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REPORT OF THE HEARING OF THE CONSERVATION REVIEW BOARD IN RESPECT OF THE REAPPLICATION TO REVOKE THE DESIGNATION OF 264 WOOLWICH STREET, GUELPH

Introduction

A hearing was held pursuant to Section 32(6) of the Ontario Heritage Act, R.S.O.1990, Chapter 0.18 in the Council Chambers of the City of Guelph on July 8, 1993. Mr. Robert Bowes, Chair, and Ms. Karen Wishart, Member, of the Conservation Review Board, presided. Prior to the hearing, the Board visited the property to view its exterior elements.

Ms. Tricia Sinclair, Assistant City Solicitor, presented the case for the City of Guelph and called one witness, Ms. Karen Frosch, City Planner and LACAC Coordinator. Mr. David Johnson, President of De-Jai Holdings Inc., owner of the property and resident in the property, presented the case on behalf of the applicant.

At the outset of the hearing, the Board noted that this was the second Conservation Review Board hearing resulting from a request by this applicant for the repeal of the designation of the property in question. The Board stated its concern at having to deal with a second repeal hearing and therefore its interest in finding what had transpired since the previous hearing held on June 25, 1991, particularly with regard to the recommendations made by the Board in its hearing report.

At the June 1991 hearing, the Board had learned of the owner's desire to have a medical clinic in the building. The City considered this to be a very intensive type of commercial use and the Zoning By-law in effect at that time required 23 parking spaces for it, which could have meant the demolition of the building. Mr. Johnson did not dispute the heritage value of the property but felt that the designation encumbered his plans for the property and that the city, through its parking requirements, was not addressing the zoning consequences of trying to preserve the building.

The Recommendations of the Conservation Review Board Report of the June '91 hearing were as follows:

"The designation and continued designation of properties under the Ontario Heritage Act should not be considered in isolation from the real world and from real and practical impacts and consequences, even though those impacts and consequences may be of a planning and zoning nature rather than of a strict heritage nature. It is important to develop and implement a practical plan whereby heritage buildings can be preserved in fact when designating those buildings. This is particularly important when an owner applies to repeal the

designation by-law. Without a practical plan in place, all that designation can possibly do under the Act as it is presently constituted, is delay demolition. It is actions of a practical planning nature and the implementation of a heritage preservation program, that can implement the intent of the Act which is to preserve heritage structures.

We therefore recommend:

- (1) that the By-law designating the property not be repealed.
- (2) that the City planning staff meet with Mr. Johnson and, in consultation with him and others if necessary, develop a practical program whereby an economically viable use can be made of the building with appropriate relief from the generally applicable municipal parking requirements.
- (3) that consideration be given to including the historical aspects of the building in the Reasons for Designation.
- (4) that a study be undertaken as to whether and to what extent exemption from municipal parking and loading requirements should be provided for heritage buildings."

(Exhibit #4)

The City's Case

The City's position was that there had been no change to the heritage significance of the property, which had been clearly established and accepted by the Board at the last hearing. Further, the City had tried to fulfill the recommendations of the Conservation Review Board Report as best as it could. The By-law designating the property had not been repealed. The City had been interested in adding historical aspects to the Reasons for Designation but did not do so because it felt this would have involved repealing the existing by-law and putting a new one in place, which they did not want to do. The City had many staff consultations with Mr. Johnson, including a site visit last January, and a chart of possible uses for the property (Exhibit #8) had been introduced at an OMB hearing (Exhibit #5) held to consider Mr. Johnson's appeal of a City rejection of his application for a variance from the parking provisions of the zoning. The chart listed various residential and office uses that could be accommodated under the new C.6 zoning for the area, with only minor variances from the parking requirements.

Since the last Conservation Review Board hearing, a new C.6 zone had replaced the old C.2 zone for the area. The new C.6 zone was put in place to maintain better the heritage character of the area which has many older residential buildings which are under development pressure. The C.6 zone removed parking lots and certain intensive commercial uses that generated high traffic volumes (such as a medical clinic)

from the list of permitted uses. It also added a variety of residential uses such as a lodging house, rest home and a commercial establishment with a residential unit and other uses such as a day care centre, and a medical office (2 practitioners - 13 parking spaces required). Questions of exemptions from parking and loading requirements for heritage buildings were considered during the preparation of the new C.6 zoning. Further, the City was now in the process of studying a new zoning by-law for the entire City. This study had input from the Local Architectural Conservation Advisory Committee (LACAC) and heritage considerations were a big part of it.

The City noted that the OMB had rejected both Mr. Johnson's request for a variance and his appeal against the new C.6 zone and had felt that the new zone offered Mr. Johnson sufficient alternatives to a Clinic for use of the house.

The City pointed out that Mr. Johnson had considerable experience in property development and could have come forward with alternative uses for the property, but did not do so.

The City concluded that it has tried to solve its dispute with Mr. Johnson in a practical manner and there were no reasons to revoke the designation of the property.

The Owner's Case

Mr. Johnson stated that the hearing was taking place because the recommendations of the previous Conservation Review Board hearing had not been implemented and he was not satisfied. He felt that there had been insufficient goodwill and effort on the part of the City and its advisors to develop with him a practical programme for the building's future. He cited as evidence of this: that the staff report (Exhibit 10) to Council on the first CRB hearing of June 1991 and LACAC's position on it had omitted the recommendation concerning the need to negotiate with the owner; that a formal meeting had never been held; that the City had not used the chart (Exhibit #8) tabled at the OMB hearing as a basis for discussion; and the LACAC recommendation that the City attempt to recover costs for the hearing necessitated by the reapplication for repeal.

By putting forth the proposal of demolishing the modern addition to the back of the building in order to provide additional parking spaces, the City was, in Mr. Johnson's opinion, ignoring the spirit of the Ontario Heritage Act. He preferred to keep the entire building so that the way its character had evolved over time would be evident. Demolition was not his first choice, but if he couldn't get the variances required from the zoning provisions for his preferred use, he would be prepared to tear the building down. Under questioning from the Board, he stated that if the designation were revoked he would demolish one side of the original building to create more parking.

Mr. Johnson concluded by saying that the City has adopted a planning process rather than a heritage process and consequently he wished to be relieved of the extra burden of the heritage designation. He had expected that the recommendations of the first CRB hearing would have led the City to approve the major variances from the zoning provisions required by his preferred use (i.e., a medical clinic).

Findings

During the hearing, there was some discussion of separating heritage considerations from planning considerations or the predominance of one over the other. In fact, if we are to maintain the distinctive

character of our communities and thus contribute to their livability, the two (heritage and planning) must be considered together. Heritage buildings often require special protection and consideration. But they will not survive without a viable use and their health is inextricably linked to that of the neighbourhood of which they are a part.

In this regard, the Board was encouraged by aspects of the C.6 zone which limit intensive uses but provide flexibility through a broader range of uses and was interested to hear of the work on a new zoning by-law for the entire City which would incorporate heritage considerations.

The Board feels that neither party has worked hard enough to reach an agreement on the future use of the property. Mr. Johnson seems disinclined to seriously consider any option other than his preferred use, and the City, for its part, could have been more proactive in approaching the owner.

Finally, the Board offers a comment on the matter of additions and the heritage core of a building. It is true that the character of a building evolves over time as changes are made to it. This concept of cumulative character should not be forgotten in deliberations on the future of a building. However, the key elements for protection remain those listed in the Reasons for Designation.

Recommendations

Accordingly, the Board recommends:

- 1) that the By-law designating the property not be repealed.
- 2) that the City planning staff and Mr. Johnson schedule a series of meetings in a concerted attempt to reach agreement on a use for the building consistent with the intent of the provisions of the C.6 zone.

(Signed)

Robert Bowes, Chair

Karen Wishart, Member

List of Exhibits

Exhibit

- 1 - Affidavit of Nancy Smith re: publication of notice of hearing
- 2 - c.v. of Karen Frosch, City Planner and LACAC Coordinator
- 3 - By-law (1979) - 10058, designating 264 Woolwich
- 4 - Report of Conservation Review Board hearing of June 21/91
- 5 - OMB Report rejecting appeal for a variance from the provisions of By-law (1991) - 7666
- 6 - By-law (1991) - 13748 - a by-law to amend by-law (1971) - 7666
- 7 - OMB Report rejecting an appeal against zoning by-law (1991) - 13748
- 8 - Chart of parking requirements for various uses of 264 Woolwich under C.6 zone
- 9 - Information Bulletin from Ontario Government re: amending a designation by-law
- 10 - Staff report to Council on CRB recommendations from June 1991 hearing and LACAC's position on them
- 11 - Staff report of March 1993 to Council providing LACAC recommendation on David Johnson's request to revoke designation
- 12 - Supreme Court decision re: trustees of St. Peter's Evangelical Lutheran Church vs. Corporation of the City of Ottawa