



**SUBJECT: Refusal of grant from Community Heritage Fund for 2349 Lakeshore Road**

**TO: Committee of the Whole**

**FROM: Department of City Building - Planning Building and Culture**

Report Number: PB-02-19

Wards Affected: 2

File Numbers: 501-06.7

Date to Committee: January 14, 2019

Date to Council: January 28, 2019

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### **Recommendation:**

Refuse the application for a grant in the amount of \$6,750.00 for window replacement at 2349 Lakeshore Road.

### **Purpose:**

The subject report responds to an application for a grant from the Community Heritage Fund. The following objective of the Strategic Plan (2015-2040) is applicable to the subject application:

- An Engaging City
  - Community Building through Arts and Culture via Community Activities

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### **Background and Discussion:**

#### **Description of Subject Property**

The subject property is located at the northwest corner of Lakeshore Road and Green Street, in the historic village of Port Nelson. The property is the location of a two-storey brick house built in 1881.

The property was designated as a property of cultural heritage value in 1995 through By-law 8-1995, the relevant Schedule of which is attached as Appendix A of this report.

The reasons for designation include the house's cross-gabled design, relieved brick quoins, arched windows, and contextual relationship to the surrounding neighbourhood, which was known as the community of Port Nelson prior to incorporating with the nearby community of Wellington Square to form the Village of Burlington in 1873. The By-law makes reference to the arched windows being original.



Figure 1: 2349 Lakeshore Road in August 2018

### **Description of Application**

The property owners (the applicants) have applied for a grant of \$6,750.00 from the Community Heritage Fund for the replacement of all eleven windows in the original portion of the house. The applicants propose to remove the original windows (shown in photos attached as Appendix B of this report) and replace them with new fibreglass windows (downstairs) and wood windows (upstairs). Specifications of the proposed new windows are shown in Appendix C of this report.

The applicants have advised that the existing windows are drafty and in poor condition, that some of their pulley systems are broken and some do not open, and that there are holes in some of the glass panes from a tree that fell on the house in April 2018. The applicants hope to achieve better efficiency from their proposed new windows.

The applicants submitted the subject grant application along with a heritage permit application for the same work on September 14, 2018. The Heritage Permit was approved by staff through delegated authority on October 26, 2018.

## **Background on Community Heritage Fund**

The Community Heritage Fund was established in 1985 through By-law 125-1985 with original contributions of \$35,000 from the Ministry of Citizenship and Culture and \$25,000 from the City of Burlington. The original \$60,000 has increased over time as interest has accrued and additional infusions of cash have occurred, including from Community Benefits under section 37 of the Planning Act.

By-law 16-1993 amended the Community Heritage Fund by specifying that the City may use the Fund to issue grants for up to 25% of eligible restoration project costs to a maximum of \$15,000.00, or loans for up to 50% of project costs to a maximum of \$15,000.00. This By-law also required applicants to provide a heritage conservation easement to the City as a condition of funding approval.

By-law 67-2014 further amended the program by removing the requirement for an easement and replacing it with a requirement for an agreement that, unlike an easement, does not need to be registered on title of the affected property.

## **Strategy/process**

### ***Preconsultation***

The applicants inquired with staff about the process for replacing original windows in November-December 2017. Staff encouraged the applicants to consider restoration/repair of the original windows but acknowledged that replacement can be an acceptable intervention when original materials are deteriorated beyond repair. Staff advised of the need for a heritage permit for replacement, and provided information about the Community Heritage Fund, indicating that restoration of existing windows would be eligible for grant assistance, as would replacements that are customized replicas of the originals. Staff also provided relevant excerpts from the Standards and Guidelines for the Conservation of Historic Places in Canada to inform the applicants of best practices that staff would consider in evaluating the application to replace the windows.

In September 2018 the applicants consulted staff about preparing an application for a heritage permit and grant for window replacement. Staff advised the applicants that they had provided all the necessary materials for an application but that the proposed new windows shown in the applicants' specifications (Appendix C) did not meet the eligibility criteria for grant assistance. The applicants acknowledged this feedback but submitted the application with the same materials on September 14, 2018.

### ***Heritage Permit Application***

The Heritage Act requires owners of designated heritage properties to obtain consent from City Council for any alteration that is likely to affect the property's protected heritage attributes, as defined in the property's designation by-law. Property owners request consent by applying for a heritage permit. Upon receiving an application for a heritage permit, the City must consult with its municipal heritage committee, Heritage Burlington, and make a decision to approve or refuse the application within 90 days.

The owners of 2349 Lakeshore Road requested expedited processing for their heritage permit application in order to allow them to replace their windows prior to the arrival of winter weather. In order to accommodate this request, staff consulted Heritage Burlington on the permit application via email in October 2018 rather than wait for the committee's next scheduled meeting in November 2018.

Heritage Burlington members voted to support the heritage permit application. In consideration of Heritage Burlington's position, and recognizing the poor condition of the original windows, staff were able to support replacement of windows. While restoration of the existing windows would be preferable and more in keeping with best practices, staff consider replacement to be a reasonable intervention given the condition of the existing windows.

Prior to approving the heritage permit, staff advised the applicants that staff were supportive of the heritage permit but that the project was not eligible for grant assistance and could not be supported. Staff provided the applicants with the opportunity to revise their application to become eligible for grant assistance, or to accept a heritage permit for the current proposal knowing that staff would not support the requested grant. The applicants indicated their desire to accept the heritage permit for the current proposal. Staff therefore approved the heritage permit under delegated authority on October 26, 2018.

### ***Grant Application***

The proposed new windows are not eligible for grant assistance. The Community Heritage Fund eligibility criteria, attached in Appendix D, state that new windows and doors are not eligible "unless replicas of the originals in like materials". The proposed new windows do not replicate the original design and 7 of the 11 are not in the original material.

The proposed new windows are double-hung windows in fibreglass (downstairs) and wood (upstairs), matching the shape and size of the existing window openings. The proposed windows do not match the design of the existing windows. In particular, the proposed new windows differ in their divisions: the proposed windows include four-over-four pane divisions rather than two-over-two, and are also not true divisions with real muntins, but rather false divisions with "grille between the glass". The assembly of

windows with grilles (false muntins) between the glass panes creates a condition that will remain for the life of the new window and cannot be reversed by future owners without dismantling the entire window.

When consulting Heritage Burlington about the permit application by email in October 2018, staff did not consult the committee about the requested grant. Staff felt it was not appropriate to consult the committee about this grant application via email and preferred to consult the committee in person at their meeting on November 13, 2018 to allow the committee to discuss the question of eligibility for grant assistance. At the November meeting, the committee passed a motion supporting the approval of the grant, contrary to the position of staff.

### ***Analysis***

In considering a heritage permit application, the City is asked to decide whether to give the property owner consent to alter their property, under the authority of the Heritage Act. Applications for grants from the Community Heritage Fund are held to a higher standard: the City must decide whether to allocate public funds to subsidize an alteration made by the owner of private property. Accordingly, the City must be satisfied that the owner's proposed alteration will benefit the community by conserving and enhancing the heritage attributes of a designated property.

The Community Heritage Fund was established to recognize that conserving heritage resources to the standard of recognized best practices carries a higher cost than would be incurred by owners of non-heritage properties conducting similar property maintenance or improvements. The intent of the Community Heritage Fund is to subsidize necessary or desirable maintenance or improvements on heritage property, so that the price paid out of pocket by the homeowner is comparable to what a normal property owner would pay for a similar maintenance/improvement project.

The window replacements proposed at 2349 Lakeshore Road are sufficiently in keeping with the heritage character of the property that staff were satisfied to give consent for the alterations by approving a heritage permit through delegated authority. The proposed window replacements do not meet the higher test for staff to support the issuance of a grant from the Community Heritage Fund. The eligibility criteria of the Community Heritage Fund explicitly state that modern windows and doors are not eligible for grants "unless replicas of the originals in like materials". The proposed new windows do not replicate the design of the originals.

Staff's position is supported by the Standards and Guidelines for the Conservation of Historic Places in Canada, 2<sup>nd</sup>. ed., which state that when replacement must occur, it should be done in the same form, material, and detailing as seen in the originals (Standard 8). Staff are of the opinion that the City should not use the public funds of the

Community Heritage Fund to subsidize the subject window replacements as they fail to meet this standard.

### **Options considered**

In Heritage Burlington's discussion about the subject grant application, members discussed whether a "partial approval" would be possible, i.e.: approval of a grant in an amount less than what the applicant had requested. At the time, staff advised that this may not be possible as the grant amount is established in By-law 16-1993. Staff can now confirm that By-law 16-1993 allows the City to approve grants for "up to 25%", meaning that Council does have the option, if desired, to approve a grant for a lesser amount. Staff's recommendation continues to be that no grant be approved on the basis that the proposal is ineligible for funding and also not consistent with recognized best practices.

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### **Financial Matters:**

The current balance of the Community Heritage Fund, excluding amounts that have been allocated but not yet paid out, is approximately \$254,000. As the maximum amount of grant or loan that can be issued for any application is \$15,000, if the subject application is approved the remaining balance will still be sufficient to accommodate the approval of subsequent applications for the foreseeable future.

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### **Connections:**

In October 2012, Heritage Burlington presented a report to Council entitled "A New Approach to Conserving Burlington's Heritage". Council approved the recommendations of this report and passed a number of motions and staff directions as a result, including the following staff direction related to the Community Heritage Fund:

"Instruct the Planning and Building department to conduct a review of the effectiveness of the Community Heritage Fund with consideration being given to directing portions of the funds to offset any non-construction costs e.g. heritage consultants, design costs, compatibility studies, etc." (CDC-11-12-1).

Due to available resources and prioritization of the various motions and staff directions that were passed as a result of the "New Approach" report, this work has not yet been undertaken. Planning staff have had preliminary meetings with Finance Department staff to discuss the administration of the Community Heritage Fund, and in 2014 Planning staff produced report PB-82-14 which resulted in the passing of By-law 67-2014. This by-law amended the Community Heritage Fund by removing the requirement

for an applicant to register a heritage conservation easement on title of their property as a condition of grant/loan approval; the easement requirement was replaced with a requirement for the owner to enter into a heritage conservation agreement (letter of understanding) that does not need to be registered on title.

By-law 67-2014 was considered a preliminary step to modernize the Community Heritage Fund. Staff intend to conduct further research on the effectiveness of the Community Heritage Fund in 2019, and will collaborate with Heritage Burlington to explore potential additional changes to the program based on this research.

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### **Public Engagement Matters:**

As discussed under Strategy/Process above, staff consulted Heritage Burlington with respect to the subject grant application on November 13, 2018. Heritage Burlington supports the approval of this application.

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### **Conclusion:**

When considering an application for a grant from the Community Heritage Fund, the City must be satisfied that the owner's proposed alteration will benefit the community by conserving and enhancing the heritage attributes of a designated property in accordance with best practices. The proposed window replacements at 2349 Lakeshore Road do not replicate the design of the originals and therefore do not satisfy best practices for heritage conservation or the eligibility criteria of the Community Heritage Fund. On this basis staff recommend refusal of the subject grant application.

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Respectfully submitted,

Thomas Douglas

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### **Appendices:**

- A. Designation By-law 8-1995, Schedule A-5
- B. Photos provided by applicant
- C. Proposed new window specifications provided by applicant
- D. Community Heritage Fund eligibility criteria

**Notifications:**

Owners of 2349 Lakeshore Rd (Planning staff to provide contact information)

**Report Approval:**

All reports are reviewed and/or approved by Department Director, Director of Finance and Director of Legal. Final approval is by the City Manager.