



SUBJECT: Amendments to heritage designation by-law for 736 King Road

TO: Planning and Development Committee

FROM: Department of City Building - Planning Building and Culture

Report Number: PB-38-19

Wards Affected: 1

File Numbers: 501-06.2

Date to Committee: May 14, 2019

Date to Council: May 27, 2019

Recommendation:

State an intention to amend By-law 105-2001 pursuant to Part IV of the *Ontario Heritage Act*, section 30.1(1), as shown in the draft amending by-law attached as Appendix C to department of city building report PB-38-19; and

Direct the Director of City Building to provide notice of Council's intention to amend By-law 105-2001, in accordance with section 30.1(1) of the *Ontario Heritage Act*; and

Authorize the City Clerk to present the amending by-law to Council, provided there is no objection to the statement of intention to amend designation By-law 105-2001; and

Authorize the City Clerk to take the necessary actions in the event of any objection to the statement of intention to amend By-law 105-2001 pursuant to Part IV of the *Ontario Heritage Act*, section 29(7); and

Direct the City Solicitor to remove reference to By-law 105-2001 from Part Lot 1, Con Broken Front as in 241642, City of Burlington, Region of Halton, being PIN 07096-0055 municipally known as 763 King Road.

Purpose:

This report recommends amendments to heritage designation By-law 105-2001, to correct a technical error contained in the original by-law and to comply with legislation.

Background and Discussion:

Description of Property

736 King Road is located on the west side of King Road at the terminus of Greenwood Drive in Aldershot. The property is the remnant of “Crown Farm”, the original 563-acre parcel granted by the Crown in 1802 to Charles King, who was one of the earliest European settlers of East Flamborough (what we now know as Aldershot) and the person for whom King Road is named. The original farmhouse on this property was constructed in two phases and remains as a landmark on King Road to this day.

The original part of the house was built as early as 1825 and is one of the oldest buildings not only in Aldershot but in all of Burlington. Later in the 19th century, the original building was reclad in brick and a new one-and-a-half storey brick wing was added, which is now the front (east) wing of the house.



Figure 1: Front (east) elevation of 736 King Road, June 2017

Relevant Background

Designation By-law 105-2001

736 King Road was designated under Part IV, section 29 of the *Ontario Heritage Act* in 2001, through By-law 105-2001, attached as Appendix A of this report. Staff have detected that a clerical error at the time of designation resulted in the wrong legal

description being recorded in the By-law. The legal description that appears in the By-law describes 763 King Road rather than the intended property, 736 King Road.

763 King Road is located approximately 85 metres northwest of Crown Farm and is not considered to have heritage value. Despite the erroneous inclusion of the legal description of 763 King Road, By-law 105-2001 clearly refers to the Crown farmhouse at 736 King Road as the cultural heritage resource that is designated under the Heritage Act by Council. A technical amendment to the By-law is required to correct the legal description.

Recent Application History

The current property owner acquired the subject property in 2011. In 2013, the owner submitted a heritage permit application proposing to build a new detached garage in the side yard, and construct two new dormer windows in the roof on the front of the house. Staff and Heritage Burlington supported the proposed garage, but not the dormers.

Staff worked with the owner to obtain minor variances from the Zoning By-law through a Committee of Adjustment application in order to allow the detached garage to be situated partially in the front yard and required side yard. The intent of these variances was to situate the garage further from the house, in order to minimize adverse impacts on the side verandah of the oldest part of the house, by creating a buffer separation between the new garage and old verandah.

Staff and Heritage Burlington did not support the proposed new dormers in the front roof of the house, as these were felt to be incompatible with the architectural style of the house and detrimental to the property's design value. Staff and a Heritage Burlington representative met with the owner to discuss alternative means of achieving the owner's objectives without having negative impacts on the property's heritage attributes.

Ultimately the dormer proposal was withdrawn and the City issued a Heritage Permit in October 2013 for the proposed garage only. The Committee of Adjustment also approved the needed minor variances, and a building permit was issued for the garage in 2014.

In 2018 the owner submitted a Heritage Permit application to replace the cedar shake roofing of the house with new black asphalt shingles on the main building roof and black metal roofing on the verandah roofs. Staff encouraged the owner to consider applying for a grant from the Community Heritage Fund to subsidize the cost of new cedar shakes rather than the proposed new materials; however, the owner advised that new cedar shakes would be too expensive even with a grant. Ultimately staff and Heritage Burlington supported the proposed new roofing materials, which are considered to be a reversible alteration, and the City approved a heritage permit for reroofing in June 2018.

Proposed Amendments to the Designation By-law

As discussed above, Designation By-law 105-2001 contains a technical error in the legal description of the subject property. On December 11, 2018, staff presented report PB-87-18 to the Planning & Development Committee of Council. This report recommended a number of administrative updates to the Municipal Register of Cultural Heritage Resources, including amending By-law 105-2001 to correct the legal description for 736 King Road.

Council approved the recommendations of PB-87-18 to amend By-law 105-2001; however, this decision was not implemented and formal notice was not served on the owner as the staff recommendation had been incomplete.

Section 30.1(10) of the *Ontario Heritage Act* requires that, because By-law 105-2001 was enacted in 2001 prior to the Heritage Act amendments of 2005, it is not possible to only amend the legal description contained within the By-law. On the occasion of amending the legal description, Council must additionally make whatever changes are necessary “to ensure that the by-law satisfies the requirements of section 29 of the Heritage Act as it read on the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent”.

For this reason, the current report recommends additional amendments to Designation By-law 105-2001.

A Note on Insurance

At the December 11, 2018 meeting of Planning & Development Committee, a representative of the subject property owner delegated regarding the proposal to correct the legal description in By-law 105-2001 recommended in report PB-87-18. In the delegation and when answering questions of Committee, the delegate described difficulties in insuring the subject property, which were perceived to be due to the designation of the property.

Pursuant to Committee’s request for additional information, staff are able to advise that insurance premiums should not increase as a result of a heritage designation. The Insurance Bureau of Canada (IBC) provides information about insuring designated heritage properties on its website, <http://www.ibc.ca/bc/home/heritage-properties>. This information is general in nature, reflecting that heritage legislation differs from one province to another.

The Ministry of Tourism, Culture, and Sport has released an information sheet, “Insurance and Heritage Properties”, which provides Ontario-specific information on insuring designated heritage properties, and dispels some popular misconceptions about the implications of designation. This resource is attached to the subject report as Appendix D.

Burlington property owners can contact City staff with any questions or concerns about insuring heritage properties. In the past staff have offered to speak directly to an insurer to clarify misunderstandings about legislative requirements for designated properties. Staff are also able to provide information about financial support that is available from the Community Heritage Fund to assist in the restoration of cultural heritage attributes of designated heritage properties.

Strategy/process

Upon identifying the need for additional by-law amendments, staff notified the property owner, Ward 1 Councillor Galbraith, and Heritage Burlington. Staff advised that formal notice of the City's proposed amendments could not be served on the owner until a complete set of amendments is approved by Council. Staff have maintained open communication with the property owner to ensure they are apprised of staff progress and know what to expect from the amendment process.

In order to satisfy the requirements of the Heritage Act, as amended in 2005, it is necessary for Council to demonstrate that the subject property meets criteria for cultural heritage value prescribed by Ontario Regulation 9/06. These criteria are as follows:

1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material, or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
 - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark.

In order to confirm the subject property's cultural heritage value in accordance with O. Reg. 9/06, staff retained Archaeological Research Associates, Ltd (ARA) to study the property. ARA provided the City with an evaluation report, attached as Appendix B to

this staff report, which finds that the subject property satisfies four criteria for cultural heritage value, as summarized in Table 1 below. The property is therefore eligible for designation under current legislation.

Table 1: Summary of ARA's Evaluation of Cultural Heritage Value or Interest of 736 King Road

Criterion	Description	ARA comment
Design or Physical Value	Is a rare, unique, representative, or early example of a style, type, expression, material or construction method.	"736 King Road is an early house in Burlington and a good example of a Gothic Revival style residence."
Historical or Associative Value	Has direct associations with a theme, event, belief, person, activity, organization, or institution that is significant to a community.	"736 King Road is associated with the King family, one of the earliest settlers in East Flamborough Township (now Burlington). They owned the property for over 135 years, from 1802 to 1941."
Contextual Value	Is physically, functionally, visually or historically linked to its surroundings.	"736 King Road is historically linked to its surroundings. King Road was developed within the alignment of an early Indigenous Trail leading northwest from Burlington Beach to Lake Medad. King Road is named for the King family who resided at 736 King Road for over 135 years".
	Is a landmark	"As one of three extant historic structures along King Road, 736 King Road is a local landmark".

The ARA study was completed from the public right-of-way only, as the property owner did not respond to a request for permission to enter on the property. On March 4, 2019, staff contacted the property owner by email to provide a copy of the completed ARA study, advise of staff's proposed By-law amendments and process to be followed, and invite the property owner to attend a meeting of Heritage Burlington where the recommendation was to be discussed. The property owner responded to the email indicating their opposition to the proposed amendments and expressing an interest in attending the Planning & Development Committee meeting where the amendments would be discussed.

Staff recommend that By-law 105-2001 be amended by replacing the "Reasons for Designation" in Schedule A of the original By-law with the "Statement of Cultural Heritage Value or Interest" contained in section 8.0 of the ARA report. The Statement of

Cultural Heritage Value or Interest satisfies the requirements of the Act by outlining how the subject property meets the prescribed criteria for designation.

The Statement of Cultural Heritage Value or Interest also includes a list of Cultural Heritage Attributes that are important in defining and supporting the cultural heritage value of the subject property (see Appendix C). If the proposed By-law amendment is approved, this list of attributes will be included in the designation By-law and referred to by staff when reviewing future Heritage Permit applications. The By-law will require the listed attributes to be protected so that future changes to the property are managed and do not negatively impact the property's heritage value. The listing of these attributes in the Statement of Cultural Heritage Value or Interest provides improved clarity for the City and the property owner about what attributes must be protected, whereas the current By-law 105-2001 is less explicit in defining these attributes. The list of Cultural Heritage Attributes will also be used in the review of any future applications for financial assistance from the Community Heritage Fund, to determine what attributes are eligible for funding for restoration projects.

If Council approves staff's recommendation to amend Designation By-law 105-2001, in accordance with section 30.1(1) of the Ontario Heritage Act, the City must follow the same process as though the property were being newly designated under section 29 of the Act. Having consulted with its municipal heritage committee (Heritage Burlington), Council must state an intention to amend Designation By-law 105-2001. The City must publish notice of the intention. This notice shall be given to the property owner and the Ontario Heritage Trust. The public must also be notified through publication in a local newspaper.

Within thirty days after the publication of notice of Council's intention, any person may object to the proposed amendments by giving notice of objection to the City Clerk. If no notice of objection is received within the thirty-day period, then Council may proceed to enact the By-law amendment.

If a notice of objection is received within the thirty-day period, the City must refer the matter to the Conservation Review Board (CRB), an adjudicative tribunal that considers matters under the Ontario Heritage Act. A hearing will ensue and the CRB will prepare a report back to City Council, who must make the final decision on whether to withdraw or enact the By-law amendments.

Options considered

It is necessary for Council to amend By-law 105-2001 to correct the legal description of the subject property. The Heritage Act requires that the legal description correction be accompanied by other amendments to modernize the by-law in accordance with the Ontario Heritage Act, as amended in 2005. Approval of staff's recommendation is

therefore necessary to comply with legislation. The property owner has the right to object to Council's decision and trigger a hearing at the Conservation Review Board.

Financial Matters:

Should Council approve the proposed amendment to By-law 105-2001 as recommended, the property owner and general public will have the opportunity to submit a notice of objection. This would trigger a hearing before the Conservation Review Board (CRB), and costs associated with a hearing would be incurred.

Public Engagement Matters:

Heritage Burlington was consulted on the proposed amendments to By-law 105-2001 on March 12, 2019, and passed a motion supporting the proposed amendments. Heritage Burlington had previously supported the proposal to correct the legal description in the by-law on November 13, 2018.

Conclusion:

736 King Road was designated in 2001, but the designation By-law 105-2001 contains a clerical error in the legal description that requires correcting. The *Ontario Heritage Act* requires that on the occasion of correcting the legal description, Council must also make additional amendments to bring the by-law into conformity with the 2005 amendments to the Act. Staff therefore recommend that Council state an intention to amend designation By-law 105-2001 as discussed in this report in order to comply with legislation.

Respectfully submitted,

Thomas Douglas, RPP MCIP

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Appendices:

- A. Designation By-law 105-2001

- B. Evaluation of 736 King Road by Archaeological Research Associates Ltd (ARA)
- C. Draft Amending By-law
- D. Government of Ontario information sheet: Insurance and Heritage Properties

Notifications:

Owner of 736 King Road (Planning staff to provide contact information)

Erin Semande, Provincial Heritage Registrar, Ontario Heritage Trust

Heritage Burlington, c/o Jo-Anne Rudy, Committee Clerk, City of Burlington

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.