



April 20, 2021

ATTENTION:

Planning & Economic Development Department (Heritage) Jason Thorne, Steve Robichaud, Anita Fabac
Heritage Planner - Alissa Golden
Councilor Ward 2 - Jason Farr,
Chair of Planning Committee- Councilor John Paul Danko
Chair of Hamilton Municipal Heritage Committee - Alissa Denham Robinson

RE:

**The absence of Heritage Permit for The Manse - 51 Herkimer
1977 Designation Part 1V Section 29/06**

The Durand Neighbourhood Association (DNA) and its Heritage Subcommittee are very concerned about the situation where a heritage staff planner advised the new owner of 51 Herkimer that in spite of there being a Part 1V Heritage Designation issued in 1977, the owner was not required to apply for a Heritage Permit for the alterations proposed. The alterations so far that are visible to the DNA include **replacement of all windows, exterior painting and a new commercial sign.**

The Hamilton City website discusses in detail how important **windows** are to the heritage properties and heritage districts and advises how to proceed. The Hamilton website is also clear that “once a property is designated under the Ontario Heritage Act, the City of Hamilton is enabled to manage physical changes to these heritage resources through the heritage permit process,...and as a general rule, changes to heritage properties should repair rather than replace original features and should not permanently damage heritage materials or construction measures.” Based on this public information, it is very difficult to understand the planner’s decision to inform the owner that a heritage permit was not required for this designated building.

<https://www.hamilton.ca/city-planning/heritage-properties/heritage-windows>

The DNA reasoning of why a Heritage Permit should have been required:

1. The designated home was built in 1858 and has an early heritage designation from 1977 based on its being an outstanding and impressive heritage resource.

2. Section 33 of the Ontario Heritage Act helps to ensure that the heritage attributes of a designated property, and therefore its heritage value, are conserved. If the owner of a designated property wishes to make alterations to the property, the owner must obtain written consent from council. Council makes the final decision on heritage permit applications unless power has been delegated to municipal staff.
3. The work proposed here was extensive involving major alterations to the exterior of the property, including the windows which are very important as identified by the City's website.
4. The designation bylaw for 51 Herkimer states "that the interior and exterior are recommended for conservation as a property having historical and architectural value."
5. The designation bylaw describes the property as having "architectural merit, and details of both Georgian and Neo Gothic design periods."
6. The designation bylaw describes the property as "having historical significance, including the same builder who built Sandyford Place; built for the minister of the former St Andrews, now St Paul's Presbyterian Church designed by the architect William Thomas."
7. Finally, the designation bylaw describes 51 Herkimer as it "stands as one of a mere handful of buildings of its era and character in the City of Hamilton".

We were informed that a heritage planner advised the owner that no Heritage Permit was required because this bylaw was written in 1977, and as one of the very first designations, it did not list attributes of what should be conserved. As windows were not listed, the heritage planner surmised that a permit was not required. The DNA disagrees with this staff assessment. We would argue that due to the inexplicit nature of these early designation bylaws, and their lack of listed attributes, further scrutiny by the heritage department should have been required to ensure that the property's historic features were protected. These bylaws will need to be amended to include historic attributes. This should be done to ensure misinterpretation of these bylaws does not affect the integrity of the designations. The lack of specificity that was in this designation bylaw, should not have allowed for the unscrutinized interpretation of the bylaw. The heritage department was required to ensure that the properties historic features were protected. The DNA would suggest that windows are inherently important to all heritage buildings, even in heritage district, and that heritage permits should always be required for window replacement on heritage buildings, irrespective of if they are listed as an important attribute.

Currently there are 30 designations that were issued from 1977 to 1980. The DNA has reviewed several of these early designations. Some have more detail than others, but what is important is that they are 'designations'. Designated properties always require Heritage Permits. The bolded notes below are from the City's Website.

"When is a heritage permit needed?"

If a property is "designated" under the Ontario Heritage Act

If a property is located within one of the seven Heritage Conservation Districts”

This needs to be resolved as this decision is precedent setting.

Issues to Resolve:

1. We need to resolve what action is going to be taken to remedy the poor replacement windows now installed at 51 Herkimer and the destruction of the fine original old growth double hung windows from 1851. There has been a significant heritage loss to this building and to our neighbourhood as a result.
2. We need it resolved that there should be no Delegated Authority by City heritage planners negating heritage permits on designated buildings; all designated properties should be required to apply to HMHC Permit Review for a Heritage Permit for change in material and alterations.
3. We need to resolve if updates are required of all early designations, if the absence of listed attributes is what contributed to the demise of the heritage windows on this outstanding building. Alternatively, the City could formally acknowledge that all early designations entail that the entire building is important to the designation and alterations are at the discretion of the heritage permit review board based on the heritage permit application process.
4. We need to resolve with certainty in what instances a heritage permit is required for designated buildings, and in what instances for buildings that are located in a heritage conservation district.
5. We need the current property owners of 51 Herkimer to be informed of the misinterpretation of this bylaw. It should be communicated to the owners that any future modifications or alterations to the property would require a heritage permit that would be reviewed by HMHC. The owners of designated properties and residents of the Durand should receive clear and concise information from the City with respect to heritage protection and their responsibilities therein. The inconsistencies demonstrated here are not in line with what we need and would expect from the City of Hamilton.

The City of Hamilton has an obligation to protect heritage under the Ontario Heritage Act. The City must uphold the heritage designations and enforce the regulations under the Act. In the DNA's opinion there has been a grave error in judgement with 51 Herkimer with devastating consequences. The heritage process within the City of Hamilton is now in question based on this decision. We need acknowledgement that what happened here is wrong and that it will not happen again. We need the process corrected as soon as possible so that it does not become precedent setting.

Respectfully yours,

Chris Redmond, President, Durand Neighbourhood Association
Janice Brown, Chair DNA Heritage Subcommittee