

40-44 Mitchell Avenue - Demolition of Designated Heritage Buildings under Section 34 of the Ontario Heritage Act

Date: October 1, 2024

To: Toronto Preservation Board

Toronto and East York Community Council

From: Senior Manager, Heritage Planning, Urban Design, City Planning

Wards: Ward 10 - Spadina-Fort York

SUMMARY

This report recommends that City Council refuse an application under Section 34(1)2 of the Ontario Heritage Act (the "OHA") to demolish the pair of cottages at 40-44 Mitchell Avenue, which are designated under Part IV of the OHA.

Located on the north side of Mitchell Avenue, the subject properties contain a pair of single-storey semi-detached workers' cottages that are rare, early surviving examples of this typology in Toronto. They are one of the last remaining pairs of the original sixteen pairs of workers' cottages completed in 1858 by James Lukin Robinson on the former Military lands east of Garrison Creek. Collectively and known historically as the Robinson Cottages or Garrison Common Cottages, only six pairs remain, located at 40-44 and 71-75 Mitchell Avenue and 703-705, 719-721, 735-737 and 753-755 Richmond Street West.

Among the first residential buildings constructed in the area, they are important reminders of the origins of the Niagara Street neighbourhood, where they define, support and maintain the historical character. The semi-detached houses feature the near-square plans, low hipped roofs and symmetrical placement of the door and window openings inspired by the bungalow that originated in India, which influenced the early-19th century Regency Cottage and, on a more modest scale, the vernacular workers' cottage.

An application under Section 34(1)2 of the Act has been submitted to demolish the pair of cottages at 40-44 Mitchell Avenue to allow for the construction of two new three-storey residential buildings. Consent and minor variance applications B0026/21TEY, A0272/21TEY and A0273/21TEY were submitted for the proposal in 2021. The consent application is currently under appeal at the Toronto Local Appeal Body (the "TLAB"), and the hearing for the minor variance applications were deferred by the Committee of Adjustment. A TLAB hearing date has not been set as it is anticipated that revised plans

and minor variances will be submitted shortly, which may also be the subject of appeals and would be consolidated with the consent appeal. This report does not deal with planning matters. It relates solely to the requirements under the Ontario Heritage Act.

RECOMMENDATIONS

The Senior Manager, Heritage Planning, Urban Design, City Planning recommends that:

1. City Council refuse the issuance of a demolition permit for the heritage properties at 40-44 Mitchell Avenue in accordance with Section 34(1)2 of the Ontario Heritage Act.
2. If the owner appeals City Council's decision to refuse the issuance of a demolition permit under Section 34(1)2 of the Ontario Heritage Act for the heritage properties at 40-44 Mitchell Avenue, City Council authorize the City Solicitor and the necessary City staff to attend the Ontario Land Tribunal hearing in opposition to the appeal.

FINANCIAL IMPACT

City Planning confirms there are no financial implications resulting from the recommendations included in this report in the current budget year or in future years.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the information as presented in the Financial Impact Section.

DECISION HISTORY

Consent and minor variance applications B0057/18TEY, A0596/18TEY, A0597/18TEY, B0058/18TEY & A0598/18TEY were submitted in 2018 to demolish the properties and construct two new residential buildings. The applications were deferred by the Committee on October 24, 2018 in order to address Heritage Planning staff concerns. The applications were closed in 2019.

On July 16, 2019, Toronto City Council included the properties known municipally as 40-44 Mitchell Avenue, 71-75 Mitchell Avenue and 737-737 and 753-755 Richmond Street West on the City's Heritage Register and stated its intention to designate the property at 40-44 Mitchell Avenue under Part IV, Section 29 of the OHA.

<https://secure.toronto.ca/council/agenda-item.do?item=2019.TE7.25>

Consent and minor variance applications B0026/21TEY, A0272/21TEY and A0273/21TEY were submitted in 2021 to demolish the properties and construct two new residential buildings. The consent application is currently under appeal at the Toronto Local Appeal Body (the "TLAB"), and the hearing for the minor variance applications were deferred by the Committee of Adjustment.

On October 15, 2021, Toronto City Council enacted by-law 820-2021, designating the properties at 40-44 Mitchell Avenue under Part IV, Section 29 of the OHA.

<https://www.toronto.ca/legdocs/bylaws/2021/law0820.pdf>

On December 15, 2021, Toronto City Council adopted a proposed amendment of Designating By-law to correct the legal description at 40-44 Mitchell Avenue.

<https://secure.toronto.ca/council/agenda-item.do?item=2021.TE29.10>

On February 10, 2022, Toronto City Council enacted by-law 70-2022 amending the legal description in by-law 820-2021.

<https://www.toronto.ca/legdocs/bylaws/2022/law0070.pdf>

BACKGROUND

Heritage Value and Attributes

Located on the north side of the street, the properties contain a pair of single-storey semi-detached house form buildings that were among sixteen pairs of workers' cottages completed in 1858 on the subdivision developed by solicitor and realtor James Lukin Robinson on the former Military Reserve lands east of Garrison Creek that were also known as the Garrison Common. Today, only six pairs of the original Robinson Cottages (also known as the Garrison Common Cottages) remain, including the subject properties at 40-44 Mitchell Avenue, 71-75 Mitchell Avenue, and those at 703-705, 719-721, 735-737 and 753-755 Richmond Street West.

The properties at 40-44 Mitchell Avenue have design value as a pair of single-storey semi-detached workers' cottages that are rare, early surviving examples of this typology in Toronto. The semi-detached houses feature the near-square plans, low hipped roofs and symmetrical placement of the door and window openings inspired by the bungalow that originated in India, which influenced the early-19th century Regency Cottage and, on a more modest scale, the vernacular workers' cottage.

They contribute to our understanding of the historical development and evolution of the Niagara Street neighbourhood that occupies part of the acreage set aside for military purposes after the founding of York (Toronto) in the late-18th century. In 1834, with the westward expansion of the newly incorporated City of Toronto and the desire to fund additional military installations in defence of the community, land in the Military Reserve east of Garrison Creek was identified for development. On Garrison Common, the tract southeast of present-day Queen and Niagara streets where the subject properties are found, was granted in the mid-1840s to the Society for the Propagation of the Gospel in Foreign Parts, an Anglican missionary organization, which did not develop the land.

A decade later, James Lukin Robinson, a prolific local developer and realtor, who was also a solicitor and member of a well-known Toronto family, registered a residential subdivision where he commissioned sixteen pairs of brick cottages that were in place when Boulton's Atlas was published in 1858. The original occupants included tradespeople, as well as workers for the inaugural steam railways that transformed

Toronto in the mid-19th century. The properties are important reminders of the origins of the Niagara Street neighbourhood.

Contextually, the properties at 40-44 Mitchell Avenue are part of the increasingly rare collection of workers' cottages on Mitchell Avenue and Richmond Street West that were among the first residential buildings constructed in the area. The Garrison cottages, as the surviving pairs are generally known, define, support, and maintain the historical character of the Niagara Street neighbourhood south of Queen Street West. The Robinson Cottages at 40-44 Mitchell Avenue are also historically, visually and physically linked to their original settings where they were laid out in relation to the other pairs of semi-detached cottages on Mitchell Avenue and Richmond and Adelaide streets.

See Attachment 3 for the full Statement of Significance with heritage attributes in the Designation By-law.

Proposal

On June 27, 2024, the City of Toronto received an application to demolish the buildings at 40-44 Mitchell Avenue under Section 34(1)2 of the OHA. On July 30, 2024, the applicant was notified that the application was complete. The application submitted included an agreement to extend the statutory time period prescribed by the OHA until such time as a notice of a decision of City Council is given to the applicant.

The heritage permit application is associated with pre-existing consent and minor variance applications B0026/21TEY, A0272/21TEY and A0273/21TEY, which were submitted for the proposal in 2021. The subject buildings at 40-44 Mitchell Avenue are proposed to be demolished as part of these applications for the construction of two new three storey residential buildings on the properties (See Attachment 4). The consent application was appealed to the TLAB for failure to make a decision within the statutory timelines. The minor variance applications were deferred by the Committee of Adjustment.

A TLAB hearing date has not been set for the consent appeal as it is anticipated that revised plans and minor variances will be submitted shortly, which may also be the subject of appeals and would be consolidated with the consent appeal.

Heritage Planning Framework

Ontario Heritage Act

Section 34(1)2 of the OHA states that no owner of a property designated under Section 29 shall demolish or remove a building or structure on the property or permit the demolition or removal of a building or structure on the property unless the owner applies to the council of the municipality in which the property is situated and receives consent in writing to the demolition or removal.

Section 34.1(1) indicates that if Council refuses the permit applied for, or gives the permit with terms and conditions attached, the owner of the property may appeal the decision to the Ontario Land Tribunal (the "OLT").

Official Plan

Section 3.1.6 of the Official Plan contains a series of heritage conservation policies that apply to the subject property. These include:

Policy 3.1.6.4 directs that properties on the Heritage Register will be conserved and maintained consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada, as revised from time to time and as adopted by Council.

Policy 3.1.6.5 directs that proposed alterations, development, and/or public works on or adjacent to, a property on the Heritage Register will ensure that the integrity of the heritage property's cultural heritage value and attributes will be retained.

Policy 3.1.6.6 states that the adaptive re-use of properties on the Heritage Register is encouraged consistent with the Standards and Guidelines for the Conservation of Historic Places in Canada.

Policy 3.1.6.26 states that new construction on or adjacent to a property on the Heritage Register will be designed to conserve the cultural heritage values, attributes and character of that property and to mitigate visual and physical impact on it.

The Official Plan defines demolition as "the complete destruction of a heritage structure and property from its site, including the disassembly of structures and properties on the Heritage Register for the purpose of reassembly at a later date."

Standards and Guidelines for the Conservation of Historic Places in Canada

The Standards and Guidelines for the Conservation of Historic Places in Canada (the "Standards and Guidelines") is the official document guiding planning, stewardship and the conservation approach for all listed and designated heritage resources within the City of Toronto. The Standards and Guidelines can be accessed here:

<http://www.historicplaces.ca/media/18072/81468-parks-s+g-eng-web2.pdf>

The General Standards (1-9) the Standards for Rehabilitation (10-12), and the Standards for Restoration (13-14) apply to this project. These include, but are not limited to:

- Conserve the heritage value of an historic place. Do not remove, replace or substantially alter its intact or repairable character-defining elements. Do not move a part of an historic place if its current location is a character-defining element.
- Conserve heritage value by adopting an approach calling for minimal intervention.
- Find a use for an historic place that requires minimal or no change to its character-defining elements.
- Protect and, if necessary, stabilize an historic place until any subsequent intervention is undertaken.

- Evaluate the existing condition of character defining elements to determine the appropriate intervention needed. Use the gentlest means possible for any intervention. Respect heritage value when undertaking an intervention.
- Maintain character-defining elements on an ongoing basis. Repair character-defining elements by reinforcing their materials using recognized conservation methods. Replace in kind any extensively deteriorated or missing parts of character-defining elements, where there are surviving prototypes.
- Make any intervention needed to preserve character-defining elements physically and visually compatible with the historic place and identifiable on close inspection. Document any intervention for future reference.
- Repair rather than replace character-defining elements. Where character-defining elements are too severely deteriorated to repair, and where sufficient physical evidence exists, replace them with new elements that match the forms, materials and detailing of sound versions of the same elements. Where there is insufficient physical evidence, make the form, material and detailing of the new elements compatible with the character of the historic place.
- Conserve the heritage value and character-defining elements when creating any new additions to an historic place or any related new construction. Make the new work physically and visually compatible with, subordinate to and distinguishable from the historic place.
- Create any new additions or related new construction so that the essential form and integrity of an historic place will not be impaired if the new work is removed in the future.

COMMENTS

Heritage Planning has reviewed the demolition application submitted for the properties at 40-44 Mitchell Avenue, which included the Heritage Impact Assessment (the "HIA") prepared by LHC dated June 21, 2024; Structural Condition Assessment prepared by Tacoma Engineers dated November 2, 2022, and the Designated Substances Survey prepared by Air Quality Canada dated June 29, 2022.

The HIA finds that the proposed demolition of the heritage buildings, including all of their heritage attributes, will lead to the total loss of the cultural heritage value and interest of the properties which is not consistent with the Official Plan policy direction to conserve significant heritage resources.

Alterations and Integrity

The HIA does not dispute the heritage value or attributes of these properties but asserts that they have undergone alterations over time that have compromised their heritage integrity. However, the alterations described in the HIA occurred prior to the passing of

the Designation By-law and the Designation By-law is not under appeal. While the properties have undergone alterations since their construction in 1858, these alterations were taken into consideration when staff evaluated their cultural heritage value as part of the designation process in 2021. Despite the changes, the properties were found to retain sufficient integrity to warrant designation and the Designation By-law both recognised, and has considered, the alterations that have taken place.

The list of heritage attributes noted in the Designation By-law relate to their importance as a rare surviving example of single-storey semi-detached workers' cottages in Toronto (see Attachment 3).

The definition of integrity in the Official Plan states that integrity is:

"a measure of a property's wholeness and intactness of its cultural heritage values and attributes. Examining the conditions of integrity requires assessing the extent to which the property includes all elements necessary to express its cultural heritage value; is of adequate size to ensure the complete representation of the features and processes that convey the property's significance; and the extent to which it suffers from adverse affects of development and/or neglect."

Staff are of the opinion that the properties continue to convey their cultural heritage value as described in the by-law, and that there has been no change in the integrity of the properties' heritage attributes noted in the Designation By-law.

Physical Condition

The building at 40 Mitchell Avenue is currently occupied, and 44 Mitchell Avenue is unoccupied. The owner claims that the physical condition of the buildings would not make restoration or rehabilitation viable options.

A structural condition assessment was provided for the properties (staff note that the assessment mislabels 40 and 44 Mitchell Avenue within its reporting). A building code analysis was not conducted, and the Designated Substance Survey found no designated substances or hazardous building materials to be present.

The structural condition assessment was based on a visual inspection and concluded that the properties were generally in poor to fair condition. The report states that they "are not good candidates for restoration" due to their existing condition, the extent of changes to the original structural elements and "anticipated scale of the repair work." The report recommends routine, short-term and medium-term remedial actions for the properties. Remedial recommendations include repairs to the roofing, roof framing, and exterior cladding, as well as the removal of finishes in the basement to accommodate a more comprehensive assessment of the foundation and ground floor framing. No immediate remedial actions (items that present an immediate structural and/or safety hazard) were identified in the report.

The structural assessment does not state that the properties are structurally unsound nor does it recommend that they should be demolished. It also does not include evidence to support the claim that their conservation and rehabilitation, in line with good

conservation practise, is not feasible. Rather, it states that the Standards and Guidelines for the Conservation of Historic Places in Canada should be referred to to further inform the development of more detailed remedial actions.

Alternatives to Demolition

As per the Standards and Guidelines, conservation includes all actions or processes that are aimed at safeguarding the heritage attributes of an historic place to retain its heritage value and extend its physical life. This may involve preservation, rehabilitation, restoration, or a combination of these actions or processes.

The HIA evaluated the option of rehabilitation as an alternative to demolition and recognises that this would allow for the retention of more of the heritage attributes of the properties than the proposed demolition, but says it is not "viable", given the amount of work and changes to the properties that would be needed.

Despite questioning the viability of rehabilitation, the HIA points to successful examples of rehabilitation of the remaining Robinson Cottages, citing 703-705, 719-721 and 735-737 Richmond Street West. After being listed on the City's Heritage Register, the properties at 705 Richmond Street West and 721 Richmond Street West, with the support of Heritage staff, underwent rehabilitation that conserved their heritage value, while also accommodating significant new square-footage through rear 3-storey additions (see attachment 2). The scope of exterior and interior work for these projects was extensive and necessitated the reversal of several unsympathetic alterations (re-cladding with historically appropriate brick; removal of paint from existing brick, as well as the installation of new compatible window units) but allowed for the heritage value and attributes of these historic cottages to be conserved.

Staff acknowledge that rehabilitation projects often necessitate changes to heritage properties and are supportive of this type of work in principle, where the heritage value and attributes are conserved. In this instance it has not been demonstrated that the buildings at 40-44 Mitchell Avenue, along with their cultural heritage value and attributes, cannot be meaningfully conserved through rehabilitation. Staff also note that the property owner is eligible to participate in the City's Heritage Grant Program, which financially assists property owners with the cost of eligible restoration work.

Archaeological Status

The properties at 40-44 Mitchell Avenue are identified by the City of Toronto's Archaeological Management Plan as retaining archaeological potential. As outlined in Schedule 3 of the City of Toronto's Official Plan, a Stage 1 or Stage 1-2 archaeological assessment, at minimum, would be a submission requirement of any consent application on the properties prior to the issuance of Certificate of Official.

CONCLUSION

The application proposes the complete and irrevocable loss of the cultural heritage values and attributes of the buildings at 40-44 Mitchell Avenue and none of the technical

reports demonstrate that these significant heritage buildings cannot be meaningfully conserved and rehabilitated in a similar way to other nearby Robinson/Garrison Common Cottages.

The semi-detached house set at 40-44 Mitchell Avenue are one of only six remaining pairs of the original collection of sixteen pairs of workers' cottages known as the Robinson/Garrison Common Cottages on Mitchell Avenue and Richmond Street West. They are rare, early surviving examples of single-storey semi-detached workers' cottages in Toronto and make an important contribution to our understanding of the historical development and evolution of the Niagara Street after the founding of York (Toronto) in the late-18th century. They are also of contextual significance as they also make an important contribution to the character and sense of place of Niagara Street neighbourhood south of Queen Street West.

As such, the proposed demolition of these protected heritage properties is contrary to the intent of the Official Plan, and the Standards and Guidelines for the Conservation of Historic Places and staff strongly recommend that Council refuse the application to demolish.

CONTACT

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SIGNATURE

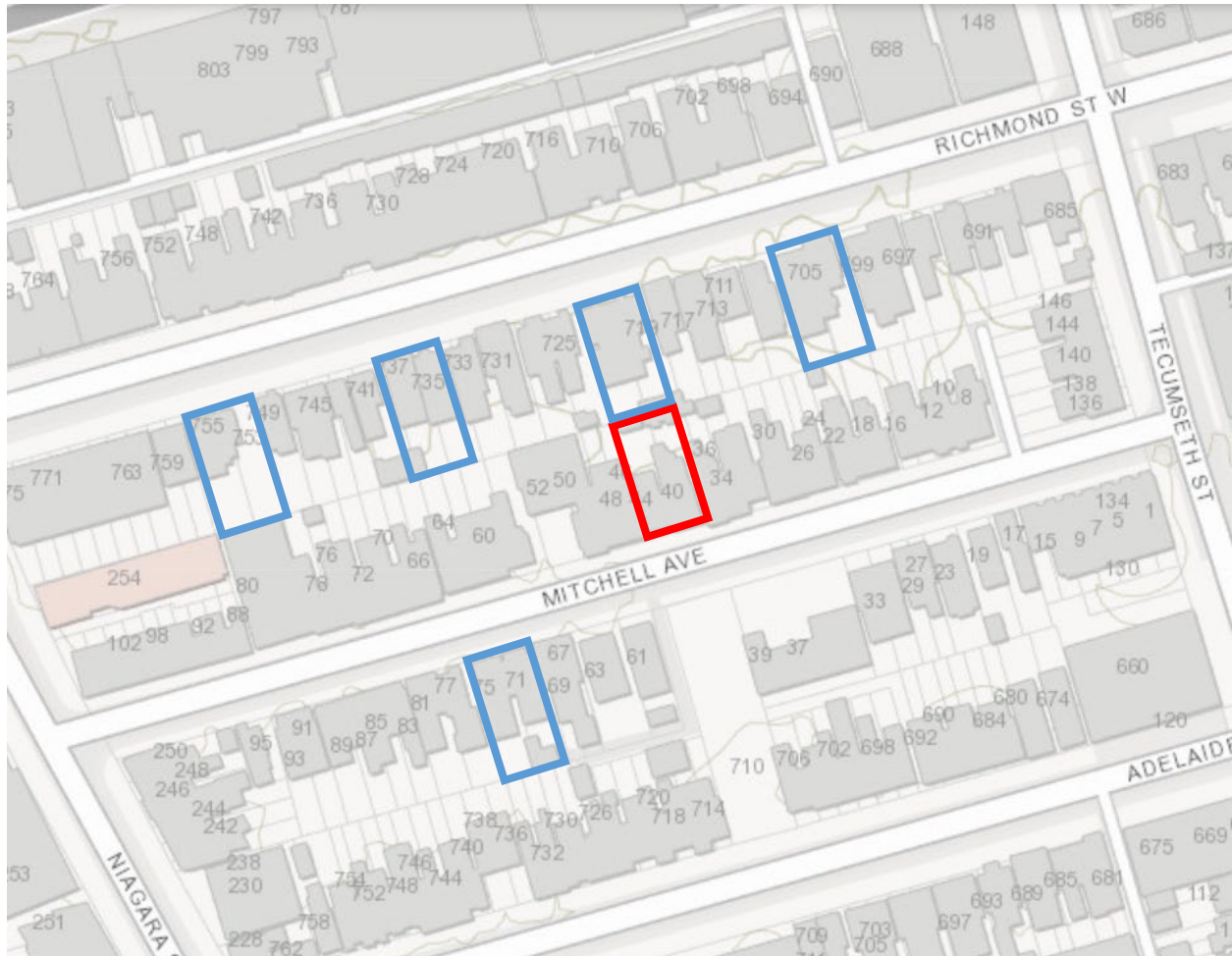
Mary MacDonald,
Senior Manager, Heritage Planning
Urban Design, City Planning

ATTACHMENTS

Attachment 1: Location Map
Attachment 2: Photographs
Attachment 3: Statements of Significance with Attributes
Attachment 4: Proposed Plans

**LOCATION MAP
40-44 MITCHELL AVENUE**

ATTACHMENT 1



The red lines indicate the location of the subject properties at 40-44 Mitchell Avenue. The blue lines indicate the location of the other remaining Robinson Cottages. This location map is for information purposes only; the exact property boundaries are not shown.

PHOTOGRAPHS

ATTACHMENT 2

40-44 MITCHELL AVENUE



Photograph of the principal elevations of 40-44 Mitchell Avenue.



Photograph of the principal elevation of 44 Mitchell Avenue.

PHOTOGRAPHS
40-44 MITCHELL AVENUE



Photograph of the principal elevation of 40 Mitchell Avenue.

PHOTOGRAPHS

REHABILITATED ROBINSON/GARRISON COTTAGES



Photograph of rehabilitated Robinson/Garrison Cottage with rear addition at 705 Richmond Street West.



Photograph of rehabilitated Robinson/Garrison Cottage with rear addition at 721 Richmond Street West.

40-44 MITCHELL AVENUE**STATEMENT OF SIGNIFICANCE
(REASONS FOR DESIGNATION)**

The properties at 40-44 Mitchell Avenue are worthy of inclusion on the City of Toronto's Heritage Register and designation under Part IV, Section 29 of the Ontario Heritage Act for their cultural heritage value, and meet Ontario Regulation 9/06, the provincial criteria prescribed for municipal designation, under all three categories of design, associative and contextual value.

Description

Located on the north side of the street, the properties contain a pair of single-storey semi-detached house form buildings that were among the 16 pairs of workers' cottages completed in 1858 on the subdivision developed by solicitor and realtor James Lukin Robinson on the former Military Reserve lands east of Garrison Creek that were also known as the Garrison Common. Today, six pairs of the original cottages remain on Mitchell Avenue and Richmond Street West, including those at 703-705 and 719-719 Richmond that were listed on the City of Toronto's Heritage Register in 2005, and the subject properties at 40-44 Mitchell Avenue.

Statement of Significance

The properties at 40-44 Mitchell Avenue have design value as a pair of single-storey semi-detached workers' cottages that are rare early surviving examples of this typology in Toronto. They are part of the extant collection of six of the original 16 pairs that were completed in 1858 when Boulton illustrated them on the first fire insurance atlas covering the city. The semi-detached houses feature the near-square plans, low hipped roofs and symmetrical placement of the door and window openings inspired by the bungalow that originated in India, which influenced the early-19th century Regency Cottage and, on a more modest scale, the vernacular workers' cottage.

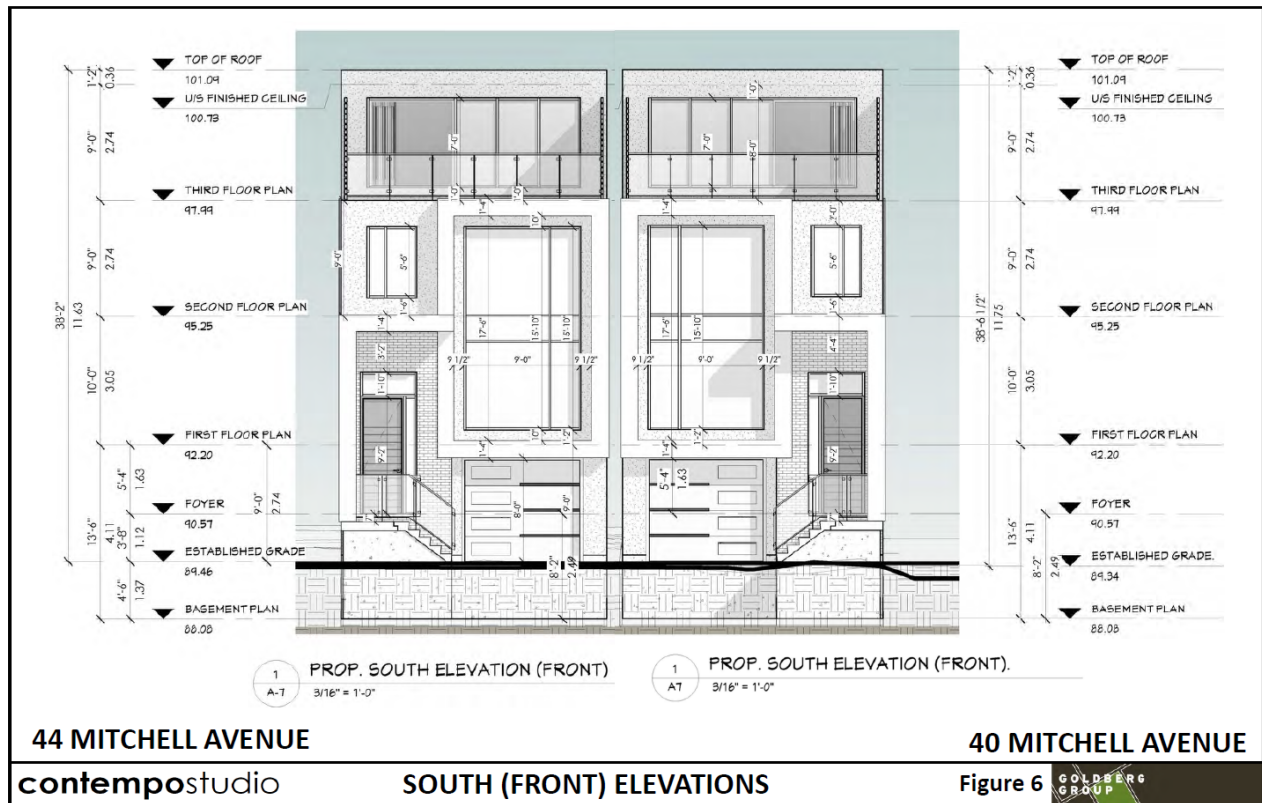
The Robinson Cottages, also known as the Garrison Common Cottages, at 40-44 Mitchell Avenue contribute to the historical development and evolution of the Niagara Street neighbourhood that occupies part of the acreage set aside for military purposes after the founding of York (Toronto) in the late 18th century. In 1834, with the westward expansion of the newly incorporated City of Toronto and the desire to fund additional military installations in defence of the community, land in the Military Reserve east of Garrison Creek was identified for development. On Garrison Common, the tract southeast of present-day Queen and Niagara streets where the subject properties are found was granted in the mid-1840s to the Society for the Propagation of the Gospel in Foreign Parts, an Anglican missionary organization, which did not develop the land. A decade later, James Lukin Robinson, a prolific local developer and realtor, who was also a solicitor and member of a famous Toronto family, registered a residential subdivision where he commissioned 16 pairs of brick cottages that were in place when

Boulton's Atlas was published in 1858. The original occupants included tradespeople, as well as workers for the inaugural steam railways that transformed Toronto in the mid-19th century. The properties at 71-75 Mitchell Avenue are important reminders of the origins of the Niagara Street neighbourhood.

Contextually, the properties at 40-44 Mitchell Avenue are part of the collection of surviving workers' cottages on Mitchell Avenue and Richmond Street West that were among the first residential buildings constructed in the area where they define, support and maintain the historical character of the Niagara Street neighbourhood south of Queen Street West. The Robinson Cottages at 40-44 Mitchell Avenue are also historically, visually and physically linked to their original settings where they were laid out in relation to the other pairs of semi-detached cottages on Mitchell Avenue and Richmond and Adelaide streets, of which six pairs (including the subject properties) remain today.

The heritage attributes of the Robinson Cottages (also known as the Garrison Common Cottages) at 40-44 Mitchell Avenue are:

- The setback, placement and orientation of the pair of semi-detached buildings on the north side of the street between Tecumseth and Niagara streets
- The scale, form and massing of the single-storey rectangular-shaped plans
- The hipped roofs covering the buildings (the central chimney has been removed)
- The materials (the brick on 40 Mitchell has been covered)
- On the principal (south) elevation of each building, the symmetrical organization with the central entrance in the flat-headed surround with the transom flanked by single window openings (the window openings on 44 Mitchell have been changed)



Proposed principal elevations of replacement buildings at 40-44 Mitchell Avenue.