

Conservation Review Board
Commission des biens culturels



ISSUE DATE: June 15, 2020

CASE NO.: CRB1906

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owner/Objector:	WAM Montez C & W Inc.
Subject:	Notice of Intention to Designate (Wellesley Apartments)
Property Address:	64 Wellesley Street East
Legal Description:	Park Lot 7, Block 2 (part)
Municipality:	City of Toronto
CRB Case No.:	CRB1906
CRB Case Name:	WAM Montez C & W Inc. v. Toronto (City)

APPEARANCES:

Parties

WAM Montez C & W Inc.

City of Toronto

Counsel

David Bronskill

Mark Piel and Daniel Elmadany

HEARD:

December 19, 2019 by telephone conference call

ADJUDICATOR(S):

Daniel Nelson, Member

PROCEDURAL ORDER

BACKGROUND

[1] This is a procedural order of the Conservation Review Board ("Review Board") arising from three pre-hearing conferences on August 22, 2019, October 8, 2019, and December 19, 2019 in respect of an objection to Notices of Intention to Designate the lands municipally known as 64 Wellesley Street East, City of Toronto.

Conduct of Hearing

[2] The Review Board will hold a hearing by Microsoft Teams video conference call on July 8 and 9, 2020 commencing at 10 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").

[3] 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.

[4] 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, Form 1, Representative of a Party – Commencement of Authorization, which can be found in Appendix A to the Rules.

[5] If a party fails to appear at the hearing without giving notice to the Review Board and all parties in advance and/or does so without reasonable cause, the Review Board has the discretion under the *Statutory Powers Procedure Act* to proceed with the hearing in their absence.

[6] The issues list for the hearing is attached hereto as Attachment 1. Except for scoping or removing issues, there will be no changes to this list unless on consent of the parties or the Review Board permits it. A party who asks for changes which are not in the nature of scoping or removing issues from the issues list may have costs awarded against it.

Document Exchange

[7] In preparation for the hearing:

On or before June 10, 2020 the parties shall file with the Review Board and serve upon each other:

1. Notice of the name of witness they intend to call at the hearing, their area of expertise if they are intended to provide expert opinion evidence, and the order they will be called;
2. A brief summary of evidence to be provided by each witness at the hearing; and
3. an Agreed Statement of Facts.

On or before June 26, 2020 the parties shall file with the Review Board and serve upon each other:

1. A copy of a Witness Statement for each witness intended to be called and, where the witness to be called will provide expert opinion evidence, a copy of that expert witness' curriculum vitae; and

2. Copies of each document and all other evidence, including all documentary and visual evidence, that the party will refer to, tender as evidence at the hearing, or rely upon at the hearing.

[8] On consent, the parties may write to the Case Coordinator and request an amendment to the deadlines set out in paragraph 7, above.

[9] The materials are to be exchanged between all parties and two paper copies are to be provided to the Review Board, as well as an electronic copy.

[10] Any intended evidence, including documents, not disclosed within the timeframe set out above, may not be used as evidence at the hearing unless the Review Board directs otherwise. Where a witness statement or expert report has not been provided by the required date, the witness may not give evidence at the hearing unless the Review Board directs otherwise.

Photos in Lieu of Site Visit

[11] Owing to the current provincial emergency, 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 Schedule 1 hereto.

[12] 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

[13] An expert witness who is providing opinion evidence must execute the Acknowledgement of Expert's Duty form prior to or at the hearing.

[14] An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Review Board may refuse to hear the expert's testimony.

[15] 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 Schedule 2 hereto.

[16] The Review Board may vary or add to this Order at any time, either on request or as it sees fit.

"Daniel Nelson"

DANIEL NELSON

MEMBER

Appendix 1 – Attachment 1: Issues List

Appendix 2 – Schedule 1: Photos In Lieu of Site Visit Guidance to Parties

Appendix 3 – Schedule 2: Guidance to parties on Expert Reports &
Other Disclosure Matters

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

Conservation Review Board

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Attachment 1

**ISSUES LIST OF WAM MONTEZ C & W INC.
64 WELLESLEY STREET EAST (the “Property”)**

1. Should the Property be recommended for designation pursuant to Section 29(1) of the *Ontario Heritage Act*?
2. Does the Property meet the criteria for determining cultural heritage value or interest pursuant to Ontario Regulation 9/06?
3. What is the cultural heritage value of the Property’s location within the Church-Wellesley neighbourhood and how is any such cultural heritage value manifested in the heritage attributes associated with the existing building on the Property, if at all?
4. Are the following proposed heritage attributes vague and overly broad:
 - a. the setback, placement and orientation of the building on the north side of the street between Yonge Street (west) and Church Street (east) and beside (east of) the Paul Kane House;
 - b. the scale, form and massing of the five-storey I-shaped plan, which is organized with the main body (south) and the wing (north);
 - c. the materials, with the brick cladding and the brick, stone, wood and metal detailing;
 - d. the east and west elevations of the main body of the building, which continue the pattern and detailing of the flat-headed openings from the south elevation; and,
 - e. the north wing of the building, which is set back from the main body on the east and west sides and extended at the north end to complete the “I” shape.
5. If the Property does not meet some of the criteria for determining cultural heritage value or interest pursuant to Ontario Regulation 9/06, should those heritage attributes associated with such criteria described in the Statement of Significant (Reasons for Designation) be revised and/or deleted?

The identification of an issue on this Issues List does not constitute an acknowledgement by the Review Board or any party that the issue is either relevant or appropriate. The identification of an issue on this list by a party indicates that party's intent to lead evidence or argue that the issue is relevant to the proceeding, for the purpose of fairly identifying to the other parties the case they need to meet. Accordingly, no party shall advance an issue not identified on the Issues List without leave of the Review Board.

Schedule 1
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			

Schedule 2

**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.