

15 Elm Street - Proposed Designation By-Law under Part IV, Section 29 of the Ontario Heritage Act – Consideration of Objection

Date: July 4, 2023

To: City Council

From: Chief Planner and Executive Director, City Planning

Wards: Ward 11 – University-Rosedale

SUMMARY

This report recommends that City Council affirm its decision of May 10, 2023 (Item PH3.11) stating its intention to designate the property at 15 Elm Street under Part IV, Section 29 of the Ontario Heritage Act (the "Act"). The City has received an objection to the notice of intention to designate on behalf of the property owner within the required statutory timeframe.

Located on the south side of Elm Street between Yonge Street and Bay Street, the property at 15 Elm Street contains a 2-storey house-form building completed prior to 1868. The Georgian Revival style property represents a rare surviving example of a Confederation-era house-form building and is part of a broader collection of 19th-century dwellings adapted at street level in the early-20th century to accommodate commercial storefronts. This residential/commercial mixed-use typology continues to define the south side of Elm Street between Yonge and Bay Streets within the city's historic St. John's Ward ("The Ward") neighbourhood and represents the uniqueness of Elm Street as a destination for locals and visitors alike.

In June 2019, the More Homes, More Choice Act, 2019 (Bill 108) received Royal Assent. Schedule 11 of this Act included amendments to the Ontario Heritage Act which included amendments to the listing and designation processes. The Bill 108 Amendments to the Act came into force on July 1, 2021. City Council has until August 3, 2023, 90 days from the date of the end of the objection period, to make a decision on this objection as per the timeline under the Act.

Staff have reviewed the objections raised on behalf of the owner and remain of the opinion that despite these objections, the property meets Ontario Regulation 9/06, the criteria prescribed for municipal designation under Part IV, Section 29 of the Act under all three categories of design and physical, historical and associative, and contextual values.

As the property has cultural heritage value or interest and meets the prescribed criteria pursuant to Part IV, Section 29 of the Ontario Heritage Act, staff are of the opinion that this property should be designated. Designation enables City Council to review proposed alterations for the property, enforce heritage property standards and maintenance, and refuse demolition.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning recommends that:

1. City Council affirm its decision to state its intention to designate the property at 15 Elm Street under Part IV, Section 29 of the Ontario Heritage Act as set out in City Council Decision Item PH3.11 on May 10, 2023.
2. City Council authorize the City Solicitor to introduce the bill in City Council designating the property at 15 Elm Street under Part IV, Section 29 of the Ontario Heritage Act.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of this report.

DECISION HISTORY

At its May 10, 11 and 12, 2023 meeting, City Council adopted a report from the Chief Planner and Executive Director, "15 Elm Street - Notice of Intention to Designate a Property under Part IV, Section 29 of the Ontario Heritage Act" (PH3.11) and stated its intention to designate the property at 15 Elm Street under Part IV, Section 29 of the Ontario Heritage Act. <https://secure.toronto.ca/council/agenda-item.do?item=2023.PH3.11>

BACKGROUND

City Council has stated its intention to designate the subject property under Part IV, Section 29 of the Ontario Heritage Act. A notice of intention to designate was served on the property owners and the Ontario Heritage Trust, and was published in accordance with the Act. The objection period ended on June 15, 2023.

The City Clerk received a notice of objection on behalf of the property owner within the required timeframe set out in the Act. The Act requires that City Council consider and make a decision on an objection within 90 days from the end of the objection period. City Council may decide to withdraw, amend, or affirm its intention to designate. City Council has until September 13, 2023 to make a decision on the objection.

COMMENTS

Staff have reviewed the notice of objection dated May 19, 2023 and prepared by Goodmans LLP. A copy of the notice of objection is included as Attachment 1 to this report. The objector is of the opinion that the staff report does not provide a rational basis to conclude that the property should be designated under Part IV of the Act. Specifically, the objector disputes that the property, as altered, retains design value; the objector is of the opinion that no explanation is given in the staff report to merit historical and associative value; and, that the subject property does not merit conservation, documentation nor commemoration as concluded in the Cultural Heritage Evaluation Report (CHER) dated December 22, 2022 and submitted in support of a Planning Act application.

The Statement of Significance (Reasons for Designation) adopted by Council as part of Item PH3.11 is appended to this report as Attachment 2.

Staff have re-examined the Statement of Significance (Reasons for Designation) for the property at 15 Elm Street and remain of the opinion that the property meets the criteria prescribed by Ontario Regulation 9/06 of the Act. This includes the property's historical and associative value, as written, which summarizes the findings in Section 2 of the staff report providing the basis for determining historical or associative value of Criteria 4, 5 or 6 according to O. Reg. 9/06 Criteria.

As described in the April 12, 2023 report from the Chief Planner and Executive Director, including the Statement of Significance (Reasons for Designation), staff acknowledge that the subject property has been altered over time. However, staff remain of the opinion that these alterations form part of the property's design value. The Georgian Revival style property is a surviving example of a Confederation-era house-form building and is part of a broader collection of 19th-century dwellings adapted at street level in the early-20th century to accommodate commercial storefronts. This residential/commercial mixed-use typology continues to define the south side of Elm Street between Yonge Street and Bay Street within the city's historic St. John's Ward neighbourhood.

As part of the evaluation process, staff reviewed the Cultural Heritage Evaluation Report dated December 22, 2022, prepared by ERA Architects Inc. and submitted in support of a Planning Act application for the subject property, as well as a Heritage Impact Assessment dated August 18, 2022.

The Ontario Heritage Act prescribes the process of designation of a property and provides for the alteration of a heritage property under Part IV of the Act. The Act also prescribes criteria under Ontario Regulations 9/06 required to be evaluated to determine whether a property has cultural heritage value or interest and therefore should be recommended for designation under the Act. Planning Act applications do not determine the cultural heritage value or interest of a heritage property nor are they included in criteria for the evaluation or determination of cultural heritage value. Instead, Planning Act applications are to be informed by the designation by-laws and cultural heritage value or interest determined under the Act such that a determination can be made whether the level of intervention and conservation proposed for a designated property is appropriate. To reach this understanding, it is necessary to first understand the cultural heritage value of a property prior to planning for change and considering interventions to the heritage property. In other words, the designation of a property under Part IV of the Act does not reflect the future state of a property with respect to any specific development application. Following designation under Part IV of the Act, the appropriateness of any proposed intervention to a heritage property is determined through an alteration or demolition application under Section 33 and Section 34 of the Act.

With respect to the subject property, a staff report addressing the alteration will be brought forward to the Toronto Preservation Board and subsequent City Council meeting with respect to the proposed interventions related to the site-specific development application. The sequential approach described above is consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada and is also consistent with the intent of the changes to the Provincial Policy Statement (2020), which clarify that determination of the cultural heritage value of a property, in accordance with the Act, should be undertaken prior to the application of heritage conservation policies to a particular planning application.

The subject property is included in a Zoning By-law Amendment application (22 202864 STE 11 OZ) currently under consideration by the City. The Zoning By-law Amendment application contemplates demolition of the existing property at 15 Elm Street. However, an application for demolition of the building under Section 34 of the Act has not been made to the City.

Should Council affirm its intention to designate, the City Solicitor will introduce a designating by-law to Council under Section 29 of the Act. Once Council has passed a designating by-law, notice has been provided, and the by-law has been published in accordance with the Act, an appeal may be made to the Ontario Land Tribunal in accordance with the Act. The Ontario Land Tribunal Decision is binding.

CONCLUSION

The property at 15 Elm Street meets Ontario Regulation 9/06, the criteria prescribed for municipal designation under Part IV, Section 29 of the Ontario Heritage Act, under all

three categories of design/physical, historical/associative, and contextual values. As such, despite the Notice of Objection, this property should be designated.

CONTACT

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SIGNATURE

Gregg Lintern, MCIP, RPP
Chief Planner and Executive Director
City Planning

ATTACHMENTS

Attachment 1 – Letter of Objection – 15 Elm Street
Attachment 2 - Statement of Significance (Reasons for Designation) – 15 Elm Street
Attachment 3 – Photograph

**STATEMENT OF SIGNIFICANCE
(REASONS FOR DESIGNATION)**

The property at 15 Elm Street is worthy of designation under Part IV, Section 29 of the Ontario Heritage Act for its cultural heritage value, and meets Ontario Regulation 9/06, the provincial criteria prescribed for municipal designation under the criteria of design and physical, historical and associative and contextual values.

Description

Located on the south side of Elm Street between Yonge and Bay streets in the city's first immigrant neighbourhood, The Ward, the property at 15 Elm Street contains a 2-storey house-form building completed by 1868 and first owned by Irish-Canadian bricklayer, Robert Kennedy, and family.

Statement of Cultural Heritage Value**Design and Physical Value**

Built in 1868, the property at 15 Elm Street is valued as a remaining example of a Confederation-era house-form building designed in the Georgian Revival style which is evident in its red brick construction, rubble stone foundation and brick, stone and wood detailing. The symmetrically-arranged openings on the upper storey of the principal (north) and east elevations contain masonry sills and segmental-arched brick headers in a soldier course pattern.

In 1922-1924, a storefront was added at street level with off-set entrance to the existing residential space above. The residential entrance maintains its wood and glass transom and door surround. This resulting mixed use type of house-form buildings is considered a defining feature of the south side of Elm Street today.

Historical and Associative Value

The property is significant as one of the earliest (Confederation-era) surviving house-form buildings constructed on the south side of Elm Street between Yonge and Bay streets in 1868. Since the mid-19th century, Elm Street has continued to provide an understanding of the built form of Toronto's first immigrant neighbourhood, The Ward.

Contextual Value

The property at 15 Elm Street, embodies part of a significant collection of 19th-century house-form buildings representative of this early period of land development on the block of Elm Street between Yonge and Bay streets within the city's historically significant St. John's Ward ("The Ward"), and part of the collection of diverse 19th-century building types and uses that have contributed to the unique quality of Elm Street today.

Within the context of a neighbourhood originally developed with mainly residential properties in the mid-to-late 19th century, and on the south side of Elm Street between Yonge and Bay where numerous properties of similar type, scale, placement and setback are already recognized on the City's Heritage Register, the subject property at 15 Elm Street is valued for its historic, physical and visual links to its surroundings for more than 150 years.

Heritage Attributes

Design and Physical Value

Attributes that contribute to the value of the property at 15 Elm Street as representative of a Confederation-era house-form building designed in the Georgian Revival style include:

- The scale, form and massing of the red brick house-form building with its two-storey rectangular plan
- The rubble stone foundation
- The gable roof and two red brick chimneys located north and south of the gable peak at its western edge
- The principal (north) elevation of the building, which is organized into two bays
- The segmental-arched window openings on the upper storey of the principal (north) and east elevations, with their brick header detailing and masonry sills
- The early 1920s wood and glass transom and door surround at the east end of the principal (north) elevation and leading to the upper storey space
- The early 1920s stringcourse directly above the early storefront and off-set residential entrance on the principal (north) elevation (currently over-clad with wooden boards)

Contextual Value

Attributes that contribute to the contextual value of 15 Elm Street as defining and supporting the character of this portion of Elm Street, and as being historically and visually linked to its surroundings include:

- The setback, placement and orientation of the building on its lot on the south side of Elm Street between Yonge Street and Bay Street, and directly adjacent to Harry Barberian Lane to the east and south of the property



Contextual view of the property looking east along the south side of Elm Street. The subject property at 15 Elm Street is indicated by the arrow. (Heritage Planning, 2023)