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February 3, 2020

BY EMAIL

File No. 155143

Toronto and East York Community Council
2nd floor, West Tower, City Hall
100 Queen St. W.
Toronto, ON M5H 2N2

Attention: Ms. Ellen Devlin:

**Re: TE13.13
Residential Demolition Application – 136 Lyndhurst Avenue**

Please be advised that Aird & Berlis LLP represents Matthew Kurtin, the owner of the property at 136 Lyndhurst Avenue.

The purpose of this correspondence is to provide our client's response both to the staff report on this matter as well as the correspondence on file in respect of the objections to the request for a demolition permit for this property.

Applications for Demolition Permit and Replacement Building Permit

First, we wanted to clarify the process which has led to this report. Our client purchased the property on July 2, 2019 and has been working with his architect, Mr. Lafreniere, since that time to update the home to meet his needs. A review of the existing building condition resulted in the discovery of significant issues which would require costly remediation and reconstruction. The alternative, to design a new contemporary home consistent with the character of the area, was preferred. Mr. Lafreniere has designed a home which complies with the City's new By-law 569-2013 and will be constructed without any variances.

Although the design of the new home is not before Community Council today, we have included a rendering of the new home in the existing streetscape. We note that the new home is proposed to be constructed of stone and brick, consistent with that found in the area, and is designed with a pitched roof in a scale which fits in with the existing streetscape.

On behalf of our client Mr. Lafreniere's office filed applications with the City of Toronto for both a zoning review and for permits to demolish the existing home and to construct a new home. The application for a zoning review was filed on July 29, 2019; the applications for replacement building permit were filed on December 4, 2019. Upon request from City staff, the demolition permit application was filed shortly thereafter. Our client and its consultants have been engaged with City staff since that time in a review of the application materials. A single deficiency was identified in the building permit application, and was rectified with the filing of an additional plan on January 30, 2020. It is our understanding that this application is now deemed complete but that the building permit for the new home cannot issue until the matter of the objections to the demolition permit are resolved. Our comments with respect to that matter follow below.

In our view, it is important for members of Community Council to appreciate that at no time in the nearly six months that this matter has been under review by the City was the issue of a possible heritage designation raised. Indeed, and as is discussed below, there is nothing publically available to indicate that City Council has identified this property as having or potentially having heritage value; indeed, the most recent decision by the City in respect of a possible heritage conservation district in the area was a decision to exclude this property from a potential district.

Comments on Staff Report and Conditions Related to Issuance of Demolition Permit

The Staff report recommends certain conditions to be tied to the issuance of the demolition permit for this property including the following:

- a. that construction fences be erected in accordance with the provisions of the Municipal Code, Chapter 363, Article 7, if deemed appropriate by the Chief Building Official;
- b. that all debris and rubble be removed immediately after demolition;
- c. that sod be laid on the site and that the site be maintained free of garbage and weeds, in accordance with the Municipal Code Chapter 629-10, paragraph B and 629-11; and
- d. that any holes on the property are backfilled with clean fill.

We have reviewed the conditions with our client who is prepared to agree to each; we would observe however that the last two conditions would only be appropriate, and indeed to our knowledge are intended to only apply, in circumstances where a replacement permit does not issue in a timely manner and the site is left vacant.

It is, and as the information above demonstrates, has always been our client's intention to proceed with construction of his new home as soon as permits issue from the City to authorize same.

Response to Letters of Objection

We have reviewed the two letters of objection filed with the City and note that both of them base their objection on the fact that the property is located in the area previously studied as a potential heritage conservation district and was identified in the 2018 Casa Loma Heritage Conservation District Study associated with that process as a property "under study". The suggestion in both letters is that because of this reference, the demolition of the existing home should not be permitted.

Respectfully, in our view it is neither lawful nor reasonable to refuse a demolition and replacement building permit – which the Chief Building Official is otherwise obligated to issue – on the basis of the reference made to this property in the 2018 Study. Our reasons for this position follow:

We have reviewed the City of Toronto's Heritage Register with respect to 136 Lyndhurst Avenue and have confirmed that the property is not currently included on the City's Municipal Heritage Register. **This means that the property is neither "listed" pursuant to section 27 or designated pursuant to section 29 of the *Ontario Heritage Act*.** Accordingly, there is no legal basis under the *Ontario Heritage Act* to defer or refuse the application.

Further, we have reviewed the status of the Casa Loma Heritage Conservation District Study which was authorized in 2005 by Toronto City Council, and which came forward to the Toronto Preservation Board in 2018. At that time, the recommendation of the consultants and Heritage Preservation Services staff was to not proceed with a Heritage Conservation District for the area originally under study (which would have included the subject property at 136 Lyndhurst Avenue). Rather, the report recommended proceeding with two smaller, separate heritage conservation districts. The first focused on Hilton Avenue and the second focused on Wells Hill Avenue. **Neither of these recommended heritage conservation districts include the portion of Lyndhurst Avenue where the subject property is located.** These proposed districts have not yet been approved.

The Casa Loma Heritage Conservation District Study **does not identify** 136 Lyndhurst Avenue as a “significant property”. The only reference to any property on Lyndhurst Avenue is the “Lyndhurst Lodge” at 153 Lyndhurst Avenue which is expressly referenced in the Lyndhurst Avenue Character Analysis contained at pages 138-139 of the Heritage Conservation District Study.

In fact, the only reference to our client’s property at 136 Lyndhurst Avenue is found in Appendix B of the Heritage Conservation District Study which contains all of the properties in the Heritage Conservation District Study area. The listing for 136 Lyndhurst Avenue (which can be found at page 207 of the Study) indicates it is a detached residential 2-storey home which was constructed in 1919 in the Arts and Crafts style. It indicates that it is “under study” as its heritage status.

To the best of our knowledge there has been no actual study of the property at 136 Lyndhurst Avenue and certainly no information which could be publically accessed by a property owner or a potential property owner prior to purchase. Indeed, the letter from Mr. Levy on behalf of the community association acknowledges that fact when he states that the review “has not been carried out”. We agree with Mr. Levy on this important fact.

However, it is incumbent on us to comment on a statement made in Mr. Levy’s letter when he states that the “owner of the property, as directly communicated to the CLRA by professionals working on the property retained by them, is knowingly circumventing the widely publicized City sanctioned heritage review process” due to the timing of the applications. We have been advised by our client that neither they nor their consultants have had any direct communication with the CLRA until a recent meeting with Mr. Levy hosted by Councillor Matlow. Furthermore, and as detailed above, there is no on-going heritage process to circumvent in respect of this property; moreover, the HCD study process which is the only “widely publicized” City process concluded by recommending that this property be excluded from the area recommended as a potential HCD.

Request of Community Council

We respectfully urge members of Community Council to allow the City’s permit process to continue and to accept the staff recommendation to approve the demolition permit, on condition.

As noted at the outset, our client’s intention is to build a home which complies with the City’s By-law and which therefore maintains the character of the area. It would be manifestly unfair for the City to interfere in that process now on the basis of one line in the appendix of a study, either to delay or to refuse the issuance of permits which, in all respects, comply with applicable law, including both the *Planning Act* and *Ontario Heritage Act*.

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We appreciate the opportunity to provide these comments in advance to members of Community Council and will attend the meeting on February 5th to answer any questions which may arise.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in cursive script, appearing to read "Eileen P. K. Costello".

Eileen P. K. Costello
EPKC/tp

Encl.

c: Client
M. Lafreniere

Encl.

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