

Subject: Consideration of Application to Repeal By-law Designating 501 Cole Avenue under Part IV of the *Ontario Heritage Act*

File Number: ACS2024-PDB-RHU-0070

**Report to Built Heritage Committee on 8 October 2024
and Council 16 October 2024**

Submitted on September 26, 2024 by Court Curry, Manager, Right of Way, Heritage, and Urban Design Services, Planning, Development and Building Services

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Ward: Kitchissippi (15)

Objet: Examen d'une demande visant à abroger le règlement municipal désignant la propriété située au 501, avenue Cole en vertu de la partie IV de la *Loi sur le patrimoine de l'Ontario*

Dossier : ACS2024-PDB-RHU-0070

Rapport au Comité du patrimoine bâti

le 8 octobre 2024

et au Conseil le 16 octobre 2024

Soumis le 26 septembre 2024 par Court Curry, Gestionnaire, Services des emprises, du patrimoine, et du design urbain, Direction générale des services de la planification, de l'aménagement et du bâtiment

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REPORT RECOMMENDATION

That the Built Heritage Committee recommend that Council refuse the application to repeal the by-law designating 501 Cole Avenue under Part IV of the *Ontario Heritage Act*.

RECOMMANDATION DU RAPPORT

Que le Comité du patrimoine bâti recommande au Conseil de refuser la demande visant à abroger le règlement qui désigne la propriété située au 501, avenue Cole en vertu de la partie IV de la *Loi sur le patrimoine de l'Ontario*.

BACKGROUND

501 Cole Avenue contains a two-and-one-half storey red-brick house constructed between 1913 and 1914. The property is located in the neighbourhood of Highland Park, near the southeast intersection of Cole Avenue and Kenwood Avenue. Following Ontario Land Tribunal (OLT) decision OLT-22-004554, issued February 20, 2024, the property is designated under Part IV of the *Ontario Heritage Act* (OHA).

Under Part IV, Section 32 of the *Ontario Heritage Act*, owners of property designated under Part IV are permitted to apply to Council to repeal the by-law designating their property. This report was prepared in response to the receipt of an application to repeal by-law 2022-348, as amended, submitted on behalf of the property owners.

Legislative History

The property was first listed on the City of Ottawa's Municipal Heritage Register in 2019. In May 2022, City staff received a complete Notice of Intention to Demolish the property under OHA Part IV, S.27. Following the Council-approved Heritage Register procedures in place at this time, the Ward Councillor requested that City Heritage staff prepare a report ([ACS2022-PIE-RHU-0028](#)) assessing the property for designation within Section 27's statutory 60-day review timeline. This report was presented to the Built Heritage Sub-committee on June 20, 2022. It concluded that the property has contextual value as defined by Ontario Regulation 9/06 but did not recommend designation of the property. By way of motion, the Built Heritage Sub-committee recommended to Planning Committee and Council that the property be designated under Part IV of the OHA. This recommendation was carried by Council on July 6, 2022 and the Notice of Intention to Designate (NOID) the property was served on the property owners on July 7, 2022.

A Notice of Objection to the NOID was submitted on behalf of the property owners in August 2022 and a report ([ACS2022-PIE-RHU-0037](#)) detailing the objection was considered by the Built Heritage Sub-committee on October 3, 2022. On October 5,

2022, Council voted to proceed with the designation of the property under Part IV of the OHA and subsequently passed designating by-law 2022-348. The property owner appealed the by-law to the OLT within the statutory appeal period and a hearing was held on June 6 and 7, 2023. On February 20, 2024, the OLT issued decision OLT-22-004554 which upheld the property's designation subject to amendments to by-law 2022-348. On July 10, 2024 City Council passed by-law 2024-334, amending by-law 2022-348 to reflect the OLT decision. The designation by-law (2022-348) is attached as Document 1. The amending by-law (2024-334) is attached as Document 2.

This report has been prepared because repeal of a by-law designating a property under Part IV of the *Ontario Heritage Act* requires Council approval, after consultation with the Municipal Heritage Committee.

DISCUSSION

Repeal of Designation By-law under the Ontario Heritage Act

As applications of this type are rare for the City of Ottawa, the process under the legislation has been outlined briefly below for information.

Section 32 of the *Ontario Heritage Act* outlines the process for repealing a designation by-law on an owner's initiative. The process requires the following steps:

- Submission of an application to repeal the designation by-law by the property owner
- Publication by the City of notice of the application including a description of the property, the statement of cultural heritage value and instructions on how any member of the public may object to the application within 30 days of the notices publication date.
- Consultation with the Municipal Heritage Committee.
- Decision of Council on whether to refuse or consent to the repeal application within 90 days of the end of the objection period.

On May 21, 2024 an application to repeal the designating by-law under OHA Part IV, S.32 was submitted on behalf of the property owner. Staff were unable to process this application as the final by-law was not yet in full force and effect. The by-law designating the property came into effect on July 10, 2024 when Council passed the amending by-law. Following this, staff initiated the processing of the repeal application.

Formal notice of this application was published online on July 24, 2024, the statutory timeline for City Council to make a decision on this application is November 21, 2024.

Should Council refuse this application the owner of the property may appeal Council's decision to the Ontario Land Tribunal. Should Council consent to the application and pass a repealing by-law, any member of the public can appeal Council's decision to the Ontario Land Tribunal.

Heritage staff have reviewed the repeal application dated May 21, 2024, prepared by Gowling WLG, and the Statement prepared by Julie Harris dated May 21, 2024. These documents are attached as Documents 3 and 4 to this report.

Repeal Application

The letter prepared submitted by Gowling WLG outlines three grounds for the repeal of the designating by-law. The following section provides staff's comment on the repeal application.

1. "Designation now requires two criteria rather than one"

Ontario Regulation 9/06 establishes the criteria used to determine if a property has cultural heritage value or interest under the Ontario Heritage Act. When the designating by-law (2022-348) was passed for 501 Cole Avenue, Section 1 of Ontario Regulation 9/06 stated that a property could be designated under OHA Part IV, S. 29 if it met "**one or more**" of the criteria. The OLT's decision found that the subject property meets Criteria 7 of Ontario Regulation 9/06. Therefore, the property meets the minimum number of criteria established by the regulation and can be designated under OHA Part IV, Section 29.

On January 1, 2023, Ontario Regulation 9/06 was subsequently amended to require that a property meet "**two or more**" of the nine criteria to be designated under Part IV of the OHA. However, Section 2(2) of Ontario Regulation 9/06 provides a transition clause, stating that "Section 1, as it read immediately before January 1, 2023, continues to apply in respect of a property for which a notice of intention to designate it was given under subsection 29 (1.1) of the Act after January 24, 2006 and before January 1, 2023". Given that the notice of intention to designate 501 Cole Avenue was issued on July 7, 2022, within the range set out by Section 2(2), the pre-January 1, 2023 requirement to meet one criteria under Regulation 9/06 continues to apply for this property.

2. "A repeal application must be evaluated under the current regulations"

Section 2(2) of the current version of Ontario Regulation 9/06 specifies that the previous minimum criteria threshold for designation under OHA Part IV, s.29 applies to properties where a notice of intention to designate was issued between January 24, 2006 and January 1, 2023, as is the case for the subject property. Transition clauses are often

provided in legislation to provide clarity in instances where amendments could impact active applications or processes. Staff are of the opinion that this instance falls clearly within the parameters of the clause.

Therefore, under the current regulations, 501 Cole Avenue must only meet a minimum of one Ontario Regulation 9/06 criteria to be designated under OHA Part IV, s.29. The OLT decision on the appeal of the designation by-law, for which the related hearing took place after Ontario Regulation 9/06 was amended in January 2023, found that the property met one criteria. As such, the property continues to meet Regulation 9/06, subject to the exception set out in Section 2(2).

3. “Consideration of the repeal application must only consider the criterion listed in the Designation By-law”

Given staff’s position regarding Section 2(2) of Ontario Regulation 9/06, no additional criteria need to be met for the subject property to be designated under Part IV of the OHA. Therefore, heritage planning staff are not presenting additional criteria beyond those listed in the designation by-law for review through this report.

Heritage Statement

A statement (Document 4) prepared by Julie Harris was submitted as part of the repeal application. The statement provides a background of the events leading to the designation of 501 Cole Avenue and finds that the property meets Ontario Regulation 9/06 Criterion 7. The statement does not provide new information related to the property and staff agree with its finding that the property meets one criterion under Ontario Regulation 9/06. The statement also provides suggested revisions to by-law 2022-348 related to the OLT decision. This letter was prepared in advance of the passage of the amendment to designation by-law 2022-348. The content of the amending by-law, including the updated list of attributes and statement of cultural heritage value, was discussed with representatives of the property owner prior to passage of the amending by-law.

Objections

Under OHA S.32, municipalities are required to post notice of the receipt of an application to repeal a designation by-law. Within 30 days after publication of the notice, any person can submit an objection to the repeal application by serving a notice of objection to the Clerk of the municipality that sets out the reasons for their objection and all relevant facts.

In total, 79 objections to the repeal application have been submitted to the City Clerk. These objections are attached as document 5. The majority of objections state their

opposition to the application to repeal the designating by-law and express support for maintaining the designation and the extant house on the property.

Conclusion:

Heritage Planning staff are of the opinion that the arguments presented in the submitted repeal application are not sufficient to find that the designation of 501 Cole Avenue fails to meet the requirements of Ontario Regulation 9/06 or the OHA. Therefore, Heritage Planning staff recommend that the Built Heritage Committee recommend to Council that the repeal application be refused and the designation of 501 Cole Avenue be upheld.

FINANCIAL IMPLICATIONS

There are no direct financial implications.

LEGAL IMPLICATIONS

An application to repeal the designating by-law must be considered by Council, in consultation with its municipal heritage committee. Should Council refuse this application the owner of the property may appeal Council's decision to the Ontario Land Tribunal. Should Council consent to the application and pass a repealing by-law, any member of the public can appeal Council's decision to the Ontario Land Tribunal. With respect to the amendment to O.Reg 9/06, the transition clause provides clarity as to how this application should be viewed. There is no legislative direction at this time requiring that this by-law be repealed as a result of the amendment.

COMMENTS BY THE WARD COUNCILLOR(S)

The Ward Councillor is aware of the repeal application and this report.

CONSULTATION

Notice of the application to repeal the designating by-law for 501 Cole Avenue was posted online at Ottawa.ca/heritagenotices on July 24, 2024, in accordance with by-law 2002-522, as amended.

ACCESSIBILITY IMPACTS

There are no accessibility impacts.

RISK MANAGEMENT IMPLICATIONS

There are no risk implications.

RURAL IMPLICATIONS

There are no rural implications.

APPLICATION PROCESS TIMELINE STATUS

The statutory 90-day timeline for consideration of this repeal application under the *Ontario Heritage Act* will expire on November 21, 2024

SUPPORTING DOCUMENTATION

Document 1: By-law 2022-348

Document 2: By-law 2024-334

Document 3: Repeal Letter

Document 4: Statement from Julie Harris

Document 5: Submitted Objections to Repeal Application

DISPOSITION

If, after considering the application to repeal the designation by law for 501 Cole Avenue under S.32 of the *Ontario Heritage Act*, Council refuses the repeal application, the Office of the City Clerk, Council, and Committee Services shall serve the following to the property owner and any person who objected to the repeal application:

- 1) Notice of Council's decision.
- 2) Notice that if the property owner objects to Council's decision, the owner may appeal the decision to the Ontario Land Tribunal within 30 days of receiving the notice by serving the Tribunal and Office of the City Clerk a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged by the Tribunal.

If, after considering the application to repeal the designation by law for 501 Cole Avenue under S.32 of the *Ontario Heritage Act*, Council consents to the application, several actions must be taken:

- 1) Heritage Planning Branch, Planning, Development and Building Services Department, is to finalize a repealing by-law, under the authority of the approval of this report, and Legal Services to submit to City Council for enactment within 90 days after the 30-day repeal application objection period under S.32 (4) of the Ontario Heritage Act.

- 2) Heritage Planning Branch, Planning, Development and Building Services Department is to prepare notices of Council's decision. Office of the City Clerk, Council, and Committee Services to serve the following on the property owner, any person who objected to the repeal application, and the Ontario Heritage Trust:
- a. Notice of Council's decision.
 - b. A copy of the repealing by-law.
 - c. Notice that any person who objects to Council's decision may appeal the decision to the Ontario Land Tribunal within 30 days after publication of the advertisement by serving the Tribunal and Office of the City Clerk a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged by the Tribunal.
- 3) Heritage Planning Branch, Planning, Development and Building Services Department to ensure publication of a notice of Council's decision according to the requirements of Section 32 the *Ontario Heritage Act*. This advertisement must note that any person who objects to Council's decision may appeal the decision to the Ontario Land Tribunal within 30 days after publication of the advertisement by serving the Tribunal and Office of the City Clerk a notice of appeal setting out the objection to the decision and the reasons in support of the objection, accompanied by the fee charged by the Tribunal.