

Conservation Review Board
Commission des biens culturels



ISSUE DATE: July 31, 2020

CASE NO.: CRB1914

PROCEEDING COMMENCED UNDER subsection 31(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Objectors: Rick Ferron, David Vida
Owner: The Corporation of the City of Niagara Falls
Subject: Proposed Repeal of Designation By-law No. 2010-90
Property Address: 7565 Lundy's Lane (Former Parks, Recreation & Culture Building)
Legal Description: PT TWP LT 132 Stamford as in ST51544, ST23564, ST22849 & ST21927 Except RO180983 & PT 1, 59R594
Municipality: City of Niagara Falls
CRB Case No.: CRB1914
CRB Case Name: Ferron v. Niagara Falls (City)

APPEARANCES:

Parties

Rick Ferron, David Vida

City of Niagara Falls

Counsel

Self-represented

Tom Halinski

HEARD:

ADJUDICATOR(S):

In writing

Daniel Nelson, Member

PROCEDURAL ORDER

Background

[1] This is a second procedural order of the Conservation Review Board (“Review Board”) arising from a pre-hearing conference (“PHC”) held on December 4, 2019 in respect of objections by Rick Ferron and David Vida to a Notice of Intention to Repeal Designating By-law No. 2010-90 for the property at 7565 Lundy’s Lane in Niagara Falls, Ontario (the “property”). The property is owned by the City of Niagara Falls (“City”).

Organization/Conduct of the Hearing

[2] Owing to the current provincial emergency, the hearing which was scheduled for May 21 and 22, 2020 at 10 a.m. in the Council Chambers, Niagara Falls City Hall, 4310 Queen Street, Niagara Falls, Ontario has been rescheduled to August 31 and September 1, 2020. The Review Board, on its own motion, has decided to hold the hearing by video conference call.

[3] The Review Board will hold the hearing by Microsoft Teams video conference call on August 31, 2020 and September 1, 2020 commencing at 9:30 am. The hearing will be open to the public and public notice will be published. No adjournments will be granted before or during the hearing except in accordance with the Review Board’s *Rules of Practice and Procedure* (“Rules”).

[4] The parties and the witnesses they intend to call to provide evidence at the hearing are directed to dial into the call prior to the start time of the hearing each day in accordance with instructions that will be issued by the Review Board.

[5] A party may attend or participate in a proceeding in person by video conference call, with a representative, or may send a representative to attend in place of the party. A representative or party shall file, upon request of the Review Board, a Form 1, Representative of a Party – Commencement of Authorization, which can be found in Appendix A to the Rules.

[6] As a consequence of the rescheduling of the hearing dates, the deadline for the exchange of documents is changed from May 7, 2020 to August 17, 2020.

Photos in Lieu of Site Visit

[7] The site visit scheduled to take place at 9:30 a.m. on May 21, 2020 with the parties in attendance has been cancelled as it is not practical to have a site visit in this matter. In lieu of this, the parties are directed to jointly provide photographs of the property in accordance with the Review Board's *Photos In Lieu of Site Visit Guidance to Parties* as set out in Appendix 1 hereto.

[8] Such photographs are not evidence but a joint submission of the parties to assist the Review Board in understanding the context of the site.

Expert Witnesses and Evidence

[9] All expert reports are expected to conform to the Review Board's *Guidance to Parties on Expert Reports & Other Disclosure Matters* as set out in Appendix 2 hereto.

Agreed Statement of Facts

[10] The parties, on or before the date of the hearing, will provide to the Review Board an Agreed Statement of Facts.

[11] The Review Board may vary or add to this Order at any time, either on request or as it sees fit, and may do so by an oral ruling or in writing.

“Daniel Nelson”

DANIEL NELSON
MEMBER

Appendix 1 – Photos In Lieu of Site Visit Guidance to Parties

Appendix 2 – Schedule 2: Guidance to parties on Expert Reports &
Other Disclosure Materials

If there is an attachment referred to in this document,
please visit www.olt.gov.on.ca to view the attachment in PDF format.

Conservation Review Board

A constituent tribunal of Ontario Land Tribunals

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Photos in Lieu of Site Visit Guidance to Parties

It is the practice of the Review Board, on the morning of the first day of a hearing, to visit the property that is the subject of the hearing. Site visits allow the members of the Review Board to understand the property in its context while illuminating the testimony of any witness discussing the property. While no evidence may be presented at a site visit, the parties are invited to draw the Review Board's attention to particular features of a property, if applicable.

Given the current emergency declared by the Government of Ontario pursuant to *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9, site visits, at this time, may not be practical or desirable despite their importance.

In the alternative, the Review Board, during the currency of this emergency, may request that the parties submit photos of a property in lieu of a site visit.

If such a request is issued, the site photos will be submitted to the Review Board in accordance with the following requirements:

1. The parties will jointly submit these materials not less than 5 days before the hearing date or at such other time as the Review Board may order.
2. Photos must be in colour.
3. Photos should be of sufficient resolution to allow the Review Board to see the property and zoom in on relevant features without a loss of picture quality.
4. There must be:
 - a. Wide-angle shots of the property from each side of the property, capturing all buildings on the property, if applicable, to allow for a contextual understanding of the how the buildings relate to each other;
 - b. Wide-angle shots of the property from each side of the property, sufficiently wide to capture some of the adjoining properties to allow for a contextual understanding of the property as it relates to its community;
 - c. Wide angle shots of each side of each building on the property;
 - d. Close-up shots of each side of a building;
 - e. Close-up shots of any applicable architectural features or heritage attributes, from multiple angles and directions, if applicable, with text and arrows identifying such attributes;
 - f. If available, aerial photos of the property with text and arrows identifying all buildings or applicable heritage attributes on the property;
 - g. Equivalent wide-angle and close-up photos for any identified heritage attributes found inside a building, if applicable;
5. A failure to provide required photos of an identified heritage attribute may result in the Review Board's refusal to hear any evidence on such an attribute.

6. The parties may add text, arrows, or other identifying marks to a digital photo to highlight applicable features or heritage attributes of a property/building. No evidence regarding such features or attributes, nor any comments regarding same may be added to the photo.
7. Each photo must be sequentially numbered in accordance with the index required below.
8. The photos must be accompanied by an index identifying each photo by number and notes indicating what is being shown in the photo, any relevant features found in the photo, and the direction of shot. Such index should be typed and submitted in MS Word or PDF format in accordance with the template below.
9. The name of each photo will be the CRB case number and its index number (e.g. CRB0000photo1).
10. Each digital photo and the photo index may be sent to the Case Coordinator by email (Conservation.Review.Board@ontario.ca). The maximum size of any one email sent to this email address is 35 mb. Depending on the size of the files, it may be necessary to send multiple emails. **In this case, please ensure the subject line of each email states the CRB file number and that the body of the email states that it is photo submission in lieu of a site visit and the number of emails constituting the submission (e.g. "email 1 of 4").**

CONSERVATION REVIEW BOARD

PHOTO INDEX

CRB File No.	Hearing Date:
Property Address:	Municipality:

Photo Number	What is being Shown?	Applicable Heritage Attributes (if none write "N/A")	Direction of Shot (in what direction was photographer facing)
1	<i>(e.g. front of house)</i>	<i>(e.g. "cornice")</i>	<i>(e.g. "West")</i>
2			
3			

GUIDANCE TO PARTIES ON EXPERT REPORTS & OTHER DISCLOSURE MATERIALS

1. The Review Board expects that any expert report would consist of the following elements, in the following sequence:
 - a. An analysis of the property as it exists, describing its features in architectural terms, and placing such features and overall design in the context of architectural history by citing academically credible secondary sources on such history. Images appropriate for highlighting features described should be included. Accurate reference to the architectural lexicon is expected when describing architectural features.
 - b. Where applicable, an analysis of the property as it relates to the available corpus of work of the architect or craftsperson in question with reference to primary/archival sources, including contemporaneous issues of relevant architectural journals. Reference should also be made to academically credible secondary sources including, if applicable, the Biographical Dictionary of Architects in Canada.
 - c. Where applicable, a review of the history of the property and the historically relevant themes, events, beliefs, persons, activities, organizations or institutions connected with the property (whichever is applicable), placing the property or such relevant factors in its historical context by citing primary/archival sources, including (but not limited to) archival photographs, historical atlases, archival newspapers, fire insurance plans, original business directories, and archival diaries and correspondence, together with academically credible secondary sources.

- d. A detailed and criterion-by-criterion evaluation of the property, in light of the analysis conducted, as it applies to the criteria set out in O. Reg. 9/06. If a criterion does not apply, the expert should explain why.
 - e. A conclusion, drawing together these various analytical elements.
 - f. A bibliography, as per the citation guidelines below.
 - g. Appendices consisting of:
 - fully and clearly replicated historic and archival materials relied upon in the expert report.
 - relevant extracts from secondary sources relied upon in the expert report.
2. The report should be cited in accordance with a consistent academic citation method appropriate for historical research. Generally, as this is historical research, the Review Board would expect the report to comply with the Chicago (Notes-Bibliography) citation method. An expert report using, for example, the APA or MLA citation method, while not standard for historic research, is also acceptable. Both primary and secondary material should be appropriately cited.
 3. Expert reports, in the context of heritage preservation, are not acceptable where the expert simply rephrases a criterion set out in O. Reg. 9/06 in either the negative or the positive. It is never enough to make such an assertion without a detailed evaluation of the criterion, as it relates to a property, and linking such evaluation to the historical record and secondary sources.
 4. The Review Board recognizes that there may be good reason to vary from these expert report guidelines and the author of an expert report may do so, provided that an explanation for such variation is provided; otherwise, an unfair adverse inference could be drawn as to the credibility of the expert.

5. It is not necessary for any party to replicate in disclosure materials the following standard sources:
- The *Ontario Heritage Act* or any other Ontario legislation freely available from www.ontario.ca/laws
 - O. Reg. 9/06
 - Parks Canada's Standards and Guidelines for the Conservation of Historic Places in Canada
 - Ontario's Provincial Policy Statement
 - The Ontario Heritage Toolkit
 - Any caselaw, including the Review Board decisions, freely available on www.canlii.org.
6. The Review Board also recognizes that producing expert reports and disclosure materials with elaborate tabs and binding can be costly for some parties. Neither is required, provided that the materials are securely bound together in some fashion, and comprehensively and sequentially paginated.