

Demolition of a Designated Heritage Property – 24 Mercer Street

Date:	August 15, 2013
To:	Toronto Preservation Board Toronto and East York Community Council
From:	Acting Director, Urban Design, City Planning Division
Wards:	Ward 20, Trinity-Spadina
Reference Number:	P:\2013\Cluster B\PLN\HPS\TEYCC\September 10 2013\teHPS 22

SUMMARY

At its meeting of July 16- 19, 2013, City Council adopted a decision to support a settlement of the applicant's appeal to the Ontario Municipal Board in the matter of the proposed rezoning of 24 Mercer Street. The Council decision was made conditional on a number of matters, including that the applicant obtain approval for the demolition of the heritage property under the provisions of the *Ontario Heritage Act*. City Council designated this property on July 19, 2013.

This report recommends that City Council refuse the proposed demolition and partial reconstruction of the designated heritage property at 24 Mercer Street as part of a revised Zoning By-law amendment application.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council refuse the proposed demolition of the designated heritage property at 24 Mercer Street, under Section 34 of the Ontario Heritage Act.
2. If the owner appeals City Council's decision to refuse the application for demolition under Section 34 of the Ontario Heritage Act, City Council authorize the City Solicitor and appropriate City staff to attend any hearing held by the Ontario Municipal Board in support of the Council position opposing such appeal.

Financial Impact

There are no financial implications resulting from adoption of this report

DECISION HISTORY

The property was listed on the City of Toronto's Inventory of Heritage Properties in 1983.

On November 29, 2011, City Council stated its Intention to Designate 24 Mercer Street under Part IV of the Ontario Heritage Act. The owner of the property appealed the Intention to Designate to the Conservation Review Board (CRB).

On November 27, 2012, City Council considered a Directions report from the Director, Community Planning, Toronto and East York District for a Zoning By-law Amendment for 24 Mercer Street. The report was referred back to Toronto and East York Community Council for further consideration pending continued discussion with the applicant.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.TE20.18>

A hearing before the CRB was held on February 4, 2013. The report from the CRB was issued on May 6, 2013. The results of the CRB hearing and the staff recommendation regarding the designation of the building are outlined in a report dated May 25, 2013 from the Director, Urban Design.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE25.20>

Based upon the report from the CRB, Heritage Preservation Services staff recommended that the third storey of the building not be included in the Reasons for Designation. Designation By-law 1061-2013 was adopted by City Council on July 19, 2013.

On July 16, 2013 City Council considered a Directions report from the Director, Community Planning, Toronto-East York District for the previously submitted Zoning By-law Amendment for 24 Mercer Street. City Council amended the recommendations of the report, determining to support an OMB settlement of the applicant's appeal in connection with its proposed rezoning of this property, subject to a number of conditions. One of those conditions was that the applicant obtain approval for the demolition of the heritage property under the provisions of the *Ontario Heritage Act*.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.TE25.19>

ISSUE BACKGROUND

Policy Framework

Ontario Heritage Act

The proposed demolition of this property is subject to Section 34 of the Ontario Heritage Act. Section 34 sets out a process by which the demolition or removal of a Part IV designated building or structure can be considered by a municipality.

Demolition or removal of structure

34. (1) No owner of property designated under section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the council of the municipality in which the property is situate and receives consent in writing to the demolition or removal. 2002, c. 18, Sched. F, s. 2 (18); 2005, c. 6, s. 22 (1).

Although formal application for demolition has not been made by the applicant (and therefore legislative response timeframes are not in effect) the related Zoning By-law Amendment contemplates demolition of the designated building.

Planning Act and Provincial Policy Statement

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council's planning decisions are required to be consistent with the PPS.

The Planning Act and associated Provincial Policy Statement guide development in the Province and they include provincial interests regarding heritage resources as described in the Provincial Policy Statement issued under the authority of Section 3 of the Planning Act. The Planning Act requires that all decisions affecting land use planning matters "shall be consistent with" the Provincial Policy Statement. The Provincial Policy Statement (PPS) provides direction on matters of provincial interest related to land use planning and development, and promotes the provincial policy-led planning system.

Provincial Policy Statement 2.6.1 states that "Significant built heritage resources and cultural heritage landscapes shall be conserved". Properties designated under Part IV of the Act or included on the City's Inventory of Heritage Properties comprise "significant built heritage resources".

In the PPS 2005, "conserved" is defined as "the identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their

heritage values, attributes and integrity are retained. This may be addressed through a conservation plan or heritage impact assessment."

Official Plan

Section 3.1.5 of the City of Toronto Official Plan states that significant heritage resources will be conserved by listing properties of architectural and/or historic interest on the City's Inventory of Heritage Properties; designating properties; entering into conservation agreements with owners of heritage properties; and designating areas with a concentration of heritage resources as heritage conservation districts. The Plan directs the adoption of guidelines to maintain and improve the character of such districts. The interpretation policies of the Plan provide that use of the term "will" is prescriptive, to be interpreted as equivalent to "shall".

Policy 2.5 of the King-Spadina Secondary Plan states that "Heritage buildings and other important buildings within the King-Spadina Area, will be retained, restored and re-used". Policy 4.1 of the Secondary Plan states that "Heritage buildings in the King-Spadina Area are essential elements of the physical character. In this regard, the City will seek the retention, conservation, rehabilitation, re-use and restoration of heritage buildings by one or more appropriate legal agreements." Policy 4.2 of the Secondary Plan states that "The height of buildings or structures on a lot containing one or more heritage buildings, may be increased above the height limit otherwise specified in the Zoning By-law if the historic conservation, restoration and maintenance of such heritage buildings are secured through a satisfactory agreement between the owner and the City pursuant to Section 37 of the *Planning Act*". Policy 4.3 requires that new buildings achieve a compatible relationship to the heritage buildings within their context through consideration of matters including height, massing, scale, setback, setbacks, roof line and profile, and architectural character and expression.

Recent planning history

In 2005, a review of the King-Spadina Secondary Plan was initiated by Council to evaluate specific matters related to entertainment uses in the area, community infrastructure, built form policies and the policies related to the public realm. In September 2006, City Council enacted amendments to the King-Spadina Secondary Plan and RA zoning to update the planning framework for the Plan area (Official Plan Amendment No. 2/By-law 921-2006 and Zoning Bylaw Amendment 922-2006). The amendments are currently under appeal to the Ontario Municipal Board by some area owners and developers. A series of pre-hearing conferences have resulted in many appeals being withdrawn or settled. The pre-hearing has been deferred with the consent of all parties. This deferral remains unchanged. The By-laws were not appealed by the owner of 24 Mercer Street.

In 2006, when Council enacted amendments to the King-Spadina Secondary Plan and the Zoning By-law it adopted new urban design guidelines for the area. Also in 2006, Council adopted design criteria for the review of tall building proposals that implement the built form policies of the Official Plan and these apply throughout the City including

King-Spadina. A study of the built form in the East Precinct of King-Spadina, within which the subject site is situated, that addressed area specific issues related to height, massing and built form context was considered by Council in 2009.

Standards and Guidelines for the Conservation of Historic Places in Canada

In 2008 Toronto City Council adopted the Parks Canada document *Standards and Guidelines for the Conservation of Historic Places in Canada* as the official document guiding planning, stewardship and conservation approach for all listed and designated heritage resources within the City of Toronto. *The Standards* include the following:

- Conserve the *heritage value* of a historic place. Do not remove, replace, or substantially alter its intact or repairable *character-defining elements*. Do not move a part of a *historic place* if its current location is a *character-defining element*
- Conserve heritage value by adopting an approach calling for minimal intervention
- Find a use for an historic place that requires minimal or no change to its character-defining elements
- Evaluate the existing condition of character-defining elements to determine the appropriate intervention needed. Use the gentlest means possible for any intervention. Respect heritage value when undertaking an intervention.
- Maintain *character-defining elements* on an ongoing basis. Repair *character-defining elements* by reinforcing their materials using recognized conservation methods. Replace in kind any extensively deteriorated or missing parts of *character-defining elements*, where there are surviving prototypes
- Make any intervention needed to preserve character-defining elements physically and visually compatible with the historic place and identifiable on close inspection. Document any intervention for future reference
- Repair rather than replace *character-defining elements*. Where character-defining elements are too severely deteriorated to repair, and where sufficient physical evidence exists, replace them with new elements that match the forms, materials and detailing of sound versions of the same elements

The *Standards and Guidelines* also include several key definitions. Central to these is the definition of Conservation:

Conservation: all actions or processes that are aimed at safeguarding the character-defining elements of an historic place so as to retain its heritage value and extend its physical life.

Reasons for Designation

Alexander Johnston House -- designated under Part IV of the Ontario Heritage Act

Located on the north side of Mercer Street between John Street and Blue Jays Way, the Alexander Johnston House (1858) was constructed as a two-storey town house that was expanded with a third-storey addition, as well as rear (north) wings for a factory. The site was listed on the City of Toronto Inventory of Heritage Properties in 1983 (Attachment No.1).

The Alexander Johnston House (1858) is a rare surviving example of an urban town house in Toronto and among the oldest surviving buildings in the City. While altered for factory use in the early 20th century, the structure retains its appearance as a house form building from the mid-1800s. The design of the Alexander Johnston House is credited to early Toronto architect John Tully and remains one of the few extant examples of his work in the city. Contextually, the property at 24 Mercer Street is historically linked to the King-Spadina neighbourhood as it evolved from its origins as an institutional and residential enclave to a commercial and industrial sector in the late 19th century. The Alexander Johnston House was converted to a hat block producing factory after the turn of the 20th century, a transformation that ensured its survival during an era when most of the original residential housing in King-Spadina were replaced by commercial buildings and industrial warehouses.

Heritage attributes include the scale, form and massing of the structure that rises two stories above a raised base with window openings. On the principal (south) façade, the brick cladding, with brick and stone detailing including the pattern brickwork with quoins along with symmetrical organization of the principal (south) façade into three bays, with the main entrance elevated and recessed in the left (west) bay, and the flat-headed window openings in the first two stories, with stone lintels, six-over-six sash windows (that are characteristic of the 19th century) and sills (Attachment No. 2).

COMMENTS

Previous proposal

A previous proposal by the applicant included the demolition of most of the heritage structure on the site with the three-storey heritage façade on the south elevation (facing Mercer Street) to be retained "*in situ*" during the construction phase of the project. Staff asked the applicant to retain a qualified heritage consultant and to supply an engineering study to demonstrate the feasibility of this proposal. This approach would have been considered an alteration under the *Ontario Heritage Act*.

Archaeological Resource Assessment

A Stage One Archaeological Assessment was requested by the City and has not yet been submitted for this application. Archaeological requirements are therefore outstanding.

Current proposal

After engaging the services of Golder Associates, the applicant is now proposing to demolish most of the heritage structure and to dismantle and remove the south façade. Prior to demolition, the applicant proposes to catalogue and dismantle two storeys of the heritage façade of the south elevation of the existing structure and then reconstruct and integrate this portion of the façade into the proposed condominium development.

Heritage Preservation staff reviewed and considered a Heritage Impact Statement and a Conservation Plan for the subject property prepared by Golder Associates and date stamped received by City Planning on June 4, 2013. These documents were associated with the originally proposed 21-storey condominium proposal for the site, although the Council supported settlement supports (on condition) a 15-storey condominium.

These two documents recognize the May 6, 2013 report from the Conservation Review Board and recommend that the amended proposal includes the first two storeys of the historic façade incorporated into the base of the building. Above the historic façade, two floors will be recessed back and, beginning at the fifth floor, the building will project to the property line to meet the street wall of adjacent properties and will form a cantilevered structure that projects over the historic façade. The proponent maintains that the cantilever of the building is necessary to accommodate a suitable floor plate (Attachment No 3).

The Heritage Impact Statement also includes the following reports for the property:

- Appendix D: Alterations and Additions to Building No 24 Mercer Street for Mr. H.G. Shaw (1919)
- Appendix G: Read Jones Christoffersen, Structural assessment of Build Façade, March 26, 2013 and Read Jones Christoffersen, Review of Damaged Foundation Wall, May 24, 2013
- Appendix H: Tango Management, Construction Feasibility, letter dated April 16, 2013

Conservation Strategy

The applicant considered four alternatives for the south elevation including conserving the façade *in situ*, intact façade removal with panelized façade kept on the site, façade deconstruction and reconstruction (new materials).

Conserving façade *in situ*

With this option, the historic façade would remain intact in its current location throughout the demolition and construction process. The demolition of the balance of the existing building would remove the main structural and lateral supports from the façade, rendering it unstable. A temporary support system would be required to support the historic façade.

In the case of 24 Mercer Street, one of the constraints discussed by the consultant is the physical size of the site which is approximately 8m in width. The structure to the west is constructed on the lot line, and a new structure to the east will be constructed with a small gap (approximately 14"). As a result, conserving the façade *in situ* presents potential for "damage and destruction" as a result of construction activities on site. The report also cautions that construction cranes will be required to lift "heavy materials" over the façade during the construction phase which places it at greater risk.

Façade removal (intact)

To mitigate potential damage due to construction activities, the applicant considered "removing the historic façade of 24 Mercer Street as one intact piece" and considers this strategy to have "the least amount of physical damage to the historic fabric". However, Golder suggest that this option is limited by the physical condition of the façade and that given the constraints of the site it is not possible to remove the heritage façade and store it on site during the construction phase of the project. Moving to an off-site location was also considered but a companion engineering report has observed cracking, spalling and mortar degradation which endangers the survival of the façade in transit.

Façade reconstruction (new materials)

This option would result in the demolition of the heritage building with replication of the heritage façade. From a conservation approach, this is the least preferred strategy as it removes all heritage value from the site.

Façade deconstruction/reconstruction (preferred strategy by applicant)

This option would include the dismantling of the façade in order to salvage components for reuse and recycling. The applicant's HIS and Conservation Plan discuss deterioration of the heritage façade from site inspection of March 5, 2013 including, three significant vertical cracks in the façade, appearance of water damage to the bricks "in many places" which has resulted in "erosion of the brick face," damage to the third floor addition including spalling, damage and visible repairs to the historic cornice between the second and third storey windows, deterioration near both corbels.

Additionally, damage was observed from downspouts, various signs fastened to the building in the past, introduction of utilities and unsympathetic repairs over time. The location of the entry door appears to be original however the steps have been replaced. The preferred conservation strategy proposed by Golder Associates is to document and record the historic façade to allow for accurate reconstruction, dismantle the façade in order to salvage components for reuse, store salvaged materials at an offsite facility and reassemble the façade in the same location as the existing building, although the entrance to the building would be lowered to grade to accommodate accessibility requirements.

Golder Associates also recommends that the historic floor levels be maintained behind the windows of the historic façade and that the modern cantilever begin at the fifth floor and be comprised of distinguishable material.

While heritage staff were reviewing the supporting heritage consultant materials, the owner advised City Planning staff that construction activity from an adjacent site had caused significant damage to 24 Mercer. This was offered as further justification for the deconstruction and removal.

HPS contacted Toronto Buildings who sent an inspector to attend the site in July 2013. The inspector confirmed that there was some damage done to the foundation wall during the shoring process over the winter from the site next door. He reported that the building had been stabilized and that repair to the foundation wall is possible. The adjacent development will carry out foundation repair once the project is constructed up to the level of the damaged area. Toronto Buildings confirmed that the building is not in a condition that would necessitate its removal.

Project analysis

The reports from Golder Associates (and associated technical reports) offer comprehensive and compelling support for the applicant's preferred deconstruction and reconstruction strategy, given the desire to build a tall building on a small site that also contains a vulnerable designated 1850s building. Significant intervention and conservation would need to occur before the façade could be panelized and protected from the compression inherent in moving a building portion that has no structural support. However, staff do not concur with the consultant's statement that deconstruction and reconstruction is not demolition, nor do we agree with the consultant's determination that this conservation treatment can be considered rehabilitation.

While careful reconstruction can achieve a more or less faithful visual representation of a heritage façade, and does allow for historic fabric to come back to its site and context, the complete removal of historic fabric from the site and a reconstruction that treats character defining features and attributes as cladding on a completely new building system, does not sufficiently conserve this rare building's heritage value. The problem in this case, however, is not the reasoning of the heritage consultant with respect to the project; it is the insistence of the applicant on a building programme that drives a drastic intervention.

Of the nine standards that the Parks Canada *Standards and Guidelines* encourages for rehabilitation projects, the following three standards offer relevant guidance for heritage planning in this instance:

- Conserve the *heritage value* of a historic place. Do not remove, replace, or substantially alter its intact or repairable *character-defining elements*. Do not move a part of a *historic place* if its current location is a *character-defining element*
- Conserve heritage value by adopting an approach calling for minimal intervention
- Find a use for an historic place that requires minimal or no change to its character-defining elements

Planning staff repeatedly advised the applicant that given the significance of this heritage property and the size of the site in relation to other properties in the King-Spadina neighbourhood, this property should not be redeveloped as a tower site. In this regard the applicant and their heritage consultant have not considered alternative development scenarios that could lessen the impact on the heritage structure, including the reduction of negative impacts through appropriately scaled development.

In a report to City Council, staff from Community Planning recommended refusal of the associated Zoning By-law Amendment concluding that "the proposal represents over-development of the property and is contrary to the planning framework for King-Spadina." It was the combined position of all Planning staff that the small size of the property made it an inappropriate location for a tall building and that its approval would set a negative precedent for future development and undermines the vision for this area of the City. City Council did not support the recommendations of staff.

As previously discussed, earlier proposals by the applicant committed to retention and restoration of the south wall of the heritage building *in situ*. Heritage Preservation gave consideration to this conservation strategy due to the future reality that recent buildings to the west and east would share side-walls with the heritage building and the balance of the heritage building would not be visible, on condition that the applicant provide a feasible shoring and bracing strategy. Of additional concern was the proposed minimal setback of one to two storeys with a cantilever beyond that height that would continue to the top of the tower above the heritage façade. Lowering the entrance to grade also represents a significant change to the organization of the façade and erases understanding of this building as a walk-up townhouse in the historic brownstone style. Alternative accessibility strategies are strongly advised.

The current proposal by the applicant justifies the removal of the heritage building on the basis that there will be negative impacts on the existing heritage resource from the proposed tower development. The applicant's heritage consultant raised concerns regarding proposed construction activity and potential damage due to construction cranes moving heavy material over the heritage façade, but do not consider construction activity from the rear of the property, along the lane to the north of the site. Additionally, much of the damage to the façade appears to be the result of water damage and consideration should be given to repair/restoration *in situ*. Further, a taller building would require a longer construction phase leaving the heritage structure vacant and vulnerable to potential damage.

The demolition of a designated building (even if reconstructed with original material) is not considered an acceptable conservation strategy within the City's guiding documents, including the *Standards and Guidelines for the Conservation of Historic Places in Canada*, or the Province of Ontario's Eight Guiding Principles in the Conservation of Built Heritage Properties. Both documents support conservation methods that result in minimal impact to the heritage resource.

The proposal is not consistent with the Provincial Policy Statement (PPS). Section 2 which contains policies related to the conservation of heritage resources. Section 2.6 of the PPS contains policies related to cultural heritage and archaeology. Policy 2.6.1 requires that “Significant built heritage resources and significant cultural heritage landscapes shall be conserved.” Properties included on the City's Inventory of Heritage Properties are considered to be "significant" in this context. The heritage building on the site has been listed since 1983, with full designation approved by City Council in 2013.

In the PPS (2005) conserved means "the identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their heritage values, attributes and integrity are retained." The proposed development would result in the demolition and removal of the heritage building which would require the City to repeal the designating by-law. In addition, the proposed cantilever, insufficient setbacks and substantial change to the front elevation at grade do not retain the heritage value, attributes and integrity of the building.

CONCLUSION

One of the fundamental goals of the Official Plan and Secondary Plan for this area is to reinforce and maintain the special heritage character of Regeneration Areas in general, and the King-Spadina area in particular. The PPS policy 2.6.1 and Official Plan policies 3.1.5.1 and 3.5.1.2 require significant heritage resources to be conserved.

Applicable preservation standards and guidelines that address the treatment of historic properties, as adopted by Toronto City Council, provide that where a building's exterior form has been identified as a character-defining element, interventions should have minimal impact. The exterior form of a building is not limited to its façade but includes elements such as scale, massing, surroundings, spatial relationships with adjacent buildings and views.

City Council has already supported a fifteen storey tower development on the site subject to a number of conditions, one of which being that the applicant obtain approval for the demolition of the recently designated building. Based on the information reviewed to date, Heritage Preservation Services cannot recommend demolition of the designated heritage property at 24 Mercer Street. As one of the few surviving 1850s townhouses in the city, and a sole survivor within the King-Spadina area, this significant heritage resource should be conserved intact and *in situ*. If an alternative proposal for a smaller scale project could be considered by the applicant, it is the opinion of Heritage Preservation Services that existing damage could be repaired and potential damage from construction activity could be mitigated.

Should Council determine to consent to the demolition, the designating by-law would need to be repealed after demolition occurs as required by Section 34(3) of the *Ontario Heritage Act*.

CONTACT

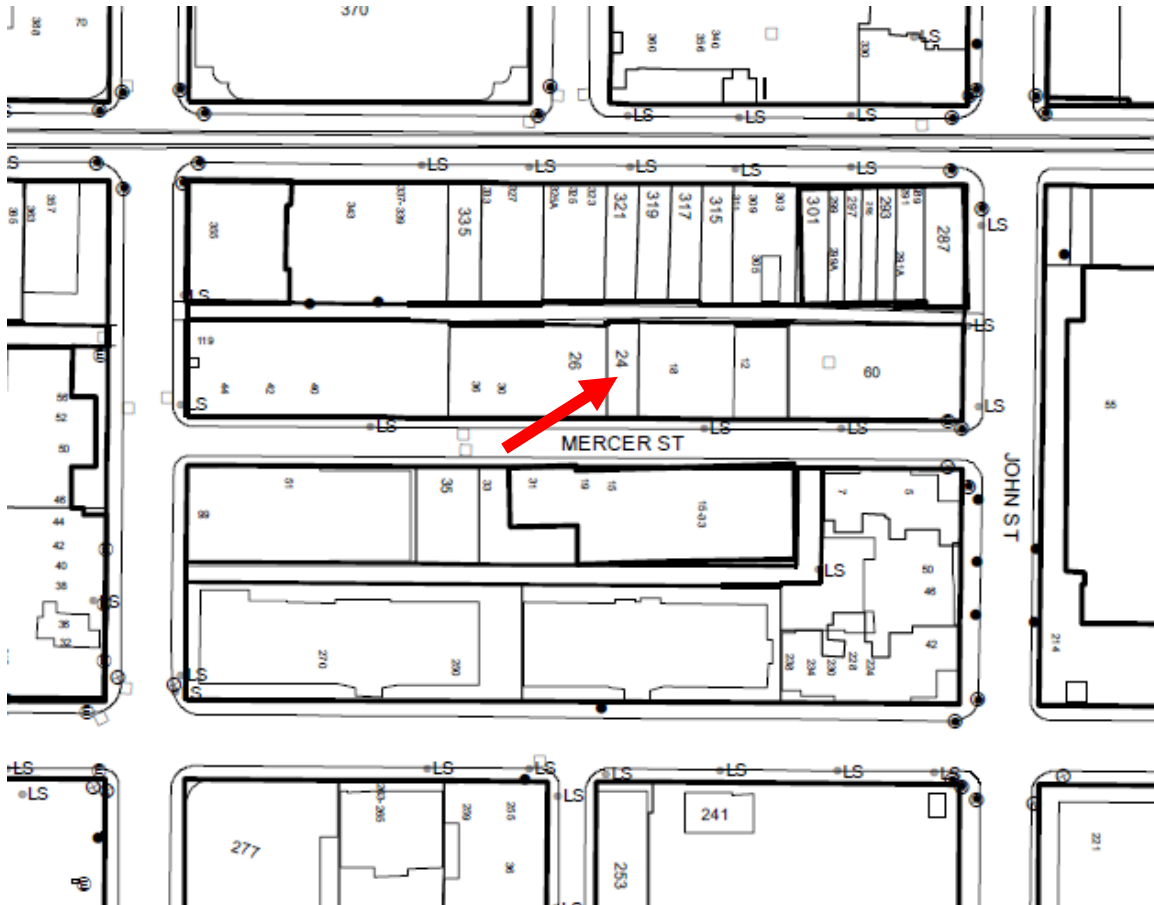
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SIGNATURE

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ATTACHMENTS

Attachment No. 1- Location Plan: 24 Mercer Street
Attachment No. 2- Photos: 24 Mercer Street
Attachment No. 3- Architectural Drawings: 24 Mercer Street



The arrow indicates the footprint of the building to be demolished at 24 Mercer Street.
The outlined area shows the limits of the heritage property

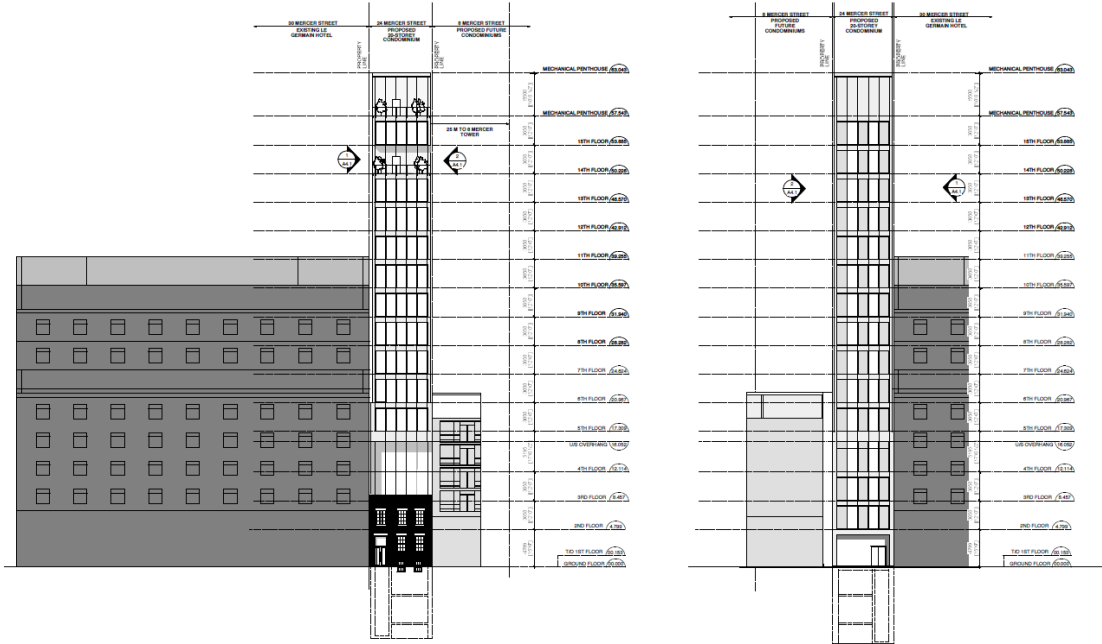
This location map is for information purposes only;
the exact boundaries of the property are not shown.



View of the primary elevation facing Mercer Street

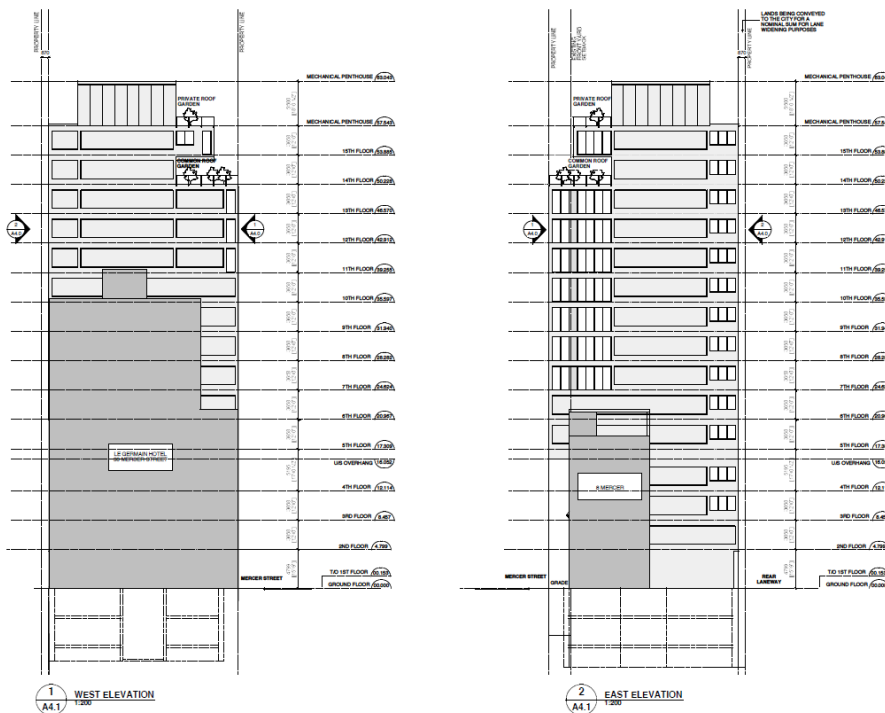


View of 24 Mercer Street showing south and east elevations



Proposed South Elevation

Proposed North (rear) elevation



Proposed West Elevation

Proposed East Elevation