

June 10, 2022

By E-Mail to *hertpb@toronto.ca*

Toronto Preservation Board
2nd Floor, West Tower, Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Ellen Devlin

Dear Ms. Devlin:

**Re: Alterations to a Heritage Property and Authority to Enter into a Heritage Easement Agreement - 95 St. Joseph Street
Agenda Item: PB35.4**

We are counsel to the Basilian Fathers of Toronto and Daniels HR Corporation, which applied to the City of Toronto in February 2019 for Official Plan and Zoning By-law Amendments (the “OPA/ZBA Applications”) to permit a high-density mixed-use development at 95 St. Joseph Street (the “Property”).

More recently, following the City’s issuance of a Notice of Intention to Designate the Property under Part IV of the *Ontario Heritage Act* on March 15, 2022, our clients submitted a Heritage Permit application to the City on April 12, 2022 (the “Heritage Application”). The Heritage Application proposes both alterations and demolitions of the existing buildings on the Property to accommodate the proposed development in a manner that appropriately conserves the cultural heritage value of the Property.

We have reviewed the report of the Senior Manager, Heritage Planning, to the Toronto Preservation Board (“TPB”) and Toronto and East York Community Council dated May 24, 2022 (the “Staff Report”), which will be considered by the TPB at its meeting on June 14, 2022.

We support the recommendation of the Staff Report that City Council consent to the Heritage Application, thereby permitting the proposed alterations and demolitions, and we request that the TPB endorse this recommendation.

At the same time, we have some concerns with the recommended conditions of approval, which could likely be resolved through relatively minor revisions.

For example, proposed Condition 1.a would require that “the related site specific Official Plan Amendment and Zoning By-law Amendment permitting the proposed alterations has been enacted by the City Council and has come into full force and effect in a form and with content acceptable to City Council ...”.

Although our clients do not, in principle, object to tying the approval of the Heritage Application to the approval of the OPA/ZBA Applications, the condition should not be dependent on the Official Plan Amendment and Zoning By-law Amendment being “enacted by City Council ... in a form and with content acceptable to City Council”, recognizing the potential that the Official Plan Amendment and Zoning By-law Amendment could ultimately be approved by the Ontario Land Tribunal. Indeed, the final sentence of the Staff Report (page 13) specifically contemplates that the site specific Official Plan and Zoning By-law Amendments may not be enacted by City Council, as follows: “In order to take advantage of Council’s consent under Section 33 of the Ontario [Heritage] Act the related site specific Official Plan and Zoning By-law Amendments giving rise to the proposed alterations must be enacted by City Council or otherwise come into full force and effect” [emphasis added].

Further, proposed Condition 1.b.2 includes the following as the final sentence: “Have obtained final approval for the necessary Official Plan Amendment and Zoning By-law Amendment, such Amendments to have come into full force and effect.” As noted above, our clients do not object, in principle, to a condition of approval for the Heritage Application requiring the site specific Official Plan and Zoning By-law Amendments coming into effect; however, the above sentence does not properly belong in Condition 1.b.2, which pertains to a requirement for a Conservation Plan, and could render proposed Condition 1.b.3 impossible to satisfy given the stipulation that Conditions 1.b.1. and 1.b.2. are required to be satisfied prior to the introduction of the bill for any Zoning By-law Amendment.

Lastly, proposed Condition 1.b.3 contemplates that the Conservation Plan must be accepted by the City and the Heritage Easement Agreement must be entered into and registered no later than December 9, 2022, failing which the condition will be determined to be unfulfilled (unless the owner and the Senior Manager, Heritage Planning, agree to a later date). It is unclear why a sunset date for these two matters is being contemplated, and the proposed date of December 9, 2022 appears to be arbitrary. Moreover, given that both of these matters would require action by the City, they are, at least to some degree, beyond the control of the owner.

Thus, we request that the TPB endorse the recommendation in the Staff Report that City Council consent to the Heritage Application, permitting the proposed alterations and demolitions, but that the conditions of approval be amended to address the concerns identified above.

We thank you in advance for your consideration of our submission and request that we be notified of the recommendation of the Toronto Preservation Board regarding this item.

In the meantime, please do not hesitate to contact us if you have any questions regarding this submission.

Yours truly,
DAVIES HOWE LLP



Mark R. Flowers
Professional Corporation

copy: Kristen Flood, City of Toronto, Heritage Planning
Clients