

Development Permit System: Breaking the Mold?

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MUNICIPAL, PLANNING & DEVELOPMENT LAW

Overview of the Development Permit System

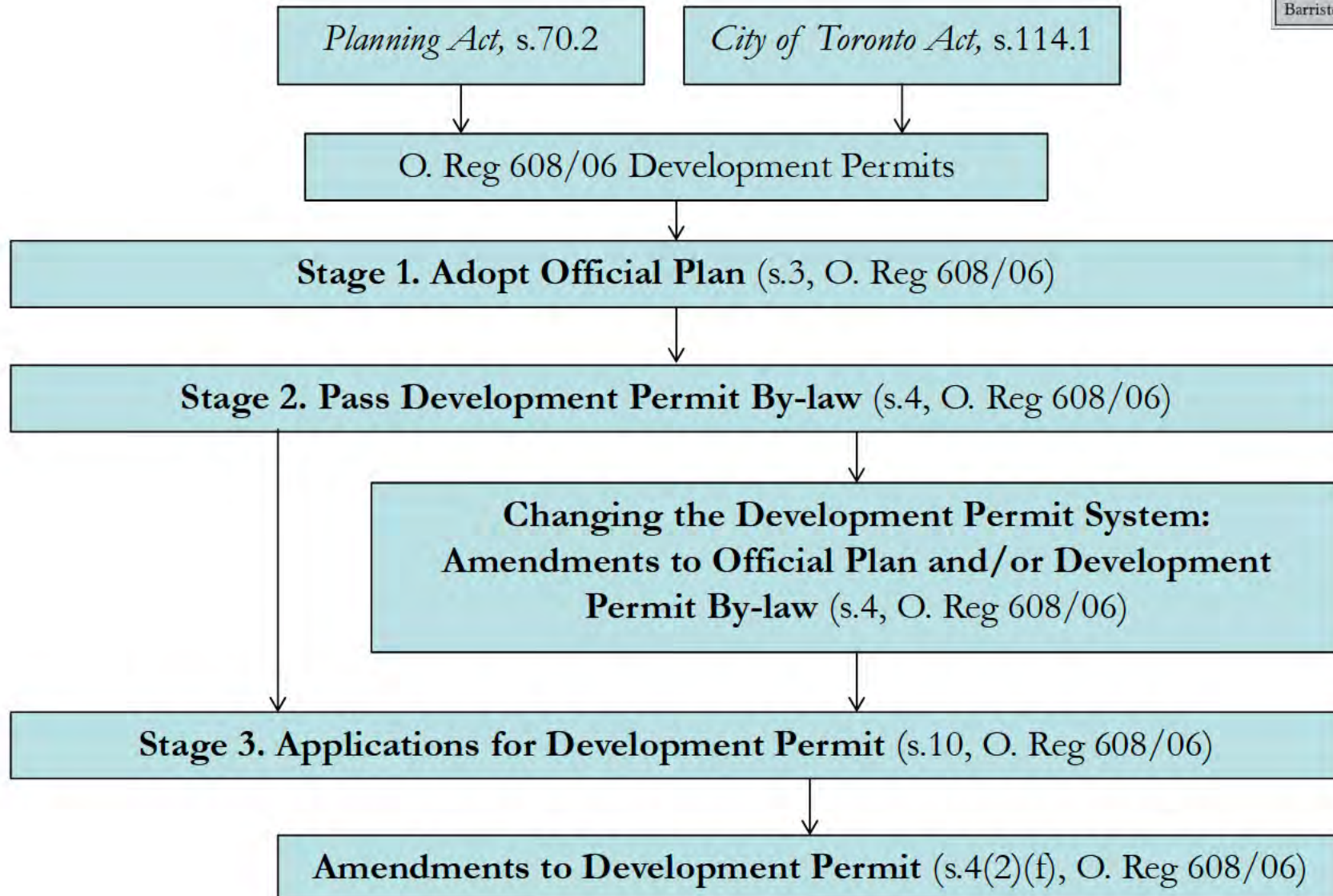
Presented by Dennis H. Wood

What is the Development Permit System?

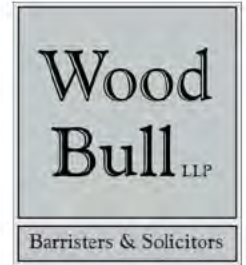


- Optional land use planning tool available for municipalities
- Streamlining: Combines zoning, minor variance and site plan into one approval process
- Flexibility: allows for discretionary uses, subject to identified criteria; allows for variations from development standards, within specified limits
- Conditions of Approval: Municipalities have the ability to impose a range of conditions on the issuance of a development permit

Development Permit System



Establishing a DPS: Official Plan



Stage 1. Adopt Official Plan (s.3, O. Reg 608/06)

- Section 17 *Planning Act* process for adopting and approving an official plan amendment. Note that *Planning Act* requires public open house prior to public meeting, for any amendment in relation to a development permit system

Establishing a DPS: Official Plan

Stage 1. Adopt Official Plan

The Official Plan is required to set out the following (s.3(1), O. Reg 608/06):

- the proposed development permit area;
- scope of the authority that may be delegated and any limitations;
- statement of the municipality's goals, objectives and policies in proposing a DPS for each proposed DPS area;
- types of criteria for each proposed DPS area that may be included in the development permit by-law for determining whether any class of development or any use of land may be permitted by development permit; and
- types of conditions for each proposed DPS area that may be included in the development permit by-law.

The Official Plan may set out the following (s.3(4) and s3(5), O. Reg 608/06):

- information and materials required in an application for a development permit, in addition to the requirements prescribed in O. Reg 608/06;
- exemption of any class of development or any use of land from any of the prescribed application requirements, but only if the official plan sets out what information and materials are to be provided in an application that falls within that class or use;
- policies respecting conditions requiring the provision of specified facilities, services and matters in exchange for a specified height or density of development.

Establishing a DPS: Development Permit By-law



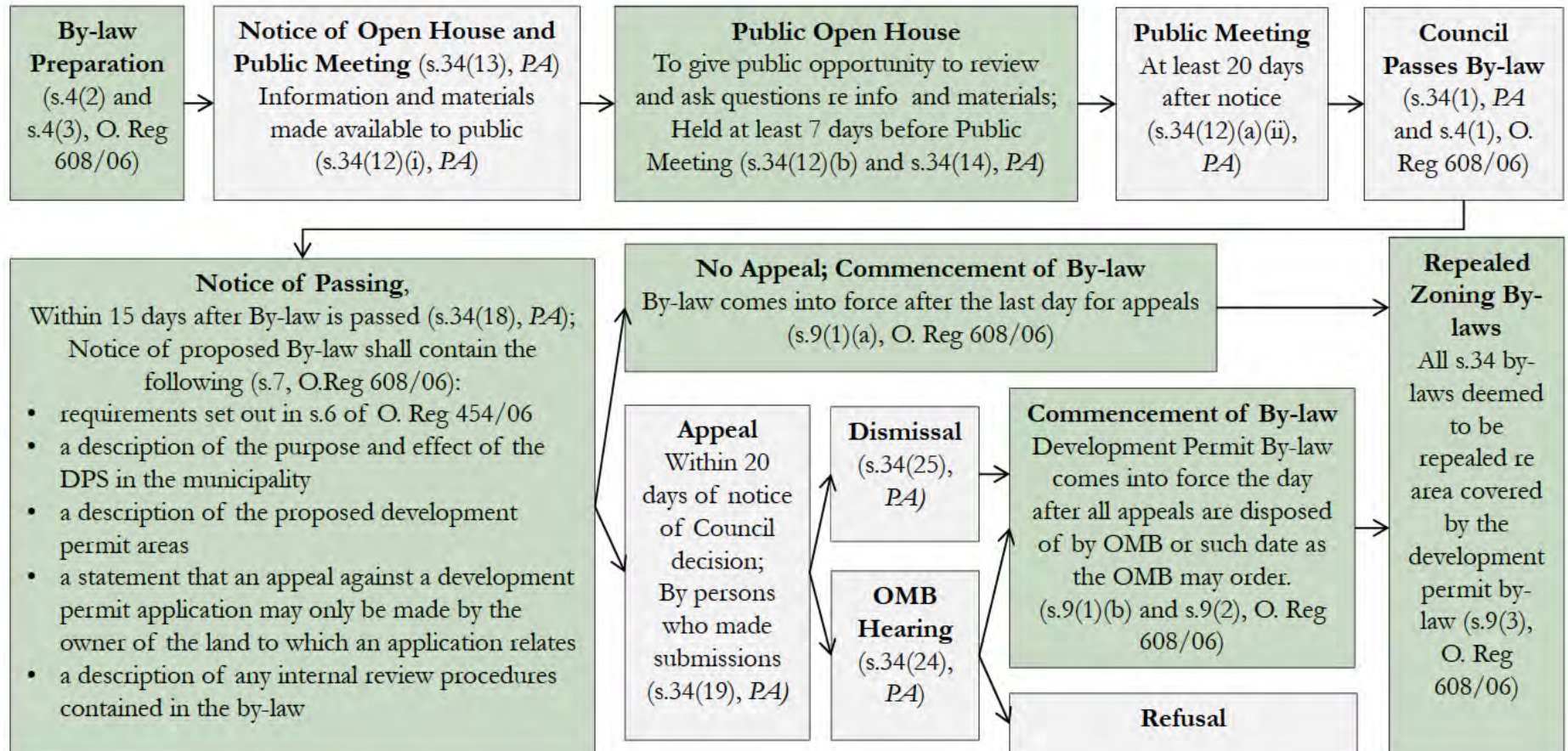
Stage 2. Pass Development Permit By-law

- Process for enacting a development permit by-law is similar to the process for enacting a zoning by-law amendment under section 34 of the *Planning Act*, with a few differences and additional requirements:
 - Information to be set out in the by-law
 - Public open house prior to public meeting
 - Information to be contained in the notice of the proposed by-law
 - Date by-law deemed to come into force
 - Zoning by-law for development permit area repealed

Establishing a DPS: Development Permit By-law

Stage 2. Pass Development Permit By-law (s.34, the Planning Act and s.4, s.7-s.9, O. Reg 608/06)

□ = steps typical to by-laws passed under s.34 of the *Planning Act* ■ = additional steps and requirements specific to development permit by-laws



Establishing a DPS: Development Permit By-law

Stage 2. Pass Development Permit By-law

The Development Permit By-law shall set out (s.4(2), O. Reg 608/06):

- area where the by-law applies, within the OP defined area;
- permitted uses and definitions;
- minimum and maximum standards for development;
- any internal review procedures for development permit decisions;
- how notice shall be given for decisions of development permit application decisions;
- process for amending development permits, development permit agreements and pre-existing site plan agreements;
- any conditions of approval;
- scope of delegated authority, including any limitations;
- statement exempting portable classroom on a school site existing on January 1, 2007 from a development permit requirement.

The Development Permit By-law may set out (s.4(3), O. Reg 608/06):

- prohibitions of any development or change of use of land without a development permit;
- defined classes of development;
- exemptions for any defined class of development or use of land from requiring a development permit;
- list of classes of development or uses of land that may be permitted if the criteria in the OP and by-law have been met (discretionary uses);
- criteria for council decisions on development permit applications;
- range of possible variations from the standards for development.

Example: Lake of Bays Development Permit By-law



- Contains permitted uses and regulations like a zoning by-law
- Allows for discretionary uses, which are permitted subject to criteria
e.g. in the “Waterfront Open Space Development Permit Area”, the permitted uses shown in the top box to the right are permitted as-of-right, and the discretionary uses shown in the bottom box are permitted subject to criteria set out in Schedule D

Permitted Uses, Buildings and Structures

PERMITTED USES, BUILDINGS AND STRUCTURES
<i>An existing detached dwelling</i>
<i>Structures accessory to an abutting 'Residential' development permit area in the same ownership</i>
<i>Individual access point</i>
<i>Public park</i>
<i>Conservation</i>

Discretionary Uses, Buildings and Structures

DISCRETIONARY USES, BUILDINGS AND STRUCTURES (a)
<i>Similar uses to those permitted</i>
<i>Waterfront Landing for a maximum of 14 watercraft</i>
<i>Mini golf course</i>

a) Subject to the criteria in Schedule D

Example: Lake of Bays Development Permit By-law



Discretionary Uses and Criteria:

DISCRETIONARY USES, BUILDINGS AND STRUCTURES (a)
Similar <i>uses</i> to those permitted
Waterfront Landing for a maximum of 14 watercraft
Mini golf course

SCHEDULE D – CRITERIA FOR DISCRETIONARY USES	
D.1	Where a <i>development</i> permit for any discretionary <i>use</i> is required, in addition to the other requirements of this by-law, the following provisions will be addressed to the satisfaction of the <i>Township</i> , prior to the issuance of a <i>development</i> permit: <ul style="list-style-type: none">a) the natural waterfront will prevail with built form blending into the landscape and <i>shoreline</i>;b) natural <i>shorelines</i> will be retained or restored;c) disturbance on <i>lots</i> will be limited and minimized;d) <i>vegetation</i> will be substantially maintained on skylines, ridge lines or adjacent to the top of rock cliffs;e) native species will be used for <i>buffers</i> or where <i>vegetation</i> is being restored;f) rock faces, <i>steep slopes</i>, vistas and panoramas will be preserved to the extent feasible; andg) <i>building envelopes</i> and the associated activity area will be defined and the remainder of the property shall remain generally in its natural state.

MINIATURE GOLF COURSE	
D.7	In addition to other requirements of this by-law, the following matters shall be addressed to the satisfaction of the <i>Township</i> prior to the issuance of a <i>development</i> permit: <ul style="list-style-type: none">a) The site is suitable for the <i>use</i> proposed;b) The property has access onto a year round publicly maintained, public road;c) Adequate potable water and sewage disposal can be provided;d) Access routes are appropriate or can be upgraded to accommodate the additional traffic;e) The proposal will be compatible with surrounding properties; andf) <i>Parking areas</i> will be <i>buffered</i> from roadways.

Example: Lake of Bays Development Permit By-law



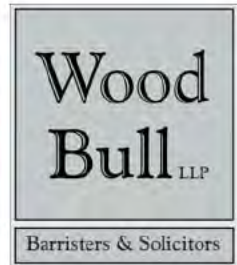
Variations from Standards:

- Allows for variations from certain standards, provided identified criteria are met to the satisfaction of either staff or Council
e.g. in the “Waterfront Open Space Development Permit Area”, the following variations are permitted to the minimum lot area standard, subject to criteria in Schedule C

a) MINIMUM LOT AREA

SITUATION	STANDARD	STAFF VARIATION	COUNCIL VARIATION
Commercial Open space	0.4 ha (1 a)	Up to 5%	Over 5%
Waterfront landing for up to 14 watercraft	1400 sq. m. (15070 sq. ft.)		
Individual access point	700 sq. m. (7535 sq. ft.)		
All other situations	No minimum		

Example: Lake of Bays Development Permit By-law



Variations from Standards - Criteria:

SCHEDULE C – CRITERIA FOR VARIATIONS FROM STANDARDS

- C.1 Where a *development* permit for any variation is required, in addition to the other requirements of this by-law, the following provisions will be addressed to the satisfaction of the *Township*, prior to the issuance of a *development* permit:
- a) the natural waterfront will prevail with built form blending into the landscape and *shoreline*;
 - b) natural *shorelines* will be retained or restored;
 - c) disturbance on *lots* will be limited and minimized;
 - d) *vegetation* will be substantially maintained on skylines, ridge lines or adjacent to the top of rock cliffs;
 - e) native species will be used for *buffers* or where *vegetation* is being restored;
 - f) rock faces, *steep slopes*, vistas and panoramas will be preserved to the extent feasible; and
 - g) *building* envelopes and the associated activity area will be defined and the remainder of the property shall remain generally in its natural state.

STAFF VARIATIONS

- C.2 In addition to the other requirements of this by-law, the following criteria shall be used in the evaluation of a request for a "Staff Variation" from a standard in this by-law:
- a) The proposal is appropriate for the lands;
 - b) The proposal would not have any off-site impacts;
 - c) The proposal would maintain the general intent of this by-law; and
 - d) The proposal would maintain the general intent of the *Official plan*.
- C.2.1 Septic Systems on *Existing Lots*
- a) A site evaluation may be required to the satisfaction of the *Township* which confirms that suitable soils exist and the reduced *setback* will not result in negative impacts on water quality.
 - b) That a *shoreline buffer* of at least 15 metres in depth be maintained between the septic system and the lake.

COUNCIL VARIATIONS

- C.3 In addition to the other requirements of this by-law, the following criteria shall be used in the evaluation of a request for a "Council Variation" from a standard in this by-law:
- a) The proposal is appropriate for the lands;
 - b) Any potential off site impacts are mitigated;
 - c) The proposal would maintain the general intent of this by-law; and
 - d) The proposal would maintain the general intent of the *Official plan*.
- C.3.1 Where a Council Variation is required to create a *lot* on a lake of high sensitivity, as identified in Schedule E, Phase 1 and 2 Water Quality Impact Assessments will be required. The Phase 1 assessment will determine if the required conditions exist on site so that *development* can occur in a manner that will ensure the protection of water quality and shall include analysis of the site and surrounding area, soil characteristics, and *vegetation* cover. Phase 1 must be completed to the satisfaction of the *District of Muskoka* and the *Township* before proceeding to Phase 2.

Phase 2 will, at a minimum, demonstrate that *building* and septic system envelopes, together with appropriate mitigation measures, including but not limited to, detailed construction mitigation plans, *shoreline setbacks* and *buffers* will protect water quality and where these requirements are implemented in the *development* permit. In addition, the *use* of a septic system with soils that have a demonstrated ability to effectively eliminate phosphorus will be required.

Example: Brampton Development Permit By-law



- Contains permitted uses, site development standards and landscaping/streetscape standards like a zoning by-law
- Allows for variances to permitted uses and most standards, subject to criteria e.g. maximum building heights for the five DPS Districts set out in the matrix below:

E) Maximum Building Heights	CMU2-DPS	CMU3-DPS	R1B-DPS	I1-DPS	OS-DPS	SPECIAL PROVISIONS / ILLUSTRATIONS <i>These special provisions correspond to numbers found under the zone columns in the matrix:</i>
1. Maximum building heights are shown on Schedule 5	•	•	•	•	•	
<p>VARIANCES: Permitted: Yes</p> <p>Criteria:</p> <ol style="list-style-type: none"> 1. See Section 5.5.4. 2. The 11.0 metre height restriction may be exceeded in the CMU3 district, if the following criteria are also met: <ol style="list-style-type: none"> a. Where an addition to an existing building is proposed, the addition shall not dominate or overpower the existing historic façade. Design techniques including massing, appropriate pitched roofs, façade articulation shall be utilized to minimise the apparent height and provide for compatibility with the existing buildings on the site or on neighbouring properties. b. Appropriate use of materials in accordance with Part 6.0 is provided. c. An appropriate transition to existing low-rise residential and adjacent commercial uses and historic uses is provided. d. In no instance shall the height exceed 15.5 metres. 3. In no instance variances shall exceed the maximum height limit by: <ol style="list-style-type: none"> a. 3.0 metres in the CMU3 - DPS district where the height limit is 15.5 metres. b. 3.0 metres in the CMU2 - DPS district. c. 1.5 metres in the R1B - DPS district. 4. Exceedance permitted in 3 will be to accommodate architectural massing and design elements and not for the purpose of adding additional floors on density. 						

Example: Brampton Development Permit By-law

Development Standard: e.g.
Schedule 5 Building Heights



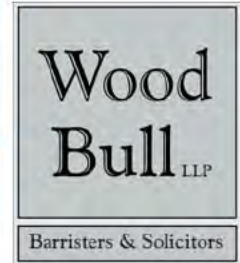
	Minimum Building Height (Metres)	Maximum Building Height (Metres)	
	7.60m	11.0m	SCHEDULE BOUNDARY
	7.60m	15.5m	
	15.5m	41.0m	
	EXISTING		

DRAWN BY: CJK DATE: JUNE 9, 2010
FILE: DPS MSN - BUILDING HEIGHTS



Schedule 5: Minimum and Maximum Building Heights

Example: Brampton Development Permit By-law



Variance Criteria:

5.5.4. Variances

- e. Where variances are permitted, they shall be assessed against the following criteria:
 - i. That the criteria under Section 5.5.3, as applicable are achieved;
 - ii. That it maintains the general purpose and intent of the Official Plan;
 - iii. That it maintains the general purpose and intent of the DPS regulations set out under Part 4.0;
 - iv. That the variance is desirable for the appropriate development of the land; and,
 - v. That the variance is minor in nature.
- f. Variances shall be permitted only in the ranges provided if so indicated under Part 4.0: Regulations.

5.5.3. Development Permit Approval Criteria

The approval of any development requiring a Development Permit pursuant to Part 5.4 of this Section of the By-law may be considered provided:

- a. The proposed development supports the further intensification and use of the lands within the DPS area and its transformation into a mixed use area;
- b. The character and stability of existing and well-established residential neighbourhoods in the vicinity of the DPS area is maintained;
- c. The proposed development is compatible, in terms of built form, use of materials and colour, with the historic character of adjacent buildings and neighbourhoods;
- d. The proposed development assists in defining Main Street by buildings and/or public spaces, where the proposal is located on Main Street;
- e. Any existing built heritage resources are retained wherever possible to provide continuity between the past and the present;
- f. If an addition to a heritage building is proposed, that it is undertaken in a manner that is consistent and compatible with the character and scale of the existing building in terms of built form and building design, use of materials and colour;
- g. The proposed development facilitates a more efficient use of urban land and the establishment of human scale pedestrian environment;
- h. The proposed development will have a built form and facade relationship to the street that is consistent with other buildings on the same side of the street;
- i. As many of the existing mature and healthy trees on site are retained as possible and appropriate landscaping added to enhance the aesthetics of the site;
- j. Appropriate measures are undertaken to maximize the infiltration of stormwater into the ground;
- k. That the policies set out in Part 3.0 of this By-law are met;
- l. That the regulations which are specific to a use or a development standard as set out in Part 4.0 of this By-law are met;
- m. That the site development standards and guidelines including Section 6.0: Urban Design Guidelines, and the City-wide Development Design Guidelines, as established by the City and as applicable to the subject lands are met; and,
- n. That the site proposal is in accordance with the policies of the City's Official Plan.

Example: Brampton Development Permit By-law



Additional Standards:

- Contains built form design standards, sustainable development criteria, and access management standards, not subject to variances
- E.g. Excerpt of built form design guidelines set out in the Brampton DPS by-law

d) Signage

BG38. Conversions will create a need for new commercial signage. Guidelines with respect to signage location, type and design are set out in Section 6.7 Signage Guidelines.

6.4.4.3. Additions to Heritage Buildings

Additions to a heritage building should respect the building to which they are added in volume and material. The style, scale, proportion, and massing of the original building should be reflected in the new addition to avoid any disruption of the existing street rhythm. The following apply for additions:

Guidelines

a) Location

BG39. Additions should not obscure or remove important architectural features of the existing building.

BG40. The principle facade of the building affects the heritage character of that building and the area. Additions are restricted to the side and rear yards, in order to minimize the visual impact from the street.

BG41. If located in the side yard, the addition should be set back a minimum of 1.0 meters from the front of the existing building. This setback will be increased if there is a historically significant side facade.

BG42. Additions should avoid the removal of any mature tree canopy.

b) Massing, Height and Scale

BG43. Additions should reflect the form and integrity of the existing building.

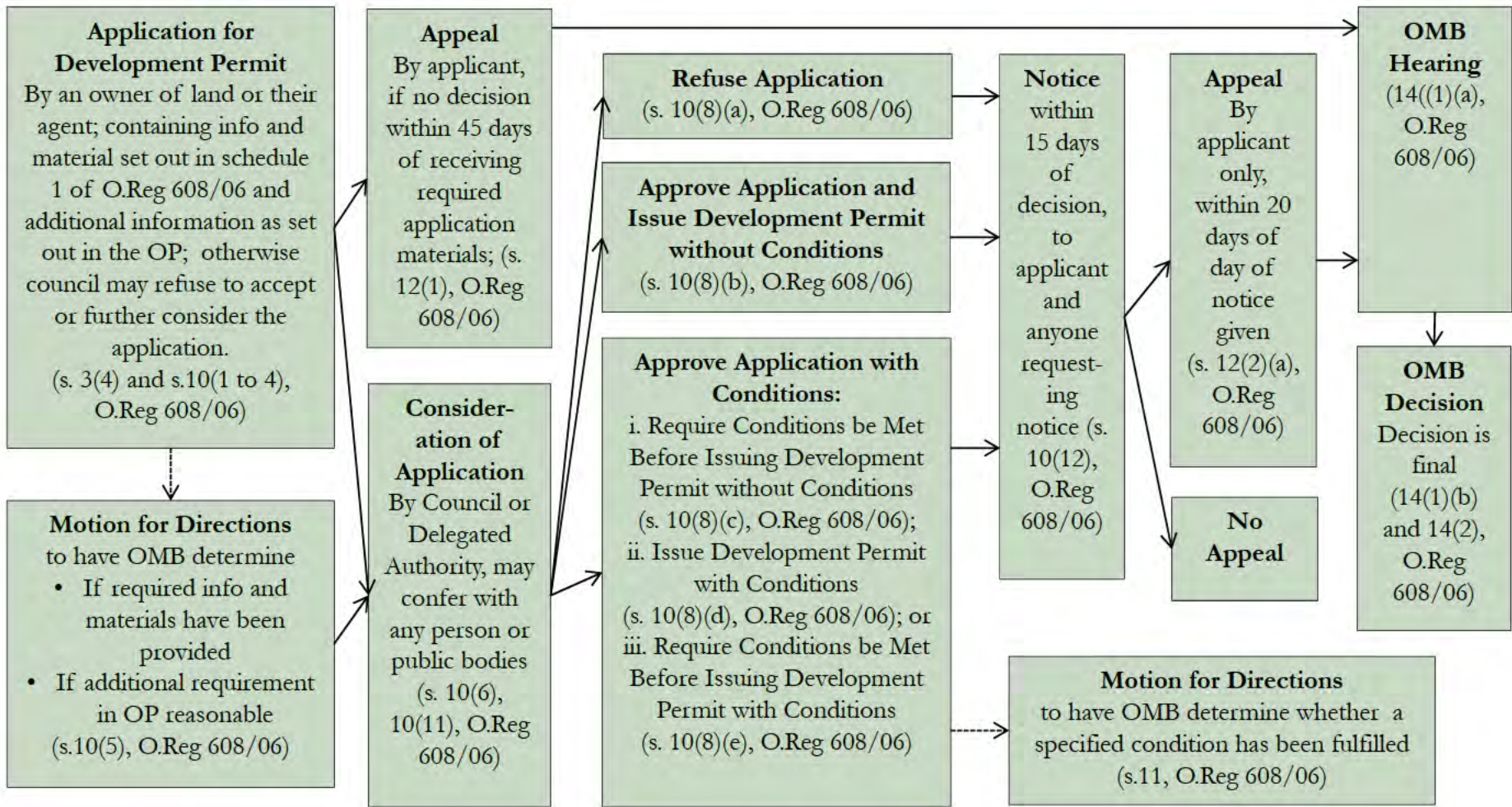
BG44. Additions should not dominate the original building. The height of any addition should not exceed that of the building or adjacent heritage buildings.



Figure 6-15: Example of Storefront Design Respects the Character of the Existing Building and Enhance the Streetscape

Application for Development Permit

Stage 3. Applications for Development Permit (s.10, O. Reg 608/06)



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