

Attachment 1

Report of the Conservation Review Board

Conservation Review Board

Commission des biens culturels



ISSUE DATE: April 26, 2018

CASE NO.: CRB1709

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owners/Objectors:	Fatemah Faghani, Hassan Mohammadi Haji and Negar Haji
Subject:	Notice of Intention to Designate (Alfred D. Morrow House)
Property Address:	276 Forest Hill Road
Legal Description:	Plan 1860, Lot 49 and part of Lots 48 and 50
Municipality:	City of Toronto
CRB Case No.:	CRB 1709
CRB Case Name:	Faghani v. Toronto (City)

Heard: March 26 and 27, 2018 in Toronto, Ontario

APPEARANCES:

Parties

Fatemah Faghani, Hassan Mohammadi Haji and Negar Haji

City of Toronto

Counsel*/Representative

Brian Sherman*
Fabian Otto*

Francesco Santaguida*
Amanda S. Hill*

Participants

Mark and Shelley Diamond

Aaron Moscoe

Forest Hill Homeowners' Association

Kelly Oksenberg*

Kelly Oksenberg*

Brian Maguire

REPORT OF THE BOARD DELIVERED BY DANIEL NELSON AND LAURIE SMITH

OVERVIEW

[1] The City of Toronto (“City”) seeks to designate the property located at 276 Forest Hill Road, being Plan 1860, Lot 49 and part of Lots 48 and 50, City of Toronto (“Property”) for its cultural heritage value or interest under s. 29 of the *Ontario Heritage Act* (“OHA”). The City, which refers to the Property as the “Alfred D. Morrow House”, has issued a Notice of Intention to Designate.

[2] The Property is currently owned by Fatemah Faghani, Hassan Mohammadi Haji and Negar Haji (“Owners”). The Owners objected to the Notice of Intention to Designate on the basis that the Property failed “to meet several mandatory criteria for designation” and that the proposed designation was a “bad faith step” on the part of some members of the community and the City.

[3] The Conservation Review Board (“Review Board”) convened a hearing under s. 29(8) of the OHA (“Hearing”) for the purpose of recommending to City Council whether, in the opinion of the Review Board, the Property should be designated under s. 29 of the OHA.

[4] For the reasons set out below, the Review Board recommends that the City designate the Property under s. 29 of the OHA.

BACKGROUND

[5] The Property is located in the residential neighbourhood known as Forest Hill Village, in the central part of the City. The two-storey house on the Property was built in 1936 for financier Alfred D. Morrow, to designs by the Toronto architectural firm of Allward and Gouinlock.

[6] The Forest Hill Homeowners' Association ("Association") nominated the Property for designation under the OHA in September 2016. City staff prepared a report dated October 24, 2016 concluding that the Property meets the criteria for design, associative and contextual value set out in OHA Regulation 9/06 ("O. Reg. 9/06") and recommending that City Council state its intention to designate the Property. The Toronto Preservation Board, on November 2, 2016, and the Toronto and East York Community Council, on November 15, 2016, made similar recommendations. At its meeting on December 15, 2016, City Council placed the Property on its Heritage Register and stated its intention to designate the Property.

[7] The City issued a Notice of Intention to Designate on January 10, 2017. The Owners filed a Notice of Objection on January 11, 2017 and the matter was referred to the Review Board.

[8] The Review Board held a pre-hearing conference ("PHC") with the Parties on August 14, 2017 by telephone. Mark and Shelley Diamond, Aaron Moscoe, and Brian Maguire, on behalf of the Association, attended and were confirmed as participants in the process ("Participants"). Mr. Maguire was directed to submit a Form 1, Representative of a Party – Commencement of Authorization, as a representative of the Association, and he later did so.

[9] The Review Board issued a procedural order on October 19, 2017, setting the date of the Hearing as January 29-31, 2018 and setting a date for disclosure. Following the City's request for an adjournment, the Review Board issued a further procedural order on February 27, 2018 to amend the Hearing dates to March 26-27 and March 29, 2018, and to make consequential amendments to the disclosure date.

[10] The Hearing was convened on March 26, 2018 at the offices of the Review Board in Toronto. On the morning of the first day of the Hearing, the Parties, the Participants, legal counsel for both the City and the Owners, and the Review Board

panel Members conducted a brief site visit of the Property. The Hearing concluded on March 27, 2018.

[11] At the Hearing, the City was represented by counsel Francesco Santaguida and Amanda S. Hill, who called a single witness: Kathryn Anderson. The Owners were represented by counsel Brian Sherman and Fabian Otto, who called three witnesses: Mark Hall, Lorne Rose, and Neda Khorakchi. Mr. Maguire appeared for the Association. Participants Mr. Diamond, Ms. Diamond and Mr. Moscoe were represented at the Hearing by counsel Kelly Oksenberg. Only Mr. Diamond and Mr. Moscoe testified.

[12] The list of exhibits entered as evidence at the Hearing is attached as Appendix 1 to this Report. Included in the exhibits is an Agreed Statement of Facts filed by the parties at the commencement of the Hearing. The Agreed Statement of Facts is reproduced as Appendix 2.

ISSUE

[13] The issue before the Review Board is whether the Property has cultural heritage value or interest as prescribed by O. Reg. 9/06 and should, therefore, be designated under s. 29 of the OHA.

RELEVANT LEGISLATION AND REGULATION

[14] *Ontario Heritage Act*

Definitions

1. In this Act,
“heritage attributes” means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest;

...

PART IV - CONSERVATION OF PROPERTY OF CULTURAL HERITAGE VALUE OR INTEREST

Definition

26. (1) In this Part, "property" means real property and includes all buildings and structures thereon.

Same

(2) In sections 27 to 34.4, "designated property" means property designated by a municipality under section 29.

Designation by municipal by-law

29. (1) The council of a municipality may, by by-law, designate a property within the municipality to be of cultural heritage value or interest if,

- (a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by regulation, the property meets the prescribed criteria; and
- (b) the designation is made in accordance with the process set out in this section.

...

Objection

(5) A person who objects to a proposed designation shall, within thirty days after the date of publication of the notice of intention, serve on the clerk of the municipality a notice of objection setting out the reason for the objection and all relevant facts.

...

Referral to Review Board

(7) Where a notice of objection has been served under subsection (5), the council shall, upon expiration of the thirty-day period under subsection (4), refer the matter to the Review Board for a hearing and report.

Report

(12) Within thirty days after the conclusion of a hearing under subsection (8), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the property should be designated under this Part and any information or knowledge used by it in reaching its recommendations, and the Review Board shall send a copy of its report to the other parties to the hearing.

...

Decision of council

(14) After considering the report under subsection (12), the council, without a further hearing,

- (a) shall,

- (i) pass a by-law designating the property,
 - (ii) cause a copy of the by-law, together with a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property,
 - (A) to be served on the owner of the property and on the Trust, and
 - (B) to be registered against the property affected in the proper land registry office, and
 - (iii) publish notice of the by-law in a newspaper having general circulation in the municipality; or
- (b) shall withdraw the notice of intention to designate the property by causing a notice of withdrawal,
- (i) to be served on the owner of the property and on the Trust, and
 - (ii) to be published in a newspaper having general circulation in the municipality.

Decision final

(14.1) The decision of the council under subsection (14) is final.

[15] O. Reg. 9/06: Criteria for Determining Cultural Heritage Value or Interest

Criteria

1.(1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act. O. Reg. 9/06, s. 1 (1).

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
 - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.

3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark.

CASE FOR THE CITY

[16] The City submits that the Property should be designated under s. 29 of the OHA because it meets five of the criteria under O. Reg. 9/06 as follows::

- a. It has physical or design value under s. 1(2)1.i because the house on the Property is a fine representative example of the “Modern Georgian style, a variation of the Colonial Revival”. In the proposed Statement of Significance which forms part of the Notice of Intention to Designate, the City notes that “It blends the scale, the symmetrical placement of the door and window openings, and the formal classical detailing from earlier Georgian prototypes, while announcing its modernity in the flat roofline, the piers flanking the entrance on the principal (north) elevation, and the undulating rear (south) elevation with the half-round balcony flanked by the full height three-sided bay windows”.
- b. It has historical or associative value under s.1(2)2.ii because it yields or has the potential to yield, information that contributes to an understanding of a community or culture. The proposed Statement of Significance states that the property contributes to an “understanding of the development of Forest Hill Village following its incorporation in 1923.” The Statement of Significance asserts that the architect-designed house illustrates the village requirement, introduced in the 1930s, that residential buildings be designed by an architect with plans approved by a panel of other architects.

- c. It has historical or associative value under s. 1(2)2.iii because it demonstrates or reflects the work or ideas of an architect who is significant to a community. The Statement of Significance notes that the house on the Property was designed by the “significant Toronto architectural partnership of Allward and Gouinlock...as one of its earliest residential commissions in Toronto...The Alfred D. Morrow House reflects the high-end residential projects that Allward and Gouinlock were lauded for and, with its modern design elements, forecasts their subsequent role in advancing the Modern Movement in Canadian architecture after World War II.”
- d. It has contextual value under s. 1(2)3.i because it supports and maintains the historical character of the Forest Hill neighbourhood. The character of the area is described in the Statement of Significance as “a significant intact collection of residential buildings that reflect the popular revival styles from the interwar era when the area was incorporated as a village”; and
- e. It has contextual value under s. 1(2)3.ii because it is historically and visually linked to its surroundings. The City’s Statement of Significance notes that “it shares its setback and vintage with the neighbouring houses, but stands out in the street with its visual appearance and its position on a double lot with extended frontage.

[17] Ms. Anderson, a heritage planner with the City, was called as an expert witness for the City. She has a university degree in history and art history, a diploma in museum studies and a certificate in cultural resource management. She has worked in the heritage field since 1985 and as an architectural historian for the City since 1989. Her primary role is to research and prepare designation reports for the City; she has prepared reports for thousands of properties now on the City’s Heritage Register. Since the O. Reg. 9/06 criteria were implemented in 2006, she has prepared hundreds of evaluation reports using those criteria. She is a member of the Canadian Association of

Heritage Professionals, and other historical and preservation organizations such as the Society for Architectural Historians. She has testified before the Review Board and the Ontario Municipal Board on many occasions. The Review Board qualified her as an expert heritage planner with a specialization in architectural history.

[18] Ms. Anderson began her testimony by noting that the house on the Property was incorrectly referred to in some City documents as the “Arthur D. Morrow House”, and that it is correctly referred to as the “Alfred D. Morrow House”.

[19] Ms. Anderson stated that she prepared the “Heritage Property Research and Evaluation Report” (“Heritage Report”) for the Property in October 2016, following guidelines set out in the Ontario Heritage Toolkit. She is also the author of the Staff Report of October 24, 2016 in which the City Planning Division recommended designation of the Property.

[20] Ms. Anderson summarized the documents that she consulted in conducting her research about the Property, including: City records, land registry records, by-laws, periodicals, the online *Biographical Dictionary of Architects in Canada* (“Biographical Dictionary”) entry for Allward and Gouinlock, and 1940 articles about the Property in the *Royal Architectural Institute of Canada Journal* (“RAIC Journal”) and in *Canadian Homes and Gardens*. She visited the Property and surveyed the neighbourhood for properties built in a similar style. She reviewed the City’s Heritage Register for properties in the area.

[21] Ms. Anderson testified that in the 1930s, the Village of Forest Hill adopted a series of by-laws that restricted development to detached single-family houses on lots with minimum frontages and setbacks. A 1933 by-law required the street elevations on all new construction to be designed by architects; in 1936 a board of architects was established to approve all new plans for quality and consistency. On cross-examination, Ms. Anderson stated that the records of the work of that board, including minutes and by-laws, do not survive.

[22] In Ms. Anderson's opinion, the dominant architectural styles in the Forest Hill Village area are Period Revival styles, being Georgian Revival, which came from the United States, and evolved from Georgian and Classical design, and Tudor Revival, which came from England.

[23] In Ms. Anderson's opinion, the house on the Property was designed in the Modern Georgian or Modernized Georgian style, terms used by Chris Armstrong in his 2014 book *Making Toronto Modern*. She said that Armstrong speaks about the pull between the traditional ideas of architectural design favoured by clients, and the more modern design trends being promoted by architects, and the effort to adapt one to the other. In Ms. Anderson's opinion, the house on the Property demonstrates a compromise, in which a 1930s approach to Modern design was adapted to meet the requirements of the Forest Hill by-laws which favoured more traditional designs. She testified that in this case, the architects may have taken Georgian design elements and simplified them to achieve the desired aesthetic.

[24] Ms. Anderson also referred to John Blumenson's 1990 book *Ontario Architecture: A Guide to Styles and Building Terms, 1784 to the Present*. Ms. Anderson testified that according to Blumenson, Modern Georgian buildings in Canada were distinguished from earlier Georgian structures by "the use of modern materials, a different scale and proportional system and a mixture of new and old elements."

[25] In reply evidence, Ms. Anderson produced a clearer copy of an article about the Property that appeared in *Canadian Homes and Gardens* in March 1940. The article was originally included in the disclosure documents filed by the City. The article is titled "Town House: A Secluded Garden" and subtitled: "The formal Georgian theme is developed with modern candor and simplicity in a house planned to realize to fullest extent all the advantages of a typical city property. Allward & Gouinlock, Architects." The text that accompanies the photographs of the house in the article reads:

The residence of Mr. and Mrs. Alfred D. Morrow, Forest Hill Road, Toronto, is linked very closely with its delightful garden to the rear. To gain maximum open space for this feature, the house is placed as far forward on the lot as possible, and designed to spread across almost the full width. All important rooms concentrate the main window groups on the south side, capturing abundant sunshine and unobstructed garden views. Done in grey stock brick with white trim, the house shows fresh modern handling of the late Georgian or Regency style – indeed, it is an excellent example of “stripped architecture,” in that the fine profile, the carefully studied proportions, and the actual fabric of the building supply all the necessary interest and eye-appeal, without recourse to embellishment.

[26] In Ms. Anderson’s opinion, the house is not an Art Deco design because Art Deco is marked by particular decorative elements and was very *avant garde*. She added that there are very few examples of Art Deco decorative elements in domestic architecture in Toronto (the Lawren Harris house being a rare example), and that Art Deco is mostly seen in office and apartment buildings.

[27] Ms. Anderson testified that the Alfred D. Morrow House was designed by the Toronto architectural firm of Allward and Gouinlock, headed by Hugh Lachlan Allward and George Roper Gouinlock. In her opinion, Allward and Gouinlock was “one of the foremost architectural firms in Toronto at the time”. She reviewed other projects that she said demonstrate a variety of similar styles/designs. After the house on this Property was built, Allward and Gouinlock moved on to build more institutional and industrial buildings.

[28] Ms. Anderson referred to her Heritage Report, which notes that in 1935, the firm “rose in prominence, continuing to win local and national awards for their residential designs completed before World War II.” Her report goes on to say “Allward and Gouinlock remain best known for their post-World War II industrial and institutional designs, including Sunnybrook Hospital (1945), the Maclean Hunter Publishing Company’s printing plant in North York (1948, and no longer extant), and the Mechanical Engineering Building (1948) at the University of Toronto that are milestones in the introduction of the Modern Movement in Architecture to the city.”

[29] She drew to the Board's attention the entries for Allward and Gouinlock in the *Biographical Dictionary of Architects in Canada*, which provides a short biography and lists their works prior to 1950. Ms. Anderson also provided photographic examples of other buildings designed by Hugh Lachlan Allward and George Roper Gouinlock, including Eversley, King Township (1939); Sunnybrook Veterans' Hospital, Toronto (1947); Mechanical Engineering Annex, University of Toronto (1948); and the Duplate Building, Toronto (1950).

[30] Ms. Anderson testified that the Property has contextual value owing to the consistent quality design, use of materials, and setback, as required by the Forest Hill Village by-laws. She said that Forest Hill Village is the only example in the City of Toronto where control by-laws were used to establish a consistent look.

CASE FOR THE OWNERS

[31] The Owners called three witnesses: Mr. Hall, Mr. Rose and Ms. Khorakchi.

[32] Mr. Hall was qualified by the Review Board as an expert "heritage specialist and architect". He has practised as an architect for more than 50 years and has been involved with heritage since 1975. He has a wide range of experience working with heritage issues, and heritage properties are increasing as a percentage of his work. He is a member of the Canadian Association of Heritage Professionals.

[33] Mr. Hall testified that Colonial Revival is a general term that includes many houses, but bears no relation to the house at the Property. He testified that the style labels "Georgian" and "Georgian Revival" are "somewhat" applicable to the house at the Property because of its symmetry, but the rear elevation has "Art Deco components" because of the curved portico. He has never heard of "Modern Georgian" as a style. He testified that the Property is a "mishmash" of design elements. He described the house on the Property as "a big house, with some symmetry but the garage throws it off. It is dissonant with the concept of Georgian houses. I would be surprised if many

architects would call it Georgian". Mr. Hall compared the design of the house to 19th century industrial and office building construction because of its "plain functional aspect of design" and suggested that the yellow brick exterior was meant to emulate concrete. He stated that it was "not pleasing to the eye" and "mundane".

[34] Mr. Hall included a "Heritage Impact Summary Chart" in his expert's report, in which he summarized his opinion as to whether the Property meets each of the criteria in O. Reg. 9/06. The chart omits the word "representative" from criterion 1(2)1.i. On cross-examination, Mr. Hall admitted that he did not consider whether the Property was representative of a style or type when he was preparing his expert's report, because he did not think it was relevant.

[35] On cross-examination, Mr. Hall admitted that the Property includes many elements of the Georgian or Georgian Revival style, including a main entry door in the centre of the symmetrical façade with a window above, a brick exterior, small-paned, double-hung windows with mullions and muntins, chimneys on either side, central walkway, elevated above the street, and two storey height. He agreed that while a flat roof is not typical of Georgian houses, there are some examples of flat-roofed Georgian designs in England.

[36] Mr. Hall testified that he was not familiar with the architectural firm of Allward and Gouinlock prior to beginning this case, but has since looked into their body of work. He characterized their work as being primarily hospital and university structures rather than residential ones. In his opinion they are not among the best architects in the history of Toronto. Under cross-examination, he admitted that they may have attained significance "elsewhere in Toronto". In his opinion, they may have designed important buildings that were "competently done but nothing special". He regards Allward and Gouinlock as "competent but not good".

[37] Mr. Hall testified that there are many Georgian Revival houses in Forest Hill because it was one of the styles that was acceptable to the panel of architects.

[38] Mr. Hall testified that in his opinion the heritage attributes listed by the City in the Statement of Cultural Heritage Value are not important heritage attributes and do not relate to the criteria in O. Reg. 9/06.

[39] Under cross-examination, Mr. Hall testified that the Property does not meet the criteria for a monument or landmark because “it is a background building, designed like a commercial or institutional building”. He compared it to a bank building or an office building. In his opinion it is “a functional building inserted in a residential neighbourhood; it is unique compared to the other houses in the area”. On re-direct examination, Mr. Hall testified that it is not a rare, unique or early example of a style or type. He said that while it contains some elements of the Georgian or Georgian Revival styles, it is not a “classic Georgian house”.

[40] The second witness called by the Owners was Lorne Rose. Counsel for the Owners proposed to call Mr. Rose as an expert witness. Counsel for the City objected at the outset of the Hearing on the basis that Mr. Rose’s expert report was filed in the afternoon of March 23, 2018, one business day before the Hearing commenced, even though the deadline for disclosure had been set by the Review Board as March 9, 2018. In addition, although Mr. Rose had been identified as an expert witness in the Owner’s disclosure documents on March 9, 2018, his area of expertise was not disclosed. Counsel for the City submitted that the City would be prejudiced if Mr. Rose were permitted to give his expert opinion as the City did not know the subject matter of his expertise in advance and did not have sufficient time to review and consider his expert report. The City did not object to Mr. Rose testifying as a non-expert witness.

[41] Counsel for the Owners argued that it was not crucial to have Mr. Rose's expert's report before the Review Board. Counsel submitted that, if the Review Board decided not to qualify Mr. Rose as an expert witness, he should be permitted to testify as a non-expert witness. Alternately, Counsel for the Owners requested that the Review Board grant an adjournment of the Hearing to permit Mr. Rose's report to be properly filed.

[42] After hearing submissions from counsel, the Review Board directed that Mr. Rose would be heard, and could provide evidence of personal knowledge, but could not give opinion evidence as an expert witness and his expert's report would not be received, due to the late filing of the report. The Review Board notes that Rules 29.03 and 29.04 of the Review Board's *Rules of Practice and Procedure* direct that expert witnesses whose reports are not filed at least 14 days before a hearing cannot testify as expert witnesses, unless the Review Board directs otherwise. In this case, Counsel for the Owners did not provide any reason for the late filing of the report, and the Review Board considered that due to the extreme lateness of the report, the City would suffer prejudice in not having adequate time to review and consider the report.

[43] In addition, the Review Board denied the Owners' request for an adjournment, as the filing requirement for the expert's report had been communicated to the Parties in the Review Board's orders of October 19, 2017 and February 27, 2018; the Owners had failed to submit the required report within the prescribed time; and the Owners had not provided any reason for their failure to meet the deadline to file the expert's report.

[44] Mr. Rose testified that he has practised as an architect since 1989 and has personal knowledge of the Forest Hill neighbourhood. He has been retained by the Owners to design two new buildings on the Property to replace the existing house.

[45] Mr. Rose gave evidence that he does not see the Property as a Georgian house and is not personally aware of "Modern Georgian" as a style. He testified that the back of the house contains features that remind him of Art Deco but he was unable to list

typical elements of Art Deco. On cross-examination, he admitted that he has not personally seen the back of the house.

[46] Mr. Rose said that he has “limited knowledge” of the architects Allward and Gouinlock. In his view, they are not talented architects in Forest Hill or in residential architecture: “I think this is a bad piece of their architecture”. In his view, some of the details in the rendering that appeared in the RAIC Journal article were left out of the as-built design of the house.

[47] The third witness called by the Owners, Ms. Khorakchi, is a law clerk employed by Mr. Sherman, counsel for the Owners. Ms. Khorakchi testified as to research she conducted with respect to the Property. She carried out internet searches, attended the “Forest Hill section” of Forest Hill Library, made an unsuccessful attempt to contact Heritage Toronto, visited the Toronto Archives and took a one-on-one heritage tour of Forest Hill. Although she was unable to find much material of relevance to the Property, she did locate two of the sources included in the City’s report: the online entry for Allward and Gouinlock in the *Biographical Dictionary of Architects in Canada*, and an online entry for the gravesites of Alfred D. Morrow and his wife. On cross-examination, Ms. Khorakchi admitted that she had never conducted heritage research before and has no expertise in heritage structures. She stated that she is a law clerk and her expertise is in legal matters.

[48] The Review Board suggests that Ms. Khorakchi’s research should have been conducted by an expert witness, or conducted under an expert witness’s direction, to form part of an expert report and the testimony of the expert witness. Ms. Khorakchi, who may be an able law clerk and legal researcher, did not seem to demonstrate the knowledge or experience necessary to conduct effective historical research.

PRESENTATIONS BY PARTICIPANTS

[49] Mr. Maguire presented on behalf of the Association. His view is that the house contains aspects of both Georgian and Art Deco styles. He conducted online searches and found an entry in the “Blue Book” of 1941, listing all the clubs to which Alfred D. Morrow belonged. Mr. Maguire noted that the house has been there for 82 years. He said that it is somewhat different from adjacent houses and therefore can be considered significant. His view is that the house is worthy of designation.

[50] Mr. Diamond was sworn as a witness and examined by his counsel, Ms. Oksenberg. He has lived at 280 Forest Hill Road, next door to the Property, for 19 years and has been familiar with the Property for longer than that. He remembered that 30 years ago it was “an iconic house”, “a famous, well-known house” even among young people in the neighbourhood. He believes that the loss of the house would affect the character of the streetscape, as well as his own house. On cross-examination, he emphasized that it has been considered “a beautiful home” for 30 years.

[51] Mr. Moscoe was sworn as a witness and was also examined by Ms. Oksenberg as his counsel. He resides directly across the street from the Property, at 291 Forest Hill Road and has lived there since 2006. He considers the Property “a beautiful iconic home” with “unique character”. He said that the Property is often referred to by agents and neighbours as a “historic home” designed by “a famous architect”. Mr. Moscoe “admires its presence on the street” and compared it to “living near Casa Loma or the ROM”. When he heard that the Owners were planning to replace the house on the Property, he went door-to-door and obtained the signatures of 20 neighbours on a petition protesting those plans. On cross-examination, he said that from speaking to more than 20 neighbours “people feel an attachment to the home in terms of culture and heritage”.

ANALYSIS

[52] The parties agree that the house on the Property was built in 1936 by financier Alfred D. Morrow and designed by the Toronto architectural firm of Allward and Gouinlock. The issue here is whether the Property meets any of the criteria set out in O. Reg. 9/06 and should be designated for its cultural heritage value or interest. The City argues that the Property meets five of the criteria set out in O. Reg. 9/06 and should therefore be designated as being of cultural heritage value or interest under s. 29 of the OHA. The Owners submit that the Property does not meet any of the required criteria.

Representative Example of a Style or Type (O. Reg. 9/06, s. 1(2)1.i)

[53] The City's witness, Ms. Anderson, asserted that the style of the Property is "Modern Georgian" or "Modernized Georgian". Witnesses for the Owners suggested that it was a "mishmash" and "idiosyncratic", including elements of both Georgian and Art Deco styles. The City argues that the design of the Property reflects the growing influence of the Modern movement on the more traditional Georgian Revival style. The Owners submit that in order to meet the criterion and function as a "representative" example of a style or type, the Property cannot exhibit such an evolution.

[54] The Owners submit that in determining whether the Property is representative of a style or type, the Review Board should prefer the testimony of their witness, Mr. Hall, over that of the City's witness, Ms. Anderson, on the basis that Mr. Hall is an architect, and Ms. Anderson is only an architectural historian. The Review Board does not find this distinction helpful. Rather, the Review Board prefers to consider the evidence of each expert witness according to their experience in identification and evaluation of heritage properties, their familiarity with the relevant styles and types and with Canadian architectural history, and the historical and comparative research they conducted with respect to the Property.

[55] In this case, the Review Board prefers Ms. Anderson's testimony over that of Mr. Hall. In both examination and cross-examination, she showed herself to be direct, careful, detailed and precise in her observations. Her conclusions were well-supported by research and connected to secondary source material that placed the Property in a historical and architectural context. Mr. Hall's report, on the other hand, apparently relies on the historic research undertaken by the City and does not demonstrate that he undertook any independent historic or comparative research to support his analysis. It is not clear how his conclusions are tied to the materials he reviewed. In particular, the Review Board does not find it helpful that much of Mr. Hall's expert report simply rephrases in the negative the criteria set out in O. Reg. 9/06, without a detailed evaluation of each criterion as it relates to this Property and without links to historical research and secondary sources.

[56] Ms. Anderson referenced two authors on architectural history to support her conclusion that the house on the Property is designed in a Modern Georgian or Modernized Georgian style: John Blumenson and Chris Armstrong, although she did not produce copies of either. She also provided a copy of the March 1940 article from *Canadian Homes and Gardens* that describes the Property as a "fresh modern handling of the late Georgian or Regency style – indeed, it is an excellent example of 'stripped architecture'".

[57] The Review Board accepts Ms. Anderson's evidence that Modern Georgian was a 1930s interpretation of the Georgian Revival style. It attempted to push the boundaries of what Georgian Revival means by stripping away decorative features and applying a Modernist design aesthetic to the traditional forms and massing of Georgian Revival.

[58] The Review Board finds that the use of the Modern Georgian style in a residential context was unusual and *avant garde*; however this does not negate its representativeness of the style. The Review Board is satisfied that the Property neatly illustrates the influence of the Modernist aesthetic on the prevalent Georgian Revival

style, with the architects artfully juxtaposing this new approach in the context of more traditional Georgian Revival designs in the neighbourhood.

[59] Thus, in many ways, the Review Board considers the Owners' great effort, through the examinations and cross-examinations conducted by Mr. Sherman, over what precisely constitutes the Georgian and Georgian Revival architectural styles was not helpful to the Review Board in making its determination. Some architectural styles (including the Georgian style), and the buildings that reflect them, are easily understandable and, therefore, easily categorized. Some designs are less obvious and pull together a variety of design elements, making it difficult to taxonomize them. Such difficulty does not vitiate the cultural heritage value or interest of such a design. There is a very good reason for that: architecture is both an art and a science. Artists, in every generation, attempt to push boundaries and play with the ideas and designs of those who have come before. Architectural style can often only be successfully analysed by looking backwards and detecting broad trends while understanding that any particular building may be a paragon of such a style or constitute a transitional version between styles.

[60] The Review Board accepts Ms. Anderson's testimony that the house is not an Art Deco design because Art Deco is marked by particular decorative elements which are not present here. While Mr. Hall testified that the curved rear portico was an Art Deco component, he did not provide evidence to support this opinion. None of the other witnesses who described the house as "Art Deco" were qualified as expert witnesses and the Review Board does not consider their testimony as reliable in this regard.

[61] The Review Board finds that the Property is a fine representative example of the Modern Georgian style applied in a residential context and therefore meets the criteria for designation under s. 1(2)1.i of O. Reg. 9/06.

Yields or Has the Potential to Yield, Information that Contributes to an Understanding of a Community (O. Reg. 9/06, s. 1(2)2.ii)

[62] It is the City's position that the Property has historical or associative value because it yields or has the potential to yield information that contributes to an "understanding of the development of Forest Hill Village, following its incorporation in 1923". The City relies on the Village by-laws, which required the public face of residential buildings to be designed by an architect and reviewed or approved by a panel of architects. Ms. Anderson testified that the coherent development of the village through by-laws makes it unique within the current City of Toronto, and that the Property could provide a useful example of this process.

[63] However, the City provided no evidence of these historic by-laws except for a brief summary contained in the Heritage Report authored by Ms. Anderson. There is no reference in the materials regarding the review panel of expert architects, their scope of review, or their powers to refuse or amend the submitted design. It is difficult, therefore, to determine the significance of the review process and the extent to which it is illustrated by the Property.

[64] The Owners' argument that the by-laws applied to every home built in Forest Hill Village during their applicability, and this factor would be too broad to serve in itself as a justification for designation under s. 1(2)2.ii, does have some merit. Nevertheless, it is certainly open to the City to evaluate and designate individual properties throughout the Village because they contribute to an understanding of the community, provided there is sufficient evidence to support this conclusion in each case.

[65] In the absence of further information, the Review Board is not satisfied that the Property yields or has the potential to yield information that contributes to an understanding of the Forest Hill community.

Demonstrates or Reflects the Work or Ideas of an Architect Who is Significant to a Community (O. Reg. 9/06, s. 1(2)2.iii)

[66] The parties agree that the Property was designed by the Toronto architectural partnership of Allward and Gouinlock, but they disagree on the significance of the architects to a community. The City argues that the firm was “more than just unremarkable in Toronto. They designed a number of buildings and became known for their modern style.” The Owners submit that Allward and Gouinlock “don’t have much of a profile in Forest Hill or in Toronto, save for Sunnybrook Hospital and some institutional or commercial buildings”. They characterize Allward and Gouinlock as competent architects designing “background buildings”.

[67] The Review Board accepts Ms. Anderson’s evidence that Allward and Gouinlock was “one of the foremost architectural firms in Toronto at the time”. Ms. Anderson relied primarily on biographies and lists of works for Allward and Gouinlock in the online resource authored by Robert Hill, *Biographical Dictionary of Architects in Canada*. The lists of works are taken directly from periodicals and other publications featuring the work of each architect. The Review Board accepts Ms. Anderson’s testimony that the *Biographical Dictionary* is an important source for research in Canadian architectural history and rejects the Owners’ suggestion that it is of questionable veracity.

[68] The biography and list of works provided by Ms. Anderson from the *Biographical Dictionary* notes that Hugh Lachlan Allward (1899-1971) won several prizes from the Toronto Chapter of the Ontario Association of Architects in the early 1930s before forming a partnership with G. Roper Gouinlock in 1935. Their new partnership continued to win local and national awards for residential designs during the 1930s and 1940s. Their firm was “one of the first to introduce a modernist aesthetic to institutional buildings in post-war Toronto” and they earned international attention for the modernist design of the Mechanical Engineering Building (1948) at the University of Toronto and the Maclean Hunter Publishing Company’s printing plant in North York (1948, and no longer extant). Other noteworthy buildings include: Eversley, King Township (1938-39) a mansion and country estate for Lady Eaton, now part of Seneca College; the Small

Arms Inspection Building, Mississauga ; Sunnybrook Veterans Hospital, Toronto (1944-47); and the Department of Veterans Affairs Building, Ottawa (1949-58, now known as the East and West Memorial Buildings). The entire *corpus* of their work demonstrates their success in achieving significant commissions. In addition, Mr. Allward was elected to the Royal Canadian Academy of Arts, one of the most important learned societies in the country, in 1945 and later served as its president.

[69] The evidence of Mr. Diamond and Mr. Moscoe, that they understood that the Property was designed by a famous architect, hints at the community's awareness of the significance of their body of work.

[70] The Owners suggest that "community" might be defined as the Forest Hill neighbourhood, the City of Toronto, or even the community of architects. The Review Board agrees that the definition of "community" is fluid and can be expanded, contracted, or specialized depending on the circumstances. In this case, the national stature of some of Allward and Gouinlock's work, and the fact that more than 80 commissions in 20 communities received media attention, as evidenced by the *Biographical Dictionary* listing, suggests that they can be considered significant at a national level.

[71] The parties did not directly address the issue of whether the Property demonstrates or reflects the architects' work or ideas. However, based on the information contained in the *Biographical Dictionary* entries, and the photographic information provided by the City, the Review Board considers that the design of house on the Property is part of the early progenation of ideas that would be implemented in significant buildings in the federal inventory and elsewhere, especially with respect to the use of a Modern aesthetic on traditional forms.

[72] For these reasons, the Review Board finds that the Property has historical or associative value because it demonstrates or reflects the work or ideas of the architectural partnership of Allward and Gouinlock, who were significant to the community at a national level.

Is Important in Defining, Maintaining or Supporting the Character of an Area (O. Reg. 9/06, s. 1(2)3.i)

[73] The City argues that the Property has contextual value because it is important in supporting and maintaining the character of the area. The City takes the position that it is part of a “significant intact collection of residential buildings that reflect the popular revival styles from the interwar era...”. Ms. Anderson testified that Georgian Revival is one of two dominant styles in the neighbourhood, and she considers the style of the house on the Property to be within the Georgian Revival style. The Owners’ witness, Mr. Hall, notes in his report that: “from an urban design perspective, the existing architectural character is inconsistent and an anomaly to many residential buildings in this immediate neighbourhood. In our view, the building represents a gap in the neighbourhood character of more traditional English suburban style house envisioned by the early developers of Forest Hill.”.

[74] While perhaps not as “anomalous” as Mr. Hall might suggest, the Property is certainly noticeable because of its Modern aesthetic. However, the Review Board considers that it did not receive sufficient evidence as to the current character of the area to make a determination on this issue. Evidence such as a comprehensive survey of the character of the area, or even the immediate street, including dates of construction, styles, materials, and photographs would have assisted the Review Board in making a determination.

Is Visually or Historically Linked to its Surroundings (O. Reg. 9/06, s. 1(2)3.ii)

[75] The City asserts that the Property has contextual value because it is historically and visually linked to neighbouring homes by virtue of its setback and vintage. In Ms. Anderson's opinion, the consistent quality design, materials and setback required by the Forest Hill Village By-laws for properties built from 1935 onwards, created this consistency in appearance and this historical link. However, in the absence of more evidence on the nature and content of the by-laws and the manner in which they were enforced, the Review Board does not consider that it has sufficient evidence to make a finding on this criterion. Evidence such as a visual survey of the streetscape, and/or evidence on the workings of the architectural review panel and by-laws for the Village of Forest Hill would have assisted the Review Board in making a determination.

Heritage Attributes

[76] As required by s. 29(4) of the OHA, the City included a description of heritage attributes that contribute to the cultural heritage value or interest of the Property in the Notice of Intention to Designate. The City submits that these attributes reflect the Georgian modern style of the house and maintain a high degree of integrity. The witness for the Owners, Mr. Hall, testified that these were not "important heritage attributes". Neither party made detailed submissions as to how each of the heritage attributes contributes or does not contribute to the heritage values of the Property. However, the Review Board has reviewed the description of heritage attributes and finds that they contribute to the heritage values confirmed by the Review Board above in relation to O. Reg. 9/06 s. 1(2)1.i and s. 1(2)2.iii, namely, the Modern Georgian style of the house on the Property and its role in demonstrating or reflecting the work or ideas of the architectural partnership of Allward and Gouinlock.

SUMMARY AND RECOMMENDATIONS

[77] Having considered the evidence and submissions at the Hearing, and for the reasons set out above, the Review Board recommends that the Property be designated under s. 29 of the OHA.

“Daniel Nelson”

DANIEL NELSON
MEMBER

“Laurie Smith”

LAURIE SMITH
VICE-CHAIR

Appendix 1 – List of Exhibits

Appendix 2 – Agreed Statement of Facts

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Conservation Review Board

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Exhibits List

Exhibit No.	Nature of Exhibit and description	Filed By:
1	Statement of Service (noting that Notice of Hearing was served on the parties and directed public notice according to the Rules and the Act)	Conservation Review Board
2	Statement of Service of Public Notice of Hearing served by the City of Toronto	City of Toronto
3	City of Toronto Document Book	City of Toronto
4	Owners/Objectors Disclosure Documents	Owners/Objectors
5	276 Forest Hill Road, Toronto, Heritage Impact Summary Chart	Owners/Objectors
6A	Realtor info sheet: "Welcome to 276 Forest Hill Road"	City of Toronto
6B	Realtor.ca listing for 276 Forest Hill Rd.	City of Toronto
7	Article: "Town House: A Secluded Garden", Canadian Homes and Gardens, March 1940	City of Toronto
8	Participants Statements for Diamond and Moscoe	Participants Mark Diamond and Aaron Moscoe

Agreed Statement of Facts

1. The property at 276 Forest Hill Road is located in the Forest Hill neighbourhood, southeast of Eglinton Avenue West and Spadina Road, and contains a two-storey house commissioned in 1936 by financier Arthur [sic] D. Morrow, which was designed by the Toronto architectural partnership of Allward and Gouinlock.
2. In September 2016, the Forest Hill Homeowners' Association nominated the property at 276 Forest Hill Road for designation under Part IV, Section 29 of the *Ontario Heritage Act*.
3. At its meeting of September 28, 2016, the Committee of Adjustment considered and deferred consideration of Application Nos. B0048/16TEY, A0768/16TEY and A0769/16TEY (to sever the property at 276 Forest Hill Road into two lots and replace the current 1936 house form building with two single detached houses) for three months.
4. Staff prepared a report dated October 24, 2016 indicating that, following research and evaluation, the property at 276 Forest Hill Road meets Ontario Regulation 9/06 (the provincial criteria prescribed for municipal designation), and recommending that City Council state its intention to designate the property under Part IV, Section 29 of the *Ontario Heritage Act*.
5. The staff report included a Statement of Significance (Reasons for Designation) as Attachment 3, as well as a Heritage Property Research and Evaluation Report 2 (Attachment 4) that concluded that the property meets Ontario Regulation 9/06 under all three categories of design, associative and contextual value.

6. At its meeting of November 2, 2016, the Toronto Preservation Board (the City of Toronto's Municipal Heritage Committee) considered the staff report (October 24, 2016) and recommended that City Council state its intention to designate the property at 276 Forest Hill Road under Part IV, Section 29 of the *Ontario Heritage Act*.
7. The Toronto and East York Community Council, at its meeting of November 15, 2016, adopted TE20.12, recommending that City Council state its intention to designate the property at 276 Forest Hill Road under Part IV, Section 29 of the *Ontario Heritage Act*.
8. At its meeting of December 13, 2016, Toronto City Council adopted TE20.12, including the property at 276 Forest Hill Road on the City of Toronto's Heritage Register, and stated its intention to designate the property at 276 Forest Hill Road under Part IV, Section 29 of the *Ontario Heritage Act*.
9. On January 10, 2017, the Clerk's Department of the City of Toronto posted the Notice of Intention to Designate the property at 276 Forest Hill Road on the City's web page, and served notice on the property owners and the Ontario Heritage Trust according to the provisions of the Ontario Heritage Act, advising that the 30-day period for objections ended on February 9, 2017.
10. Prior to these events, 276 Forest Hill Road was never Listed or Designated by the City of Toronto or Province of Ontario.