



DEMOLITION CONTROL AS A POSITIVE FORCE—A DELEGATION TO HAMILTON CITY COUNCIL

Protecting our Heritage.....Welcoming Positive
Development

Abstract

Demolition in Hamilton has created many negative outcomes for the community. The Ancaster Village Heritage Community believes it is past time to move decisions on demolition of important buildings from the shadows and restore accountability to the public

EXECUTIVE SUMMARY

Leadership in Development:

A Call to Hamilton City Council

1. **Ancaster Village Heritage Community**, an incorporated association of Ancaster residents based mainly in the Heritage District, is concerned about issues that affect our lives and those living in Hamilton. Ancaster's heritage dates from the 1700s. Heritage, people, and quality of life are the foundation of our efforts to improve the well-being of our community. **Our goal is to end the devastation caused by City demolition policies. We offer six possible solutions. (Page 5)**

2. **Stealth Demolition:** The loss of one of the most prominent buildings in the Ancaster streetscape, Brandon House, was the catalyst for AVHC to research the City process for demolition decisions. The result is a strong view that **demolition decisions have largely become an unaccountable, private transaction between City staff and demolition applicants.** (Photos Page 8)

3. **This is Public:** Demolition is NOT a private matter. Demolition may spark development or may result in a vacant lot. In either case the public has an interest as the streetscape defines a community, and significant changes to it are a public matter. **It is time for change.**

4. **Not Just One:** Besides Brandon House, demolition decisions taken by staff have resulted in the loss of important buildings and created empty lots. **Neighbours** live with weeds, dirt, unsightly views, likely loss in value. **Who spoke for them as these decisions were made behind closed doors?**

5. **Vacant lots** destroy streetscapes, have a significant negative financial effect on the city, and pressure Council to permit inappropriate development as developers attempt to build higher and lessen setbacks. This creates traffic issues, challenges infrastructure, alters the character of the community and creates stress. **AVHC cannot think of any city decisions less appropriate for closed door discussion.** The remarkable negative public reaction to losing Brandon House underlines this. (Photos Page 9)

6. **Encouraging Bad Outcomes:** It appears the City encourages vacant lots, a prime example of inappropriate Council delegation of authority to staff. Staff has significant latitude in determining if they can approve a demolition. **The current bylaw was created in 2009 through what appears to be a closed process with no public input. We hope the 2020 Council can do better.** There are many examples where it is clear from public reaction that the staff decision was not in accordance with community views. **Demolition management clearly needs a reset.**

7. **Often Ward Councilors are the Only Ones Who Know:** While Heritage properties designated under the Ontario Heritage Act cannot be summarily demolished, demolitions of other important structures, historical or otherwise, should be reviewed by City Council. These decisions are left to a ward councilor to try to influence a staff decision or decide to allow staff to proceed.

8. **Relieve Community Stress:** Issuance of Demolition permits for any building over 90 years, and for any building or series of buildings that will significantly alter a community streetscape must be made by Council to prevent "surprise" demolitions of important buildings. (Page 6)

9. **AVHC is mindful that Council time is valuable.** Important buildings need Council involvement. The decision process must preserve efficiency for routine demolitions.

CALL TO ACTION

AVHC is asking Council to immediately create a process to draft a replacement Demolition Control Bylaw that will cover ALL demolitions and ensure demolition is the basis of positive community development, not a strategy employed by developers to attain zoning changes and variances to improve their bottom line. AVHC offers positive suggestions in this presentation on how a 2020 Demolition Control Bylaw could be a win for Council, the community, and developers.

We ask that the process be considered urgent, include meaningful public consultation, and in recognition of the incredible negative effects of Demolition on our community that Council direct staff to immediately place all applications for a Demolition Permit for a building more than 90 years old on the Council agenda for public consideration.

BACKGROUND

Our appearance today reflects our belief that, other than the provision of basic services, there is nothing more important for a City Council than providing leadership in development.

Streetscapes define a community. They are community assets. Ancaster's buildings tell the tale of who we are and how we got here. A visit to Hamilton's communities will show each is unique—it only takes a quick glance to know you are in Dundas, not Stoney Creek, for example. New buildings are needed but they dramatically affect density, traffic and alter the character of a community.

AVHC believes strongly development done well renews and improves a community. Ancaster has many successful developments that preserved the buildings but brought a new life to them. The Carriageworks, Panabaker House, Rousseau House, the 1812 Barracks, the Union Hotel and more are on that list. There are many newer buildings that try to fit in and are an important part of the streetscape. **In short, we need to keep the best of what we have and welcome positive new development.** This requires Council leadership and community input.

Demolition is the start of most development, and **AVHC believes a demolition should lead to development in a timely manner**, NOT leave vacant lots for years while developers seek zoning variances to improve their bottom line.

Here is the issue and the ask: We ask Hamilton City Council to put an end to the developer strategy of creating vacant lots to pressure Council for zoning changes. **The streetscape is community property, not an asset to be manipulated for profit. Neighbours who have no voice in the decision to create a vacant lot need to be protected.**

Demolition of buildings in semi-residential zones seem to escape the process of Bylaw 09-298. That is wrong. **All demolition must be covered.**

AVHC only sees one solution, and that is to start over on how Hamilton manages demolitions.

CURRENT BYLAW: A copy of Hamilton ByLaw 09-208 is attached for reference.

THE ISSUES

- Stealth demolition of the pre-Confederation (1860) Brandon House without so much as a hint that a prominent heritage building at the gateway to Ancaster was about to be destroyed. The result: a vacant lot. Ancaster streetscape significantly harmed.
- Partial demolition of James Street Baptist Church downtown leaving the façade and an ugly vacant lot on a main downtown street and a bankrupt developer. This illustrates that our concern is broader than just Ancaster.
- Two recently created gaping holes in the Ancaster Wilson Streetscape are the scars of ill-advised demolition done with no notice. Unkempt vacant lots in the most characterful heart of town create a seriously negative image for our community. A few photos follow.
- AVHC notes significant negative effects on neighbouring properties, typical well cared for unpretentious older homes. Weeds. Dust. Unattractive views. Likely loss of value. They had no warning a dirty vacant lot was coming, nor do they know what is coming next. **Who spoke for their interests in this closed door granting of Demolition Permits?**
- Demolition of many buildings with no evidence of an approved future use is demolition for the sole purpose of creating vacant lots. These vacant lots are often part of a developer's strategy.
- Vacant lots cost the City of Hamilton significant tax revenue. Tax losses on the vacant lots on Wilson Street will likely be in the hundreds of thousands of dollars before any tax producing development is created. This amounts to other taxpayers subsidizing the developers. Immediate replacement of demolished buildings will increase tax revenues.
- A significant ongoing threat to a circa 1840 stone home (the Phillip House). It was designated heritage in 1981 but now stands alone in a vast vacant dirt lot after the demolition of all surrounding buildings. We have heard this referred to as "demolition by neglect". (Marr House, built 1840, was next door and in good condition but was demolished in 2019 to create the vacant lots)
- The threatened demolition of two other properties near the now-gone Brandon House, one of which pre-dates the Brandon House.
- Vacant lots increase the pressure on the City to allow variances as vacant lots are a detriment to the community. Granting a variance, for example to build higher than zoning allows, is the precedent. Hard to deny the same variance down the street. The first ill-advised demolition starts a process that could destroy the full streetscape, so it is critical the first demolition be handled well.

This is the heart of the concern that brings us to Council: There is not a single development plan filed with the City for any of the Ancaster vacant lots. Rumours about condos and retirement homes that will be almost double zoning height requirements are fuel for further aggravation of the community. Why should the community be subject to this pressure?

CONCLUSIONS

Advantage: Developers

Not only are there gaping holes in the ground around us in the Village, but there is a parallel gaping hole in the City development process that tilts it almost completely to a developer's advantage.

Why do Developers Demolish First? They Love Vacant Lots: It is a strategy. That simple. When an application is ultimately filed to fill an unsightly vacant lot, there is less public involvement than when there is no building the community values. Developers leverage zoning changes and other benefits from the City by first creating a highly contentious vacant lot. The vacant lot is often a detriment to the community and developments are approved that may not have been approved otherwise. Often the community is fed up with the mess and settles for less than ideal development. In short, irresponsible development and unfairness to the community.

Disadvantage: City and the Community

It is ironic that Hamilton taxpayers are forced to subsidize these developer strategies. New development should bring new tax revenue and if demolition is tied to development that happens very quickly. With vacant lots the City will lose incalculable amounts of revenue before there is tax-producing development. It is surely unfair to place this burden on taxpayers.

Constant developer pressure on the City to allow increased heights, smaller setbacks, is amplified when there is a vacant lot in the mix. Zoning bylaws are well thought through with significant community input BUT attempts to circumvent these zoning provisions are done on a spot basis and often before the broader community even knows.

The bottom line is: Demolition first, Development later advantages ONLY the developer, HURTS the City and the Community

It is Past Time to Give the Public A Say Through Council for the Important Decisions

SIX POSSIBLE SOLUTIONS:

We believe the current Demolition Control Bylaw 09-208 should be amended to:

1. **Return Authority to Council:** The previous 2008 Hamilton City Demolition Control Bylaw required Council approval for issuance of every Demolition Permit. Staff prepared a full report for each application for review by Council. This is not a good use of Council time. We propose efficient staff handling of ONLY non-contentious applications.

2. **Lessen Delegated Authority to Staff:** The Ontario Planning Act permits the City to delegate Council responsibility for issuance of Demolition Permits to staff. This led to radical revision of the 2008 bylaw procedures in 2009 Demolition Control Bylaw, 09-208. Demolition approval went from total Council involvement to almost total staff authority. This significant delegated authority means no accountability to the public with decisions made behind closed doors.

This matters: The process that led to this was a report to Council by staff recommending streamlining of the issuance of Demolition Permits by delegating authority for most Permits to staff. The draft bylaw was attached. AVHC sees no evidence of public input. We ask Council to ensure this process is NOT repeated and that changes be made with meaningful input by the public.

3. **Support Individual Ward Councilors:** Individual ward councilors are effectively the only line of defense when inappropriate demolition is applied for. Councilors are informed by staff in writing when an application for a demolition permit is filed in their ward. This leaves the responsibility for a contentious demolition with the councilor. Different wards may see different approaches and there is the potential for conflict with staff. There should be a consistent approach across the city to each demolition application that takes pressure off individual councilors to “save” buildings. Council should be responsible for contentious demolitions, not a lone councilor.

4. **Give Staff Clear Definitions:** Paragraph 4 of 09-208 delegates approval of “routine” applications to the Chief Building Official. Paragraph 5 provides examples of “routine” but then provides the definition “is not limited to” the items set out. In Section 6, the conditions under which a demolition permit may be issued by staff are preceded by use of the word “may”, giving staff complete discretion in issuing demolition permits, and renders the conditions for issuance irrelevant.

The criteria for dealing with “routine” applications set out in Paragraph 5 are efficient and reasonable. The resulting exceptions created by “may” and “not limited to” are NOT reasonable. The criteria should be unequivocal.

If an application does not meet the criteria, it should not be considered “routine” and should be handled by Council. Non-residential zoned demolitions can be done with no replacement plan. This needs to end. A vacant lot is a vacant lot and demolition should not create them.

5. A Great Start—Expectations for Demolitions: The City of Waterloo provides an enlightened example of how Hamilton could set clear expectations easily understood by the public, property owners, and developers. No one would wonder if a demolition application would be approved with similar wording in Hamilton. It is not in the community’s interest to lose significant buildings and end up with vacant lots with no replacements in sight. The City of Waterloo sets out clearly the intent of its Demolition Bylaw:

“The intent of demolition control shall be:

- 1. to prevent the premature loss of housing stock and the creation of vacant parcels of land;*
- 2. to prevent the premature loss of assessment;*
- 3. to retain existing residential units until new uses have been considered and zoning or site plans approved;*
- 4. to prevent block busting within residential neighbourhoods;*
- 5. to prohibit the use of Demolition to reduce maintenance costs; and*
- 6. to prohibit the use of Demolition as a tactic to obtain zoning or other City approvals.*

AVHC believes a statement of intent in a revised Demolition Control Bylaw would be the single most important change Council could introduce.

6 Clarify the Definition of “Routine”: Efficient handling of permits is an important goal, and the addition of an Intent section to the bylaw and further examples of “routine” could help ensure Council is not bogged down and handles only the significant Applications for Demolition.

An important item to include is the age of a structure. AVHC believes “routine” applications should generally apply to structures newer than 90 years. This would alleviate a lot of the community concern about structures that are historical, but which have not been considered for some level of heritage status.

Placing Demolition applications for these structures on a public Council agenda automatically provides transparency and public accountability that does not exist today.

This Matters to the Public Image of Council: Our suggested changes may see Council dealing with more Applications. If the changes are drafted well those will be the ones that truly matter.

AVHC believes it is in Council’s interest to prevent the recriminations and criticisms that arise after a structure that is highly valued by a community is suddenly demolished, to be replaced by a vacant lot. In these cases, there will inevitably be a sense that the encroachment on the community was improper, even though all rules were followed.

AVHC suggests that even the developer would be in a better place. Development without community support is never a positive move; if this developer had known the extent of community feeling for Brandon House, its historical importance to the community as a heritage site, and if our proposals had been in place, it is inevitable that a different plan would have come forward which would have met with agreement from all parties.

IN SUMMARY

- Demolition is part of development, which can be positive for a community, and requires a Hamilton permit under the Ontario Planning Act;
- A development plan is a bargain between the developer, the City, and the community—without community acceptance changes to the streetscape are criticized and most developments will not thrive;
- The contingencies involved should be on full display on the table in a full proposal in such cases, including what the community loses by demolition and what they gain by the proposed development;
- Demolition to create vacant lots tilts the process to developers; costs significant tax revenue; destroys neighbourhoods; and presents an inevitable downside to everyone AND SHOULD BE PREVENTED;
- Link Demolition to Development and create a fair bargain between all parties. Swapping an almost pristine heritage home for an unsightly vacant lot is NOT a fair bargain;
- The multiple demolitions that have created a far less attractive streetscape in Ancaster cannot be undone—this is an important lesson for all of us. There is one chance to get this right.

We can, however, make changes to create a better future for our community, by ensuring development creates a win for the community, a win for the City, and a win for the developer.

WILSON STREET TRANSFORMED BY DEMOLITION



THERE IS NO DEVELOPMENT
PLAN FOR THE BRANDON
HOUSE PROPERTY.

THIS APPEARS TO BE
DEMOLITION TO CREATE A
VACANT LOT

BRANDON HOUSE IN 2019 AS GENERATIONS KNEW IT



THE CITY DEMOLITION PERMIT WAS ACTED UPON IMMEDIATELY



DIRT, WEEDS, RUBBLE--ALL THAT IS LEFT OF A ONCE PROUD HOME



JUST WEST OF BRANDON HOUSE A HUGE EMPTY LOT THANKS TO MULTIPLE DEMOLITIONS



LIKE THE BRANDON HOUSE LOT THERE IS NO FILED PLAN FOR THESE PROPERTIES.

ALL INDICATIONS ARE DEMOLITION WAS DONE SOLELY TO CREATE THESE UNSIGHTLY DIRT LOTS

MARR-PHILLIPO HOUSE, A DESIGNATED PROPERTY BY ONTARIO HERITAGE, NOW SITS IN A VAST DIRT LOT CREATED BY THESE DEMOLITIONS AWAITING ITS UNKNOWN FATE WITH NO PUBLIC INPUT



ESTABLISHED RESIDENTIAL AREAS BORDER THE VACANT LOTS. ADJACENT PROPERTY OWNERS HAVE NO IDEA WHAT DEVELOPMENT WILL ULTIMATELY FILL THE LOTS, AND IN THE MEANTIME HAVE TO PUT UP WITH UNKEMPT VACANT LOTS AS NEIGHBOURS.



A GLANCE EAST FROM THE LARGE VACANT LOTS (RIGHT) AND WEST (BELOW) SHOWS THE BEAUTIFUL COMMUNITY ANCASTER IS, AND UNDERLINES WHY HAMILTON NEEDS TO RESET HOW DEMOLITIONS ARE MANAGED TO PREVENT THESE UGLY SCARS ON THE STREETScape WITH NO DEVELOPMENT IN PLACE TO FILL THEM



THE CLOSEST BUILDING IN THE PHOTO TO THE LEFT IS NEW DEVELOPMENT, ABOUT 2018. IT FITS THE STREETScape. DEMOLITION OF THE FORMER BUILDING WAS FOLLOWED QUICKLY BY CONSTRUCTION OF THIS ONE. CLEARLY EMPTY LOT DEMOLITIONS ARE NOT NECESSARY.

APPENDIX A—Current Hamilton Bylaw—09-208

Authority: Item 10, Economic Development
and Planning Committee Report;
09-018 (PED09258) CM:
September 30, 2009

Bill No. 208

CITY OF HAMILTON

BY-LAW NO. 09-208

To Enact a Demolition Control Area By-law and to Repeal and Replace By-law No. 08-226 Entitled "Demolition Control"

WHEREAS section 33 of the Planning Act, R.S.O. 1990, c. P. 13, provides that Council of the City of Hamilton may by by-law designate any area within the City of Hamilton as a demolition control area when a property standards by-law under section 15.1 of the Building Code Act, 1992, S.O. 1992, c. 23, is in force in the City of Hamilton;

AND WHEREAS Property Standards By-law No. 03-1 17 was enacted on May 14, 2003 and is in force in the City of Hamilton;

AND WHEREAS no person shall demolish the whole or any part of any residential property in a demolition control area unless the person has been issued a demolition permit by the Council of the City of Hamilton;

AND WHEREAS under subsections 33(3) and 33(6) of the Planning Act, R.S.O. 1990,

c. P. 13, the Council of the City of Hamilton is the decision-maker in respect of consenting to the demolition of a residential property in an area of demolition control;

AND WHEREAS under sections 9 and 10 of the Municipal Act, 2001, S.O. 2001, c. 25, in accordance with section 23.1 of the Municipal Act, 2001, the powers of a municipality under that or any other Act may be delegated to a person or a body subject to the restrictions set in sections 23.2 to 23.5, inclusive, of the Municipal Act,

2001;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. In this By-law:

"Chief Building Official" means the City's Chief Building Official and includes the City's Deputy Chief Building Officials as directed by the Chief Building Official or in his/her absence;

"City" means the geographical area of the City of Hamilton or the municipal corporation as the context requires;

"Council" means the City's Council;

"dwelling unit" means any property that is used or designed for use as a domestic establishment in which one or more persons may sleep and prepare and serve meals; and

"residential property" means a building that contains one or more dwelling units, but does not include subordinate or accessory buildings the use of which is incidental to the use of the main building or a building used as a lodging house, residential care facility, retirement home, long term care facility or hotel as defined under the City's zoning by-laws.

Demolition Control Area

2. All of the lands within the boundaries of the City are designated as a demolition control area.

3. This By-law does not apply when:

(a) the demolition of a part of the residential property does not reduce the number of dwelling units;

(b) the residential property is owned by the City and the demolition is required for the imminent implementation of a City capital works project previously approved by Council, except if the residential property is designated under the Ontario Heritage Act;

(c) the residential property is a mobile home;

(d) the owner of the residential property has entered into a demolition agreement with City;

(e) the residential property is exempted under any federal or provincial statute or regulation; or

(f) the residential building has been found to be unsafe under section 15.9 of the Building Code Act, 1992 and an order has been issued under that section.

Delegation of Authority

4. Council delegates to the Chief Building Official power with respect to the issuing of demolition permits for routine applications which was given to Council under subsections 33(3) and 33(6) of the Planning Act.
5. For the purposes of section 4, "routine applications" include, but are not limited to, an application to demolish a residential building:
 - in an established neighbourhood when the standard conditions in section 6 would apply; _
 - to facilitate a development under an approved site plan or approved draft plan of subdivision; _
 - in a zone that does not permit a residential use; _
 - when another non-residential use is permitted; _
 - to facilitate land assembly for future development; _
 - in the Rural Area when abutting lands would not be impacted.
6. A demolition permit issued by the Chief Building Official under section 4 may be subject to the following conditions:
 - (a) that the applicant for the demolition permit has applied for and received a building permit for a replacement building on the property;
 - (b) that the said building permit specifies that if the replacement building is not erected within two years of the demolition of the existing building on the property, the City be paid the sum of \$20,000 which sum:
 - (i) the City Clerk is authorized to enter on the collector's roll and collect in like manner as municipal taxes; and
 - (ii) is a lien or charge on the property until paid; and
 - (c) that the applicant for the demolition permit has registered on title to the property notice of conditions (a) and (b) in a form satisfactory to the Chief Building Official and the City Solicitor.
7. The delegated power under section 4 does not include the power to:
 - (a) refuse to issue a demolition permit and where the Chief Building Official would refuse to issue a demolition permit, he/she shall so

advise Council which retains all power with respect to issuing or refusing to issue that demolition permit;
 - (b) attach conditions as set out in section 6 to a demolition permit with which an owner of residential property is not in agreement and where this is the case, the Chief Building Official shall so advise Council which retains all power with respect to issuing or refusing to issue the demolition permit; or
 - (c) issue or refuse to issue a demolition permit for a building designated under the Ontario Heritage Act.
8. The Chief Building Official is authorized to undertake all acts necessary to carry out the delegated power under section 4, including the authority to sign any required documents.

Title, Repeal and Effective Date

9. This By-law may be cited as the "Hamilton Demolition Control Area By-law" or the "Demolition Control Area By-law".

10. By-law 08-226 is repealed as of the day on which this By-law comes into force.

11. This By-law comes into force on the date of its passing.

PASSED and ENACTED this 30th day of September 2009.



Fred Eisenberger
Mayor



Kevin C. Christenson
City Clerk