



SUBJECT: Amendments to Designation By-law for 227 Green Street
(formerly 2358 Lakeshore Road)

TO: Community Planning, Regulation & Mobility Cttee.

FROM: Community Planning Department

Report Number: PL-41-20

Wards Affected: 2

File Numbers: 501-06-02

Date to Committee: August 11, 2020

Date to Council: August 24, 2020

Recommendation:

State an intention to amend By-law 138-1993 pursuant to Part IV of the *Ontario Heritage Act*, section 30.1, as shown in the draft amending by-law attached as Appendix C of community planning department report PL-41-20; and

Direct staff to provide notice of Council's intention to amend By-law 138-1993, in accordance with section 30.1 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 138-1993; 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 8-1993 pursuant to Part IV of the *Ontario Heritage Act*, section 29(7).

PURPOSE:

This report recommends amendments to Heritage Designation By-law 138-1993 to correct the legal description for 227 Green Street (formerly known as 2358 Lakeshore Road) and to comply with legislation in accordance with the *Ontario Heritage Act*.

Vision to Focus Alignment:

- Building more citizen engagement, community health and culture
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Background and Discussion:

Description of the Property

The subject property now known as 227 Green Street is the southernmost lot on Green Street, south of Lakeshore Road and backing onto Lake Ontario. The property currently supports a one-and-a-half storey representative example of an Arts and Crafts style residence, particularly evidenced by architectural features such as the front gable, large overhanging eaves with brackets and rafter tails, clapboard siding, and wood shingle roof. The property is also associated with prominent Hamilton architect Stewart McPhie, who designed many buildings for the Moodie family in Hamilton; the subject building was constructed in 1910 as a summer residence for James Moodie. McPhie's most notable property in Burlington was Paletta Mansion. Contextually, 227 Green Street is visually linked to its surroundings through views to Lake Ontario. The building was designed with its location in mind as the cottage includes an expanse of windows facing south towards Lake Ontario.



Figure 1: Photo of 227 Green Street taken in April 2019.

Relevant Background

Designation By-law 138-1993

The property at 227 Green Street was formerly known as 2358 Lakeshore Road, and was designated as such under Part IV, section 29 of the *Ontario Heritage Act* in 1993 through By-law 138-1993 (attached to this staff report as Appendix A).

Schedule A of By-law 138-1993 outlines that the reasons for the designation include the property's cultural heritage value as an "exceptionally well preserved" Arts and Crafts style Lakeside cottage. The by-law specifically references and protects heritage attributes including the "the exterior clapboard treatment, trim, and windows".

Related Application History and Proposed Amendments to Designation By-law 138-1993

In 2017, the Committee of Adjustment approved an application to sever a 590m² parcel of land from the middle part of the existing lot at 2358 Lakeshore Road to create two new lots (one adjacent to Lakeshore Road and another backing onto Lake Ontario; three lots in total). The southernmost parcel backing onto Lake Ontario is now known as 227 Green Street and continues to retain the designated cultural heritage resource. The other parcels are currently vacant.

In May 2020, the applicant was granted consent to further sever a northerly portion of 227 Green Street (see the parcels outlined in red in Figure 2 below). The severed parcel complies with the Zoning By-law's minimum frontage and lot area requirements, no concerns were raised from the public circulation of the application, and the applicant agreed with the conditions of provisional consent as outlined in the staff and agency review. As such, approval for the application for consent to sever was granted by the Director of Community Planning under the Delegated Authority By-law 99-2012.

As a condition of approval, Heritage Planning staff noted the requirement to amend the legal description in Schedule B of By-law 138-1993 to reflect changes to the property parcel made through all past applications. Staff noted that section 30.1(10) of the *Ontario Heritage Act* requires that, because By-law 138-1993 was enacted 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 the necessary changes to ensure that requirements in section 29 of the Heritage Act "as it read on the day the *Ontario Heritage Amendment Act, 2005* received Royal Assent" are met. For this reason, this report recommends additional technical amendments to Designation By-law 138-1993.



Figure 2: Approved severance of 227 Green Street to create a new lot at 231 Green Street. The combined lands of the properties at 239, 235, 231, and 227 Green Street made up the lands formerly known as 2358 Lakeshore Road, which is the original property parcel.

Strategy/process

In order to satisfy the requirements of the *Ontario 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,
 - a. Is a rare, unique, representative or early example of a style, type, expression, material, or construction method,
 - b. Displays a high degree of craftsmanship or artistic merit, or
 - c. Demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it,
 - a. Has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to the community,

- b. Yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - c. 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,
- a. Is important in defining, maintaining or supporting the character of an area,
 - b. Is physically, functionally, visually or historically linked to its surroundings, or
 - c. Is a landmark.

In order to confirm the subject property's cultural heritage value in accordance with O. Reg. 9/06, the applicant was required to submit an evaluation report as part of the condition of approval. The applicant retained Archaeological Research Associates Ltd. (ARA) to prepare the evaluation report, which is attached as Appendix B. The report finds that the subject property satisfies three criteria for cultural heritage value as summarized in Table 1 below, and is therefore eligible for designation under current legislation.

Table 1: Summary of ARA's Evaluation of Cultural Heritage Value or Interest of 227 Green Street

Criteria	Description	ARA Comment
Design or Physical Value	Is a rare, unique, representative or early example of a style, type, expression, material or construction method	"227 Green Street is a representative example of an Arts and Crafts style residence. Typical of this style is the front gable, large overhanging eaves with brackets, clapboard siding and wood shingle roof".
Historical or Associative Value	Demonstrates or reflects the work or ideas of an architect, builder, artist, designer or theorist who is significant to a community	"227 Green Street is associated with prominent Hamilton architect Stewart McPhie. Many of the McPhie's residential designs drew inspiration from architects Frank Lloyd Wright and Louis Sullivan who were key in the development of the Arts and Crafts Style".
Contextual Value	Is physically, functionally, visually or historically linked to its surroundings	"227 Green Street is visually linked to i[t]s surroundings through views to Lake Ontario. The cottage has an expanse of windows facing south towards the lake".

ARA's report notes that due to Ontario's "Declaration of Emergency" for COVID-19, a site visit was not feasible and therefore not conducted. Evaluation of the building was completed through photographic analysis using photos that were obtained from an Airbnb listing (Airbnb 2018), photos that were taken by the City of Burlington on April 12, 2019, and photos that were taken by the client on April 29, 2020. No interior elements of the building are included in the report.

Staff recommend that Schedule A of By-law 138-1993 be amended by being replaced with the "Statement of Cultural Heritage Value or Interest" contained in section 8.0 (page 26) of ARA's report. The Statement of Cultural Heritage Value or Interest satisfies the requirements of the Heritage 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. If the proposed by-law amendment is approved, this list of attributes will be included in Schedule A of 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 Schedule A of By-law 138-1993 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.

Section 30.1(2) to (10) of the *Ontario Heritage Act* allows municipalities to follow an abbreviated minor amendment process that does not require the public notice required for designation. Subsection 30.1(2) outlines the exception criteria that, if the only purpose(s) of the amendments are to do one of the following, would allow the abbreviated minor amendment process to proceed: 1) clarify or correct the statement explaining the property's cultural heritage value or interest or the description of the property's heritage attributes; 2) correct the legal description of the property; and, 3) otherwise revise the by-law to make it consistent with the requirements of this Act or the regulations. The following amendments meet the latter two criteria.

If council approves staff's recommendation to amend By-law 138-1993, notice will be served on the property owner of 227 Green Street and the other severed properties that once formed 2358 Lakeshore Road. 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

Should the by-law not be amended, the designation would continue to include both the retained lot and the severed lot (as well as other lots severed through the previous consent application) despite the latter lots not containing elements of cultural heritage value or interest. Maintaining the designation status on the severed lots would present an undue burden to owners of those lots. It is therefore necessary for Council to amend the designation by-law pertaining to the property now known as 227 Green Street in By-law 138-1993 to reflect property changes resulting from past and present applications to sever the lot formerly known as 2358 Lakeshore Road (along with other amendments required by legislation).

Financial Matters:

Should Council approve the proposed amendments to By-law 138-1993 as recommended, the property owner of 227 Green Street (and the owners of the lots now know as 235 and 239 Green Street, formerly 2358 Lakeshore Road) will have the opportunity to submit a notice of objection. This would trigger a hearing before the Conservation Review Board, and costs associated with a hearing would be accrued. However, as the proposed amendments are needed to facilitate the applicant's proposed severance, an appeal is unlikely to be received.

Engagement Matters:

Heritage Burlington was consulted on the proposed amendments to Designation By-law 138-1993, including an opportunity to review the draft amending by-law on July 7, 2020 via email. Heritage Burlington did not have any objections to the proposed by-law amendments. As the amendments outlined in this report are to proceed as a minor amendment in accordance with section 30.1(2) to (10) of the *Ontario Heritage Act*, the City will follow an abbreviated process that does not require the public notice required of designation.

Conclusion:

Pursuant to a decision from the Committee of Adjustment in 2017 to grant provisional consent to sever lands from the property formerly known as 2358 Lakeshore Road including 227 Green Street, and pursuant to a decision from the Director of Community Planning to grant provisional consent to further sever the lot now known as 227 Green Street, the legal description requires amendment to reflect changes to the property parcel. The *Ontario Heritage Act* requires that on the occasion of correcting the legal description, Council must make additional amendments to ensure the property's designation is in conformity with the 2005 amendments to the Act. Staff therefore recommend that Council state an intention to amend designation By-law 138-1993 as discussed in this report and as attached as Appendix C in order to comply with legislation.

Respectfully submitted,

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Appendices:

- A. Designation By-law 138-1993
- B. Evaluation of 227 Green Street by Archaeological Research Associates Ltd. (ARA, 15/05/2020)
- C. Draft Amending By-law

Notifications:

Owner of 227 Green Street (Planning staff to provide contact information)
Owner of 235 Green Street (Planning staff to provide contact information)
Owner of 239 Green Street (Planning staff to provide contact information)
Erin Semande, Provincial Heritage Register, 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, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Council. Final approval is by the City Manager.