

Staff Report



Development Services Department

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REPORT TO: Committee of the Whole

DATE OF MEETING: March 18, 2024

SUBMITTED BY: Garrett Stevenson, Director of Development and Housing Approvals, 519-741-2200 ext. 7070

PREPARED BY: Jessica Vieira, Heritage Planner, 519-741-2200 ext. 7291

WARD(S) INVOLVED: Ward 10

DATE OF REPORT: February 8, 2024

REPORT NO.: DSD-2024-064

SUBJECT: Consideration of Objection to Notice of Intention to Designate 70 Francis Street North

RECOMMENDATION:

That City Council consider the Notice of Objection dated January 14th, 2024 and affirm its decision of December 11, 2023, stating its intention to designate the property, municipally addressed as 70 Francis Street North, under Part IV of the Ontario Heritage Act;

That City Council not withdraw the Notice of Intention to Designate the property, municipally addressed as 70 Francis Street North, under Part IV of the Ontario Heritage Act; and

That the By-law, attached as Attachment 'B' to this Report No. DSD-2024-064, to designate the property municipally addressed 70 Francis Street, in accordance with Part IV, Section 29 of the Ontario Heritage Act, **BE APPROVED.**

REPORT HIGHLIGHTS:

The key findings of this report are as follows:

- The purpose of this report is to provide Council with information, analysis, and options regarding an objection to the City's Notice of Intention to Designate (NOID) 70 Francis Street North, which was published in the Kitchener Record on December 15, 2023.
- City Council resolved to issue a NOID, for the property municipally addressed as 70 Francis Street, on December 11, 2023. The designation is being undertaken as part of the Municipal Heritage Register Review Strategy implemented by the City in 2023 in response to amendments to the *Ontario Heritage Act* introduced through Bill 23, *More Homes More Choices Act*.

- Heritage Planning Staff contacted the property owners on May 23, 2023, and August 25, 2023, prior to the formal issuance of NOID, to initiate a conversation about designation and invite any questions or concerns. This exceeds the requirements of the *Ontario Heritage Act*, which only prescribes that the Owners must be contacted when a NOID is being published. No response was received from the property owners on either of the initial attempts. A response was received after a third and final letter was sent to the property owners on December 15, 2023.
- Under Section 29(5) of the Ontario Heritage Act (OHA), anyone may serve the Clerk with a Notice of Objection within 30 days of the publication of the Notice of Intention to Designate, triggering a Council review of the original decision. The Notice of Objection was served within this timeframe, being received by the Clerk on January 14, 2024.
- City Council has until April 13, 2024, which is 90 days from the date of the end of the objection period, to make a decision on the objection as per the timeline under the OHA.
- Heritage Planning Staff have reviewed the reasons for objection provided by the Property Owner and remain of the opinion that the property meets the criteria for determining cultural heritage value or interest, as prescribed by Ontario Regulation 9/06, and continues to merit heritage designation under Part IV of the *Ontario Heritage Act*.

BACKGROUND:

The subject property is located on the north side of Francis Street North, to the west of Francis Street North and Water Street North intersection. The heritage resource is a two-and-one-half storey late 19th century brick house built in the Queen Anne architectural style. The building is situated on a 0.24-acre parcel of land in the Urban Growth Centre of the City of Kitchener within the Region of Waterloo.

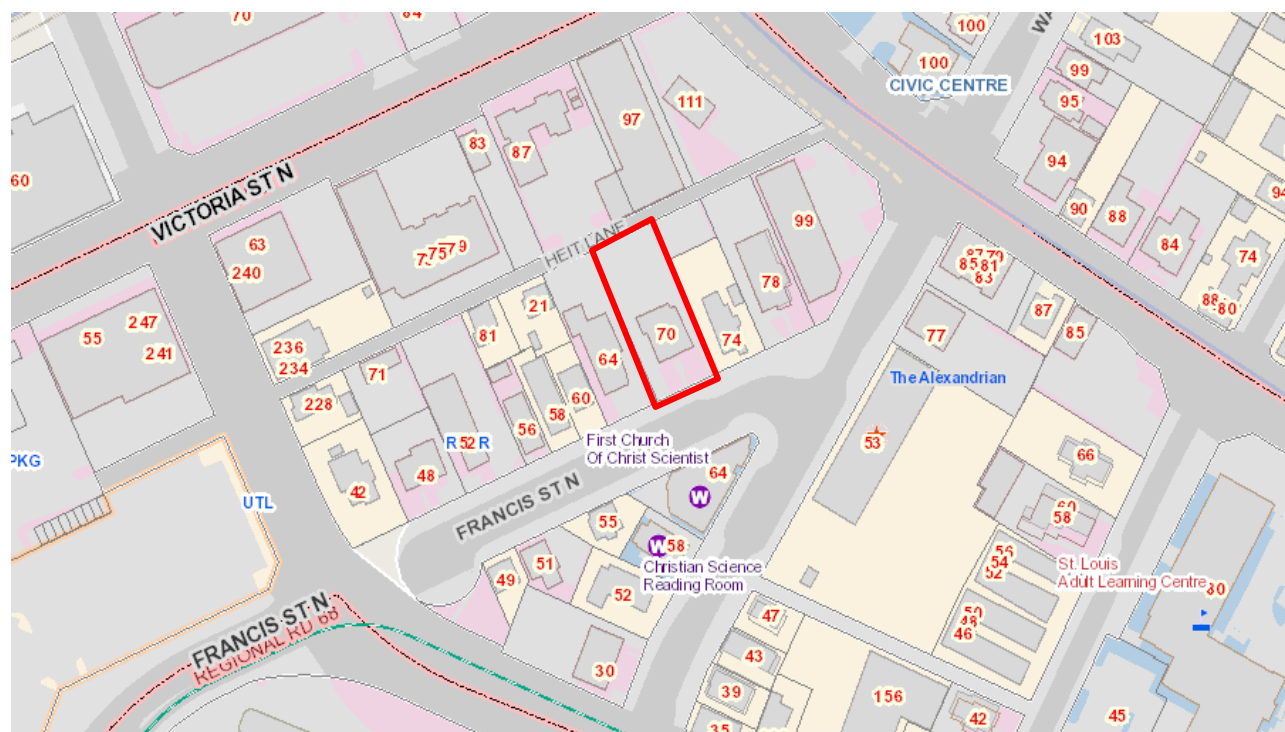


Figure 1: Location Map of Subject Property

A full assessment of 70 Francis Street North was completed in 2023 and included a field evaluation and detailed archival research. This work was undertaken as part of the City of Kitchener Municipal Heritage Register (MHR) Review, initiated in February of 2023. The MHR Review is the City’s response to amendments to the Ontario Heritage Act introduced in January of 2023 through Bill 23, the *More Homes Built Faster Act*. The findings of the review conclude that the subject property meets five (5) of the nine (9) criteria for designation under Ontario Regulation 9/06 and possesses design/physical, historical/associative, and contextual value. Upon receiving the objection, Heritage Planning Staff have reassessed the subject property and can confirm that four (4) out of the nine criteria (9) are met. It was determined that while the property does possess decorative elements and some unique features, it does not display craftsmanship or artistic merit beyond what is usual for the Queen Anne architectural style, which is a highly-decorative style.

A summary of the criteria that is met or not met is provided in the table below. A detailed review of the cultural heritage significance of the property can be found in Schedule B of Attachment ‘B’, which is the designating By-law recommended by staff to be passed by Council.

Criteria	Criteria Met (Yes/No)
1. The property has design value or physical value because it is a rare, unique, representative, or early example of a style, type, material, or construction method.	Yes. Representative example of a late-19 th century residential dwelling constructed in the Queen Anne Revival architectural style. This style is known for its elaborate and decorative method of construction and was popular among the wealthy and upper-middle class.
2. The property has design value or physical value because it displays a high degree of craftsmanship or artistic merit.	No. While the building does possess several different decorative elements, the degree of artistic merit displayed does not exceed the amounts usual seen with the Queen Anne Revival architectural style. Of note however is the gambrel-style front gable, which is an unusual and unique design feature.
3. The property has design or physical value because it demonstrates a high degree of technical or scientific achievement.	No. The construction method and materials used are typical of the time period and architectural style and do not reflect any technical or scientific achievement.
4. The property has historical value or associative value because it has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community.	Yes. The original owner of the property was Albert Ruby, a prominent businessman within the community with direct ties to the Krug Furniture Company and did contribute to the economic development of the City. The Ruby family retain their ties to Krug Furniture Company to the date of this report, with Len Ruby being the president as of 2023.

5. The property has historical or associative value because it yields, or has the potential to yield, information that contributes to an understanding of a community or culture.	No. The primary use of the property was residential. While it was occupied by a prominent citizen of importance to the City, the use does not contribute to a greater understanding.
6. The property has historical value or associative value because it demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.	No. The architect of the building is unknown.
7. The property has contextual value because it is important in defining, maintaining or supporting the character of an area.	Yes. The building maintains and supports the character of the area as it remains in its original location within the downtown core. This was an area that was historically occupied by other prominent citizens of the time. A number of these residences along Francis Street remain intact and in good condition.
8. The property has contextual value because it is physically, functionally, visually, or historically linked to its surroundings.	Yes. The property is physically, visually, and historically linked to its surroundings as the building remains in its original location along Francis Street North and is surrounded by other historic buildings. It continues to contribute to the continuity and character of the streetscape. It is historically linked to the Krug Furniture factory located in proximity.
9. The property has contextual value because it is a landmark.	No. The property is not located in a prominent location and is not distinct in terms of size, massing, or design.

An updated Statement of Significance on the property's cultural heritage value was taken to the Heritage Kitchener Committee on June 6, 2023. On this meeting date, the Committee recommended that pursuant to Section 29 of the *Ontario Heritage Act*, the cultural heritage value or interest of 70 Francis Street North be recognized, and designation pursued. The City contacted owners of listed properties through an initial letter dated May 23, 2023, to inform them of this undertaking. Owners of properties recommended for designation were contacted via a second letter dated August 25, 2023, and invited to contact the City's Heritage Planner with any comments, questions, or concerns. No response was received from the property owners of 70 Francis Street North in either of these instances.

Subsequently, a Notice of Intention to Designate Report (DSD-2023-466) was taken first to Heritage Kitchener Committee on November 7th, 2023, and then Council on December 11th, 2023.

Decision History

The Heritage Kitchener Committee indicated their support of the designation on November 7th, 2023. On December 11, 2023, City Council passed the following motion:

"That pursuant to Section 29 of the Ontario Heritage Act, the Clerk be directed to publish a Notice of Intention to Designate the property municipally addressed as 70 Francis Street North as being of cultural heritage value or interest as outlined in Development Services Department report DSD-2023-466."

The Notice of Intention to Designate was published in the Kitchener Record and served to the Owner on December 15, 2023. This was the third opportunity for comments provided and fulfilled the notice requirements under Section 29(3) and 29(4) of the OHA.

COMMENTS:

Staff have reviewed the Notice of Objection dated January 14, 2024, and prepared by the owners Shane Stickel and Kassandra Stickel. A copy of the Notice of Objection is included as Attachment 'A'. The Owners divided their reasons for objecting into four (4) points.

Point One

The Owners are of the opinion that the property no longer displays cultural heritage value as some alterations have occurred to the property and the use of the building has expanded from residential to mixed-use. While some elements are no longer original, the majority of identified attributes remain including:

- The massing and irregular building plan including the bay and octagonal tower;
- Roofline with gambrel roof and eight-sided conical roof;
- Buff brick;
- Rock-faced stone foundation;
- Plain fascia, moulded soffit, and frieze with dentils and mouldings; and
- Window and entrance openings.

It is Heritage Planning Staff's opinion that the alterations that have occurred are appropriate for the character of the building and are not so extensive as to have impacted heritage integrity. The alterations identified within the letter are reversible and restoration to original condition would still be feasible. While the windows themselves may not be original, the fenestration pattern of the windows is characteristic to the Queen Anne Revival architectural style. The windows have been removed from the attribute list of the proposed designating by-law and speak only to window openings; as such heritage permits would not be required for window work unless changes to openings are contemplated. It should be noted that the rear and side additions identified in the objection letter date back to at least 1925, as shown in the 1925 Fire Insurance Map.

The use of the building was not identified as either a heritage attribute nor was it identified as contributing to the heritage significance of the property. Interior features were also not reviewed as part of the evaluation and are not identified as heritage attributes that contribute to the heritage value and significance of the property.

Point Two

The second point of concern relates to cost and process, and the impact that designation may have on the ability for them to maintain or redevelop the property in the future. The maintenance of designated heritage properties is encouraged and supported by the City through the Heritage Grant program, which is intended to help with the costs of work and repair. Further, there is no fee associated with a heritage permit application. It should also be noted that not all work requires a heritage permit. This includes all interior renovations and any exterior work that will not impact an attribute specifically identified within the heritage attributes list of the designating by-law.

The designation of the property would not prevent the owners from adding an addition to increase the number of units as well. It would only require a heritage permit to be obtained and the addition to be designed and constructed in a manner that complies with best conservation practices. These best practices speak primarily to additions being located away from the front façade and being compatible but distinct in appearance from the original structure. Examples of designated properties where additions have been proposed and approved to increase the number of dwelling units include 38 Shirk Place, 53 Margaret Avenue, and 170 David Street. There are a number of other examples where additions intended to simply increase living space within a designated home have also been approved by Heritage Planning Staff. A project of the scale identified within the objection letter would likely not require heritage consultants to complete heritage studies. The examples listed did not require specialized contractors or consultants.

Of further note, while insurance for older homes may be more expensive due to the age of the home, designation in and of itself does not impact insurance premiums.

Point Three

In the third point, the Owners state that designation will impact the resale value of the building. There is no basis for this claim. In fact, there is strong evidence from different studies that suggest heritage designation is associated with an increase in property sale values. Examination of sales history trends of individually designated properties in comparison to the sales history of average properties further indicate that such designated properties are more resistant to market downturns and have an equal to or greater rate of sale than other properties. ^{[1][2][3]}

¹ Correia, R. et al. (2023). Investigating the Impact of Heritage Property Designation on Real Estate Value. Accessed via <https://macsphere.mcmaster.ca/bitstream/11375/28406/1/McMaster%20Research%20Shop%20Report%20-%20City%20of%20Hamilton%20Heritage%20Properties.pdf>

² Kovacs, J. F. et al. (2015). Assessing the Success of Heritage Conservation Districts: Insights from Ontario, Canada. Accessed via <https://www.sciencedirect.com/science/article/abs/pii/S0264275114001723>

³ Shipley, R. (2000). Heritage Designation and Property Values; Is there an Effect? Accessed via https://ehq-production-canada.s3.ca-central-1.amazonaws.com/7869b25d8c345f1418ec0d0cce65b1a9cdea0d6e/original/1698344336/09e6eead6d2c6784672907748f855bc1_Appendix_I_-_Robert_Shipley_Report_-_Heritage_Designation_and_Property_Values.pdf?X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Credential=AKIA4KKNQA KIOR7VAOP4%2F20240308%2Fca-central-1%2Fs3%2Faws4_request&X-Amz-Date=20240308T205125Z&X-Amz-Expires=300&X-Amz-SignedHeaders=host&X-Amz-Signature=0e1d6f6827764164141301afd07c6d69de5f847751f19664b50ef90cdac400b

Point Four

The fourth point of concern identified by the property owners once again relates to the heritage integrity of the home and the heritage value it displays. The letter identifies the old Krug Furniture Factory as encapsulating the same values identified for 70 Francis Street North. The old factory, well demonstrative of a direct association to a significant company, is not necessarily demonstrative of a direct association to Albert Ruby. The designation of 70 Francis Street North allows for the separate recognition of Albert Ruby as a prominent businessman within the community during a crucial time of economic development.

The Importance of Cultural Heritage within the City

The identifying and protection of cultural heritage resources within the City of Kitchener is an important part of planning for the future, and helps to guide change while conserving the buildings, structures, and landscapes that give the City of Kitchener its unique identity. In addition to the creation of distinct places and a cultural identity, there are social, economic, environmental, informational, and aesthetic values.

The City plays a critical role in the conservation of cultural heritage resources. The designation of property under the *Ontario Heritage Act* is the main tool to provide long-term protection of cultural heritage resources for future generations. Designation recognizes the importance of a property to the local community; protects the property's cultural heritage value; encourages good stewardship and conservation; and promotes knowledge and understanding about the property. Designation not only publicly recognizes and promotes awareness, but it also provides a process for ensuring that changes to a property are appropriately managed and that these changes respect the property's cultural heritage value and interest.

Council Options

In accordance with Section 29 of the *Ontario Heritage Act*, City Council has the following options to consider in response to the Notice of Objection:

1. Decline the objection, affirm Council's decision to designate the property, and pass the designating By-law (recommended).

The City's Heritage Planning Staff have found that 70 Francis Street North meets the criteria for designation as prescribed by Ontario Regulation 9/06 (amended through Ontario Regulation 569/22). Protection of the property is consistent with both provincial, regional, and local policy which directs that municipalities should conserve significant built heritage resources.

Should the designation proceed, the Owner may appeal the designating by-law to the Ontario Land Tribunal (OLT) once the designating by-law has been passed, notice has been provided, and by-law has been published in accordance with Section 29(8) of the *OHA*. Through an appeal under s. 29 of the *OHA*, there is an opportunity for heritage attributes to be modified during the appeal process, should the OLT deem it appropriate. The decision of the OLT is binding.

2. Accept the objection and withdraw the Notice of Intention to Designate.

Council could choose this option if it is convinced by the letter of objection that the building does not possess the cultural heritage value identified by Heritage Planning Staff and that designation will lead to increased costs and delays in process. Heritage Planning Staff do not recommend this option and have provided responses to each area of concern brought up by the property owner as outlined above.

It should also be noted that should Council decide not to proceed with a Notice of Intention to Designate, that the building will remain on the City's Municipal Heritage Register until January 1, 2025, after which it will be removed according to the changes enacted by Bill 23. Once removed, it cannot be re-listed on the Register again for five (5) years, i.e., January 1, 2030.

STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

FINANCIAL IMPLICATIONS:

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City's website with the agenda in advance of the Council Meeting. The Notice of Intention to Designate Report was posted to the City's website with the agenda in advance of the Heritage Kitchener Meeting on November 7, 2023.

CONSULT– Heritage Planning staff have consulted with the Heritage Kitchener Committee regarding designation under the *Ontario Heritage Act*. Property owners were invited to consult via two separate letters dated May 23, 2023, and August 25, 2023. The Notice of Intention to Designate was published in the Kitchener Record and a letter was also served per standard operating procedures following Council's decision on December 11, 2023.

Heritage Planning Staff were contacted by the Property Owners after a Notice of Intention to Designate letter was sent by the City. Heritage Planning Staff spoke to Shane Stickle via phone in January of 2024, prior to Clerks receiving the Notice of Objection Letter. The concerns outlined in the letter were identified during this phone call and responded to by Heritage Planning Staff. The phone call concluded with the property owner noting that he was still uncertain in his stance on designation of the subject property.

PREVIOUS REPORTS/AUTHORITIES:

- *Ontario Heritage Act*
- Notice of Intention to Designate 70 Francis Street North – DSD-2023-466

REVIEWED BY: Tina Malone-Wright, Manager, Development Approvals
Garett Stevenson, Director of Development Approvals and Housing

APPROVED BY: Justin Readman, General Manager, Development Services Department

ATTACHMENTS:

- Attachment A – Notice of Objection, dated January 14, 2024
- Attachment B – Draft Designating By-law for 70 Francis Street North