

## **135 Roxborough Drive - Alterations to a Designated Heritage Property in the North Rosedale Heritage Conservation District - Supplementary Report**

**Date:** June 21, 2024

**To:** City Council

**From:** City Solicitor

**Wards:** Ward 11 - University - Rosedale

### **REASON FOR CONFIDENTIAL INFORMATION**

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This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding litigation or potential litigation.

### **SUMMARY**

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The Acting Senior Manager, Heritage Planning, as a designate of the Chief Planner and Executive Director, City Planning, prepared a report dated April 18, 2024 recommending refusal of the alterations to the designated heritage property at 135 Roxborough Drive under Section 42 of the Ontario Heritage Act.

On June 11, 2024, Toronto and East York Community Council directed the City Solicitor to report directly to the June 26-28, 2024 meeting of City Council on what steps the City can take to correct the building permit to remove the incorrect permission, given without delegated authority, to paint the front of 135 Roxborough Drive.

This report from the City Solicitor responds to the direction from Toronto and East York Community Council.

### **RECOMMENDATIONS**

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The City Solicitor recommends that:

1. City Council receive the confidential information and advice contained Confidential Attachment 1 to this report from the City Solicitor for information.

2. City Council direct that all information contained in Confidential Attachment 1 to this report from the City Solicitor is to remain confidential, as it is about potential litigation and contains advice or communications that are subject to solicitor-client privilege.

## **FINANCIAL IMPACT**

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There is no financial impact arising from the adoption of the Confidential Recommendations.

## **DECISION HISTORY**

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Council adopted the North Rosedale Heritage Conservation District (NRHCD) Plan on May 3, 2004 (By-law 749-2004) and was enacted by September 30, 2004:

[https://www.toronto.ca/wp-content/uploads/2018/01/9536-CityPlanning\\_North-Rosedale-HCD.pdf](https://www.toronto.ca/wp-content/uploads/2018/01/9536-CityPlanning_North-Rosedale-HCD.pdf)

There have been no previous reports to Council regarding the property at 135 Roxborough Drive.

On June 11, 2024, Toronto and East York Community Council forwarded Item TE14.16 to City Council without recommendations to be considered at its meeting of June 26-28, 2024.

[Agenda Item History - 2024.TE14.16 \(toronto.ca\)](#)

## **COMMENTS**

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### **Building Permit Application and Revisions**

Building Permit No. 23-110745 BLD 00 SR was issued on February 6, 2023 regarding the property at 135 Roxborough Drive (the "Property") to demolish and rebuild a rear one-storey addition and basement, rear platform, interior alterations and rear detached garage, and make minor changes to windows at side elevations (the "Building Permit").

Heritage Planning granted its approval to the construction proposed with the Building Permit. The construction proposed with this Building Permit consisted of alterations to the heritage property in the NRHCD Plan that were consistent with the Plan, and therefore Heritage had delegated approval to authorize the alterations pursuant to the Municipal Code.

A revision permit No. 23-110745 BLD 01 SR was applied for and issued on September 7, 2023 (the "First Building Permit Revision") which authorized the removal of the detached garage, the enlargement of the proposed rear one-storey addition, rear

platform changes, and the use of the basement level as an attached garage. All the “construction” (as defined in the Building Code Act) proposed with the First Revision Permit (being the work at the rear) constituted alterations to the heritage property that were consistent with the NRHCD Plan for which Heritage Planning had delegated authority to approve. The painting of the exterior brick masonry was only noted on the front elevation, however, painting has begun on one of the side elevations.

A second revision to the building permit (the “Second Revision Application”) Permit Application No. 23-110745 BLD 02 SR was applied for on September 26, 2023 to apply the white colour painting to the two side elevations (one of which is the elevation on which painting has already partially commenced) and rear elevation. No layout changes were proposed and no actual construction was proposed. A building permit under the Building Code Act is not required for painting. This building permit has not been issued.

### **Heritage Permit Applications**

The owner submitted a heritage permit application under section 42 of the *Ontario Heritage Act* requesting alterations to the existing heritage property. Section 103-3.3 A of the Toronto Municipal Code authorizes the Chief Planner, or designate, to issue a heritage permit on behalf of Council if alterations do not conflict with the Heritage Conservation District Plan (HCD Plan), are not contrary to the objectives of the HCD Plan or incompatible with the guidelines which apply in the HCD Plan.

Section 103-3.3 C. also requires that two conditions be imposed on any such approval, namely that: (1) that the permit holder not make any material change to a plan, specification, document or other information that forms the basis on which the permit was issued without making a further application for another permit; and (2) That the permit holder carry out the alterations in accordance with the plans, specifications, documents and any other information that form the basis on which the permit was issued.

City staff do not have delegated authority to approve alterations that are not consistent with the HCD Plan or contrary to its stated objectives. As described by Heritage staff in their report dated April 18, 2024, the painting of the existing building is in conflict with the HCD Plan. The recommendation in the report to refuse the alterations with respect to painting of the masonry is applicable to all elevations of the building.

City Council will need to make a decision with respect to painting on all elevations of the building as required by Section 103-3.4 A of the Municipal Code as City staff are not authorized to make this decision.

This report contains advice or communications related to potential litigation and contains advice or communications that are subject to solicitor-client privilege.

## **CONTACT**

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## **SIGNATURE**

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Wendy Walberg  
City Solicitor

## **ATTACHMENTS**

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1. Confidential Attachment 1 - Confidential Information