

Subject: Consideration of Objection to Notice of Intention to Designate 501 Cole Avenue, under Part IV of the *Ontario Heritage Act*

File Number: ACS2022-PIE-RHU-0037

Report to Built Heritage Sub-Committee on 3 October 2022

and Council 5 October 2022

Submitted on September 20, 2022 by Court Curry, Manager, Right of Way, Heritage and Urban Design Services, Planning, Real Estate and Economic Development Department

Contact Person: Greg MacPherson, Planner I, Heritage Planning Branch

613-580-2424,23665, Greg.MacPherson@ottawa.ca

Ward: KITCHISSIPPI (15)

Objet : Examen des motifs d'opposition de l'avis d'intention de désigner le 501, avenue Cole, en vertu de la Partie IV de la *Loi sur le patrimoine de l'Ontario*

Dossier : ACS2022-PIE-RHU-0037

Rapport au Sous-comité du patrimoine bâti

le 3 octobre 2022

et au Conseil le 5 octobre 2022

Soumis le 20 septembre 2022 par Court Curry, Gestionnaire, Services des emprises, du patrimoine et du design urbain, Direction générale de la planification, de l'immobilier et du développement économique

Personne ressource : Greg MacPherson, Urbaniste I, Planification du Patrimoine

613-580-2424,23665, Greg.MacPherson@ottawa.ca

Quartier : Kitchissippi (15)

REPORT RECOMMENDATION

That the Built Heritage Sub-Committee recommend that Council:

1. Adopt either:
 - a. The motion found at Document 3 (Draft Motion to Designate) and direct the enactment of the Designation By-law; or
 - b. The motion found at Document 5 (Draft Motion to Withdraw Notice of Intention to Designate)
2. Suspend the notice required under Subsections 29(3) and 34(1) of the Procedure By-law to consider this report at its meeting on October 5, 2022 in order decide this matter within the legislated timeline.

RECOMMANDATIONS DU RAPPORT

Que le Sous-comité du patrimoine bâti recommande au Conseil ce qui suit :

1. L'adoption de :
 - a) la motion qui figure dans le document 3 (Motion provisoire visant la désignation) et la concrétisation de l'adoption du Règlement sur les désignations;
 - b) la motion qui figure dans le document 5 (Motion provisoire visant à révoquer l'avis d'intention de désigner un bien).
2. La suspension de l'avis requis en vertu des paragraphes 29(3) et 34(1) du Règlement de procédure afin qu'il examine le présent rapport lors de sa réunion du 5 octobre 2022 pour trancher à cet égard dans les délais prévus par la loi.

BACKGROUND

In June 2019, the *More Homes, More Choice Act, 2019* (Bill 108) received Royal Assent. Schedule 11 of this *Act* amended the *Ontario Heritage Act* (OHA), including the process for appeals and objections to designations under Part IV of the OHA. These amendments came into force on July 1, 2021. Under Part IV, Section 29 (5) of the amended OHA any person can serve the City with notice of objection to a Notice of Intention to Designate (NOID) within 30 days after its publication. City Council must

consider objections and render a decision to either withdraw or proceed with the designation within 90 days from the end of the objection period.

This report was prepared in response to the receipt of an objection to the NOID for 501 Cole Avenue, published on July 7, 2022. This NOID objection is the first received by the City of Ottawa under Part IV, Section 29 (5) of the amended OHA.

Site History

The property at 501 Cole Avenue contains a two-and-one-half storey red-brick house constructed between 1913 and 1914 located in the neighbourhood of Highland Park, near the southeast intersection of Cole Avenue and Kenwood Avenue. The property was listed on the City of Ottawa's Municipal Heritage Register as a non-designated property in 2019 and City staff received a request to designate the property from the Westboro Community Association in October 2021.

In May 2022 City staff received a complete notice of intention to demolish the property under Part IV, Section 27 of the OHA. At the request of the ward councillor, staff prepared a report ([ACS2022-PIE-RHU-0028](#)) to assess the property for designation under Part IV of the OHA within the 60 day statutory timeline for review. This report was presented to the Built Heritage Subcommittee on June 20, 2022. The report concluded that the property has contextual value as defined by regulation 9/06 of the OHA but did not recommend designation of the property. The Built Heritage Sub-Committee, by way of motion, subsequently recommended to Planning Committee that the property be designated under Part IV of the OHA according to the Statement of Cultural Heritage Value, attached as Document 1 to this report. This recommendation was carried by Planning Committee at their meeting of June 20, 2022 and approved by City Council on July 6, 2022. Notice of Council's intention to Designate was served on the property owners and the Ontario Heritage Trust and was published in accordance with the OHA on July 7, 2022.

A Notice of Objection was received by the City Clerk on behalf of the owners of the property on August 4, 2022, within the required timeframe set out in the OHA. Council has until November 4, 2022 to consider the objection.

DISCUSSION

Heritage staff have reviewed the notice of objection dated August 4, 2022 prepared by Gowling WLG. This notice of objection is attached as Document 2 to this report.

Through this letter the representatives of the property owner outline three reasons for

their objection to the NOID: first, that the designation of the property is not justified by any study and is contrary to heritage staff's recommendation; second, that the property lacks design or physical value despite the language set out in the Statement of Cultural Heritage Value (SCHV) attached to the NOID; and third, that the property lacks contextual value. The following sections provide staff comment on each component of the objection letter.

1: The designation is not justified by any study and is contrary to staff's recommendation

As part of the City's process for addressing notices of intention to demolish buildings listed on the City's heritage register, staff evaluated the property against regulation 9/06 of the OHA. Regulation 9/06 establishes the criteria for determining the cultural heritage value of a property. If a property meets one of the regulation's three criteria – design or physical value, historical or associative value, or contextual value – it may be designated under the OHA. Staff's evaluation is set out in the Heritage Survey Form (HSF) attached to report ACS2022-PIE-RHU-0028. Through this evaluation staff determined that the property meets the criteria for contextual value but did not recommend that council move to designate the property under Part IV of the *Ontario Heritage Act*. Despite this recommendation and given that staff's evaluation determined that the property meets one of the regulation's criteria, staff are of the opinion that council retains the authority to designate the property and that a designation based on the regulation's contextual value criteria would be justified by staff's assessment. Furthermore, the OHA does not require that a designation under Part IV, Section 29 be justified by a study.

2: Lack of design or physical value

Staff's assessment concluded that the property does not meet the criteria for design or physical value as prescribed by Regulation 9/06.

3: Lack of contextual value

The owners submit that the Statement of Cultural Heritage Value does not sufficiently define an area against which to assess the subject property's contribution to defining, maintaining, or supporting said area's character, as prescribed by criteria 3 (i) of Regulation 9/06. A similar objection to staff's assessment of the property's contextual value was previously raised by the property owner's representatives when the staff report considering designation was presented at Built Heritage Sub-Committee. Heritage staff's assessment of the property remains unchanged and accordingly are of

the opinion that the SCHV appropriately describe the contextual value of the subject property. The SCHV identifies the area as the neighbourhood of Highland Park and describes its contextual value as contributing to the area's historic character through its exemplification of the neighborhood's original design intent. The OHA and Regulation 9/06 do not require an area to have uniformity in built forms or building age, as alluded to in the objection letter, for it to have an identifiable character.

Next Steps:

As set out in Part IV, Section 29 (6) of the OHA, the responsibility of Council is to consider the objection received and decide to either withdraw or proceed with the NOID issued for the property. The following paragraphs describe the necessary steps for each potential option.

Recommendation 1(a): Council proceeds with the Notice of Intention to Designate

After consideration of the contents of the Notice of Objection, attached to this report Council may decide to proceed with the designation process. Should council choose to proceed with the Notice of Intention to Designate (NOID) a by-law designating the property must be passed within 120 days following the publication of the NOID. This 120-day timeline would expire on November 4, 2022. Should Council decide to continue with the designation process, the draft by-law attached as Document 4 to this report could be passed by Council at the October 5 Council meeting. If the by-law is approved, a notice of the by-law must be published in a newspaper with general circulation. Any person who objects to the by-law may appeal to the Ontario Land Tribunal (OLT) within 30 days after the publication of the notice. If deemed appropriate by the OLT, a hearing will be held on the designation and the OLT will issue a binding decision on the designation.

Should Council wish to proceed with a designation by-law through Recommendation 1 (a), the motion attached as Document 3 should be passed.

Recommendation 1 (b): Council withdraws the NOID

Should council choose to withdraw the NOID a formal notice of withdrawal must be served on the owner of the property and any objectors. A notice of withdrawal must also be published in a newspaper having general circulation in Ottawa. There are no statutory timelines associated with issuing these notices.

Should council choose to pass Recommendation 1 (b) and withdraw the NOID, the motion attached as Document 5 should be passed.

Conclusion:

Heritage staff are of the opinion that the objection received does not provide new or substantive information related to the designation of 501 Cole Avenue. The department maintains the position that designation is not recommended for the subject property as set out in report [ACS2022-PIE-RHU-0028](#). As set out in Part IV, Section 29 (6) of the OHA it is the responsibility of Council to consider the objection and decide to proceed or withdraw the subject NOID.

RURAL IMPLICATIONS

There are no rural implications.

CONSULTATION

No consultation was undertaken on this objection.

COMMENTS BY THE WARD COUNCILLOR

The Councillor is aware of the Notice of Objection to the designation of 501 Cole Avenue.

LEGAL IMPLICATIONS

Under the *Ontario Heritage Act*, Council must consider the objection to the Notice of Intention to designate the property under Part IV of the *Act*, which is attached at Document 2 to this report. Following consideration of the objection, Council may proceed with Designation of the property, or it may withdraw the Notice of Intent to designate. If Council proceeds with Designation, a by-law must be passed, as prescribed by the *Act*, and any person who objects to the by-law has a right of appeal to the Tribunal.

RISK MANAGEMENT IMPLICATIONS

There are no risk implications.

FINANCIAL IMPLICATIONS

There are no direct financial implications.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

APPLICATION PROCESS TIMELINE STATUS

The statutory timeline for consideration of this objection under the *Ontario Heritage Act* will expire on November 4, 2022.

SUPPORTING DOCUMENTATION

Document 1: Statement of Cultural Heritage Value

Document 2: Objection Letter

Document 3: Draft motion to designate

Document 4: Draft designation by-law

Document 5: Draft motion to withdraw designation

DISPOSITION

If, after considering the objection to the Notice of Intention to Designate the property known as 501 Cole Avenue, Council proceeds with the designation of the property under Part IV of the *Ontario Heritage Act*, several actions must be taken:

- 1) Heritage Planning Branch, Planning, Real Estate and Economic Development Department, is to finalize the designation by-law, under the authority of the approval of this report and Legal Services to submit to City Council for enactment within 120 days of the publication of the Notice of Intention to Designate as prescribed in Section 29(8) of the *Ontario Heritage Act*.
- 2) Office of the City Clerk, Council and Committee Services to cause a copy of the by-law together with a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property, to be served on the owner of the property and on the Trust according to the requirements of the *Ontario Heritage Act*. Heritage Planning Branch, Planning, Real Estate and Economic Development Department to ensure publication of the notice of the by-law in the newspaper according to the requirements of Section 29(8)(4) of the *Ontario Heritage Act*.

If, after considering the Objection to the Notice of Intention to Designate the property known as 501 Cole Avenue, Council decides to withdraw the notice and not proceed with the designation of the property under Part IV of the *Ontario Heritage Act*, several actions must be taken:

- 1) Heritage Planning Branch, Planning, Real Estate and Economic Development Department, is to prepare the notice of withdrawal. Office of the City Clerk, Council and Committee Services to notify the property owner and the Ontario Heritage Trust (10 Adelaide Street East, 3rd Floor, Toronto, Ontario, M5C 1J3) of Council's decision to withdraw the Notice of Intention to Designate 501 Cole Avenue under Part IV of the *Ontario Heritage Act*.
- 2) Heritage Planning Branch, Planning Real Estate and Economic Development Department to ensure publication of the notice of withdrawal in the newspaper according to the requirements of Section 29 the *Ontario Heritage Act*.

Document 1 – Statement of Cultural Heritage Value

Description of Property – 501 Cole Avenue, Ottawa

The house located at 501 Cole Avenue is a two-and-one-half storey, red brick clad building with a truncated hip roof constructed in 1913 and located on the east side of Cole Avenue, south of Kenwood Avenue, in the Highland Park neighbourhood in Ottawa's west end.

Statement of cultural heritage value or interest

The cultural heritage value of 501 Cole Avenue lies in its contextual value for its contribution to the character of the Highland Park neighbourhood and its design value as an example of early twentieth century vernacular residential architecture.

501 Cole Avenue has contextual value as a house designed and constructed subject to John E. Cole's requirements for large residences in Highland Park. Cole, one of a number of dairy farmers in Ottawa's west end in the late 19th century, subdivided his land in 1898 with the vision of creating a prosperous, cohesive suburban neighbourhood and included a covenant on the area's large lots to ensure development was in keeping with this vision. The house is situated on a large lot that features mature trees along the property line, a green front lawn and a generous setback in keeping with the character of other houses from this period in Highland Park.

501 Cole Avenue has design value as a typical early 20th century example of vernacular suburban residential architecture. Typical of the time period, it features Edwardian Classicist elements including the red brick cladding central two storey porch with simple columns and triangular pediment, a central hipped dormer, and a stone foundation.

Description of Heritage Attributes

Key exterior attributes that contribute to the contextual heritage value are:

- The generous front yard setback from Cole Avenue; and,
- The green front lawn and mature trees along the property lines.

Key exterior elements that contribute to the heritage value as an example of early twentieth century vernacular suburban residential architecture in Highland Park:

- Simple square plan and the siting of the building on the lot;
- Red brick cladding;

- Central two storey front porch with pedimented roof;
- Symmetrical front façade with rectangular windows on either side of central two storey porch; and,
- Truncated hip roof.

Document 3 – Draft Motion to Designate

City Council, Standing Committee and Commission

Conseil, comités permanents et commission

Report / Agenda:

Rapport / Ordre du jour:

Item / Article:

Re:

Moved by / Motion de:

Seconded by / Appuyée par:

WHEREAS Council issued a Notice of Intention to Designate 501 Cole Avenue on July 7, 2022; and

WHEREAS the an objection to the Notice of Intention to Designate was received by the City Clerk on August 4, 2022; and

WHEREAS the Built Heritage Sub-committee has considered the contents of the objection through report ACS2022-XXX-XXXXX; and

WHEREAS the Built Heritage Sub-committee continues to find that the building has cultural heritage value as defined in the Statement of Cultural Heritage Value, attached to the staff report as Document 1;

THEREFORE BE IT RESOLVED that, the Built Heritage Sub-Committee recommend that Council proceed with the designation process under Part IV of the *Ontario Heritage Act* through the passage of a by-law designating the property at 501 Cole Avenue for its cultural heritage value.

**Document 5 – Draft Motion to Withdraw Notice of Intention to Designate
City Council, Standing Committee and Commission
Conseil, comités permanents et commission**

Report / Agenda:

Rapport / Ordre du jour:

Item / Article:

Re:

Moved by / Motion de:

Seconded by / Appuyée par:

WHEREAS Council issued a Notice of Intention to Designate 501 Cole Avenue on July 7, 2022; and

WHEREAS an objection to the Notice of Intention to Designate was received by the City Clerk on August 4, 2022; and

WHEREAS the Built Heritage Sub-committee has considered the contents of the objection through report ACS2022-XXX-XXXXX; and

WHEREAS the Built Heritage Sub-committee now finds that the property should not be designated under Part IV of the *Ontario Heritage Act* ;

THEREFORE BE IT RESOLVED that, the Built Heritage Sub-Committee recommend that Council not proceed with the designation process under Part IV of the *Ontario Heritage Act* and withdraw the Notice of Intention to Designate.