



**SUBJECT: Request to Amend Heritage Designation Bylaw for 38  
Frontier Trail (Formerly 398 Mountain Brow Road East)**

**TO: Community Planning, Regulation & Mobility Cttee.**

**FROM: Community Planning Department**

Report Number: PL-61-22

Wards Affected: 1

File Numbers: 501-06

Date to Committee: September 13, 2022

Date to Council: September 20, 2022

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### **Recommendation:**

State an intention to amend By-law 44-2009 pursuant to Part IV of the Ontario Heritage Act, section 30.1 (1), as shown in the draft amending by-law and revised statement of significance attached as Appendix C to community planning department report PL-61-22; and

Direct the Director of Community Planning to provide notice of Council's intention to amend By-law 44-2009, in accordance with section 29 (3) and 29 (4) of the Ontario Heritage Act; and

Direct the City Clerk to present the draft amending by-law to Council for approval within 120 days after the date of publication of the notice of intention to amend By-law 44-2009, provided there is no objection or withdrawal; and

Direct the City Clerk to take the necessary actions in the event of any objection to the statement of intention to amend By-law 44-2009 pursuant to Part IV of the Ontario Heritage Act, sections 29 (5) and 29 (6); and

Direct the City Solicitor to take necessary steps to implement the following amendments to the existing Heritage Conservation Easement Agreement, registered on title for the heritage property at 398 Mountain Brow Road, Instrument No. HR1518674 (the "HEA"), dated April 29th, 2009:

- a) Replace the Statement of Significance attached to the HEA under Schedule “C” with the revised statement of significance attached as Appendix C to community planning department report PL-61-22;
- b) Make any required amendments to the HEA to remove references to the demolished house and accurately reflect the existing condition of the property to the satisfaction of the Director of Community Planning;
- c) Introduce any necessary by-law in Council to amend the HEA.

## **PURPOSE:**

The purpose of this report is twofold: 1) to provide Council with analysis and background information regarding a request to amend the heritage designation by-law for 38 Frontier Trail (Formerly 398 Mountain Brow Road East). In July 2020, the heritage designated house on the property caught fire and suffered extensive structural damage. It was demolished based on a structural engineer’s finding that it was no longer safe and could not be repaired (See Appendix F- Structural Engineering Review Letter 2020-07-13); and, 2) to recommend amendments to heritage designation By-law 44-2009 and Heritage Conservation Easement Agreement (“HEA”), Instrument No. HR1518674 (See Appendix G) to remove references to the demolished house and limit the scope to a surviving historically significant structure on the property known as the “Woodhill Ice House”. The owner is supportive of maintaining the designation for the Woodhill Ice House.

## **Vision to Focus Alignment:**

- Increase economic prosperity and community responsive city growth
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## **Background and Discussion:**

### **Site Description**

The subject property is municipally known as 38 Frontier Trail, formerly 398 Mountain Brow Road East, and the lands are historically known as “Woodhill”. Woodhill consists of a 52-acre heritage designated property at the northwest end of Burlington, directly on the Hamilton-Burlington border. Despite its size, there is only one access to the site consisting of a single lane gravel road, which winds down the Niagara Escarpment to a plateau overlooking downtown Burlington, Burlington Bay and the Hamilton Harbour. On the plateau is a collection of unoccupied buildings arranged around a demolished stone house.

### Heritage Significance

The subject property was designated in 2009 and found to have heritage significance for its historical associations, architectural design and landmark attributes. The property was

originally developed in 1833 by a Scottish-Canadian politician and agriculturalist named Adam Fergusson. Working with James Webster, Fergusson founded the Town of Fergus, Ontario. Throughout his life he was an advocate for agricultural innovations like selective livestock breeding, crop rotation and soil analysis. Fergusson was politically influential as a member of the Legislative Council of Upper Canada.

In 1833, Fergusson commissioned a stone mason named Charles Allan, a Scottish builder from Perthshire, to construct a one-and-one-half storey gable-roofed stone house. Two separate 19th century additions were subsequently constructed, making the total floor area of the building approximately 5000 square feet. The design of the building reflected simple Scottish masonry, with a stone foundation and exterior walls covered in painted stucco. The south portion of the building had a symmetrical design, with a central door and windows to either side. Around the same time the main house was built, an ice house was built into the escarpment. Ice houses preceded refrigeration and were highly insulated buildings constructed to store ice throughout the year.

According to the statement of significance for the property, heritage attributes of Woodhill included:

- Siting of the residence and **icehouse** on a plateau allowing vistas of Lake Ontario, the grazing lands, the pond, the forested lands, and the escarpment;
- The scale of the house and its division into formal (head of the building) and informal (tail) portions;
- The morphological relationship between the formal front volume (southern-most mass) and the extended tail of the building;
- south exposure of formal front elevation;
- The scale of the northern portion of the building, including its length, volume and mass;
- The symmetry of the southern-most mass including window openings, chimneys and centre lines; and
- The masonry detailing on the southern-most mass including the tooled ashlar corner stones, the tooled ashlar door and window surrounds, the tooled stone sills, the chimneys, the wrought-iron shutter mounting hardware, and the fanlight over the front (south-facing) door.



South (front) elevation and west (side) elevation before the fire.



Side (east) elevation before the fire & the Woodhill Ice House (2022).

### 2020 Fire

On July 10, 2020, the main house caught fire, which destroyed 75-80% of the house. Below are a series of photos from the Structural Engineer's report documenting the condition of the house after the fire.



South (front) elevation shortly after the fire and interior photos.



Main House Current Condition (2022).

## **Discussion**

### Loss of Heritage Value and Recommended Amendments to the Heritage Designation By-law

The destruction of the main historic feature of the subject property has impacted the heritage value of the property, however the stone ice house built into the escarpment still has significance.

To be eligible for heritage designation, a property must meet one of nine criteria under one of three categories of value in *Ontario Regulation 9/06*. The categories of heritage value and criteria are listed below:

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,

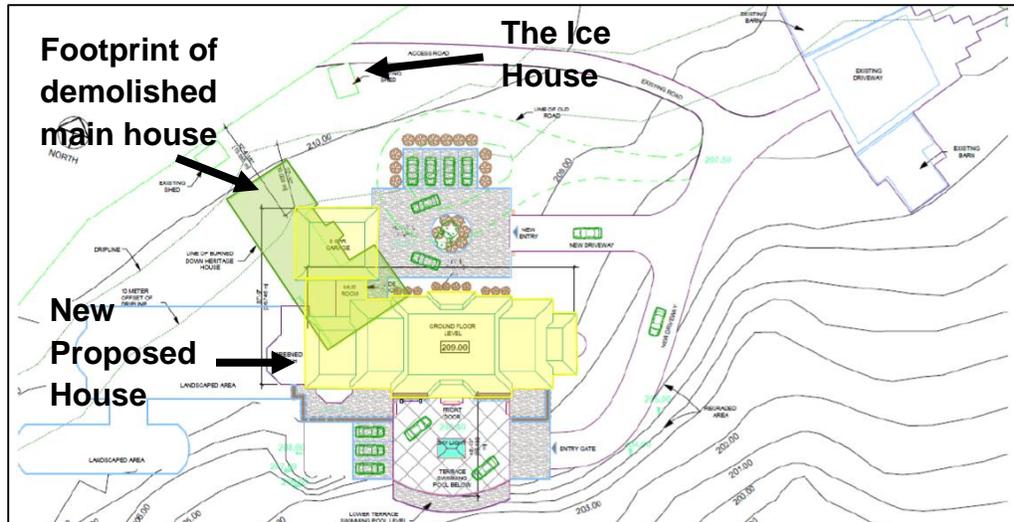
- ii. is physically, functionally, visually or historically linked to its surroundings, or
- iii. is a landmark. O. Reg. 9/06, s. 1 (2).

The Woodhill Ice House has design and physical value as a rare surviving example of a purpose-built ice house. Ice houses were a type of building constructed to store ice throughout the year. After home refrigerators were invented in 1913, ice houses became obsolete. The Woodhill Ice House also has associative value for its connection to the Woodhill Estate. The Woodhill Ice House's gable roof, multi-light window and stone exterior walls echo the Scottish masonry techniques and design features of the main building, creating a tangible connection to the original house.

The owner has consented to have the Woodhill Ice House remain heritage designated, provided the by-law is revised to remove references to the demolished main house.

#### Future Development Plans

The owner has preliminary plans to redevelop the property with a large single-family home that would exceed the footprint of the original house. The new development would not physically impact the Woodhill Ice House (see below). Because the property is in the Niagara Escarpment Commission ("NEC") development control area, any new development exceeding the size and footprint of the demolished building will require a development permit from the NEC. The City will have a chance to review the development permit and provide comments but is not able to apply approval conditions to the permit. However, the property is subject to HEA, Instrument No. HR1518674 in favour of the City, which requires the owner to maintain the property in "as good and sound a state of repair as a prudent owner would normally do so that no deterioration in the present condition and appearance of the Heritage Attributes shall take place except for reasonable wear and tear". The agreement enables the City to complete a compliance inspection at any time provided 48 hours-notice is given.



### **Draft Site Plan**

### **Official Plan Policies**

The Burlington Official Plan, 1997, contains a number of policies related to the conservation of cultural heritage resources under Part II, Section 8:

Cultural heritage resources of significant cultural heritage value shall be identified and conserved. These policies are consistent with provincial policy directions related to heritage. (8.1(a))

Sound heritage conservation practice requires early identification of cultural heritage resources, ongoing maintenance and protection from inappropriate use, alteration and demolition (8.1(b))

Completion of a heritage impact statement shall be required prior to any approvals for proposed development where the City foresees potential adverse impacts on the cultural heritage attributes (including important vistas and streetscape) of a property designated pursuant to The *Ontario Heritage Act*, or on a property worthy of designation...(8.4.1(b))

Amending rather than removing the heritage designation of the subject property will enable the City to conserve a unique building type, of which there is only one other example on the Heritage Register. Continued heritage designation also preserves a tangible symbol of the original 1833 Woodhill Estate.

### **Options Considered**

#### **Option 1- Amend the Heritage Designation By-law and Heritage Conservation Easement Agreement**

See page 1 of report for recommendation wording.

This option is recommended because it updates the designation by-law and HEA to reflect the current state of the property. Removing the reference to the house avoids potential confusion about which attributes of the property are protected and which are not. This will save time for staff and the owner when future proposals are considered.

Option 2- Make no amendments to the heritage designation by-law

That Council decline to amend By-law No. 44-2009.

This option is not recommended because the heritage designation by-law and statement of significance are not accurate and refer to a large historic structure that no longer exists.

Option 3- Remove the Heritage Designation from the Property

If City Council believes that the destruction of the main house combined with the isolation of the property makes it ineligible for continued heritage designation, it has the authority to repeal the designation by-law altogether.

This option is not recommended since the owner is supportive of the designation continuing to apply to the property, and because staff and the Heritage Burlington Advisory Committee believe that the Woodhill Ice House has heritage value and is eligible for continued heritage designation.

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**Financial Matters:**

**Total Financial Impact**

Not applicable.

**Source of Funding**

Not Applicable

**Other Resource Impacts**

None. The Ice House is currently heritage designated so maintaining the designation will not create any additional resource impacts.

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## Climate Implications

Not applicable.

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## Engagement Matters:

The Heritage Burlington Advisory Committee considered the matter at their meeting on June 8, 2022 and passed the following motion:

*Heritage Burlington recommends that City Council:*

- *Authorize amendments to heritage designation by-law 44-2009 for 390 Mountain Brow Road to remove references to the demolished house and limit the designation to the Ice House; and*
- *Require the applicant to enter into a legal agreement with the City of Burlington to secure the maintenance and upgrading of the Ice House as part of the future development of the property.*

When Heritage Burlington discussed the matter, they were unaware that there was an existing HEA that applies to the property and already requires the owner to maintain the Woodhill Ice House in a state of good repair. Given that the HEA is in place, staff did not include this part of the Heritage Burlington motion in its recommendation to City Council.

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## Conclusion:

The Woodhill Estate is a significant heritage designated property that suffered a destructive fire in summer 2020. The fire destroyed the main heritage attribute of the property- a one-and-a-half-storey stone house built in 1833. Despite the fire and demolition of the main house, a small ice house built into the Niagara Escarpment survives and has heritage significance independent of the main house. The owner of the property has agreed to maintain the heritage designation provided it only applies to the Woodhill Ice House. Staff therefore recommend that Council amend the HEA, heritage designation by-law and statement of significance to reflect this agreement.

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Respectfully submitted,

John O'Reilly, MCIP, RPP  
Planner II- Heritage  
(905) 335-7777 ext. 7427

**Appendices:**

- A. Aerial Photo (PL-61-22)
- B. Photographs (PL-61-22)
- C. Draft Amending By-law and Revised Statement of Significance (PL-61-22)
- D. Current By-law 44-2009 (PL-61-22)
- E. Heritage Burlington Committee Minutes, June 8, 2022 (PL-61-22)
- F. Structural Engineering Review Letter 2020-07-13 (PL-61-22)
- G. Heritage Conservation Easement Agreement, Instrument No. HR1518674 (PL-61-22)

**Notifications:**

Owner of 38 Frontier Trail.

**Report Approval:**

All reports are reviewed and/or approved by Department Director, the Chief Financial Officer and the Executive Director of Legal Services & Corporation Counsel.