

Staff Report



Development Services Department

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REPORT TO: Committee of the Whole

DATE OF MEETING: June 24, 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 9

DATE OF REPORT: June 10, 2024

REPORT NO.: DSD-2024-290

SUBJECT: Consideration of Objection to Notice of Intention to Designate 91 Madison Avenue South

RECOMMENDATION:

That City Council consider the Notice of Objection dated May 5th, 2024 and affirm its decision of April 8, 2024, stating its intention to designate the property, municipally addressed as 91 Madison Avenue South, under Part IV of the Ontario Heritage Act;

That City Council not withdraw the Notice of Intention to Designate the property, municipally addressed as 91 Madison Avenue South, under Part IV of the Ontario Heritage Act; and

That the By-law, attached as Attachment 'B' to this Report No. DSD-2024-290, to designate the property municipally addressed 91 Madison Avenue South, 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 Notice of Intention to Designate (NOID) 91 Madison Avenue South, which was published in the Kitchener Record on April 12, 2024.
- Council resolved to issue a NOID for the subject property on April 8, 2024.
- The designation is being undertaken as part of the Municipal Heritage Register Review Strategy implemented in 2023 in response to amendments to the *Ontario Heritage Act* introduced through Bill 23, *More Homes More Choices Act*.

*** This information is available in accessible formats upon request. ***
Please call 519-741-2345 or TTY 1-866-969-9994 for assistance.

- Heritage Planning Staff contacted the Property Owner on May 23rd, 2023, and February 20th, 2024, 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 Owner of 91 Madison Avenue South on either of these occasions.
- 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 May 5th, 2024.
- Council has until August 10th, 2024 to make a decision on the objection. This is in compliance with the timeline mandated by the Ontario Heritage Act, Section 29(6) which provides 90 days from the date of the end of the objection period.
- 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:

91 Madison Avenue South is a two storey early-20th century religious building constructed in the Colonial Revival architectural style with Byzantine and Moorish influences. The building is situated on a 0.43 acre parcel of land located on the east side of Madison Avenue South between Church Street and Courtland Avenue East. The principal resource that contributes to the heritage value is the religious building.



Figure 1: Location Map of Subject Property

A full assessment of 91 Madison Avenue South was completed at the beginning of 2024 and included a field evaluation and detailed archival and document 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 concluded that 91 Madison Avenue South met six (6) 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 remain of the opinion that six (6) of the nine (9) criteria are met. Per Ontario Regulation 9/06, a property need meet only two (2) of the nine (9) criteria in order to be designated under Part IV (Section 29) of the Ontario Heritage Act.

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	Met?	Explanation
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.	The building is a unique example of the Byzantine and Colonial Revival architectural style in Kitchener and is in excellent condition. One of the only examples of this architectural style within both the City and Region, with the other being 131 Victoria Street South.
2. The property has design value or physical value because it displays a high degree of craftsmanship or artistic merit.	No	Does not display a degree of artistic merit or craftsmanship beyond what is typical for this architectural style, which is characterized by decorative elements.
3. The property has design or physical value because it demonstrates a high degree of technical or scientific achievement.	No	The building does not demonstrate a high degree of technical or scientific achievement, appearing to have been constructed using materials and methods typical for its time.
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	Relate to the original owner and use and connects to the theme of early Jewish settlement within the City.

<p>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.</p>	<p>Yes</p>	<p>Can provide an understanding of how the diversification of religion progressed within the City in the early twentieth century, being the first synagogue within then-Berlin, and established during a time period when the predominant faith present in the area was Christianity.</p>
<p>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.</p>	<p>No</p>	<p>The architect, builder, or designer of the property is unknown.</p>
<p>7. The property has contextual value because it is important in defining, maintaining, or supporting the character of an area.</p>	<p>Yes</p>	<p>Contributes to the continuity and character of the Madison Avenue South streetscape and the Cedar Hill Neighbourhood Cultural Heritage Landscape (CHL), which is the second established CHL in the City. The neighbourhood is characterized by a mix of residential and institutional uses, elevated topography, narrow street widths, and dramatic long views. The building maintains the setbacks, size, and scale of the surrounding properties.</p>
<p>8. The property has contextual value because it is physically, functionally, visually, or historically linked to its surroundings.</p>	<p>Yes</p>	<p>The building remains in-situ, maintains its relationship and orientation towards the street and the topography of the area. Though the congregation has changed, the building also maintains its original use as a place of worship, therefore maintaining its historic function within the neighbourhood.</p>
<p>9. The property has contextual value because it is a landmark.</p>	<p>Yes</p>	<p>With its distinctive architectural style and its location near the peak of one of the neighbourhoods large rolling hills, 91 Madison Avenue South is an easily recognizable building and can be classified as a neighbourhood landmark.</p>



Figure 2: Front Façade of Subject Property (2024)



Figure 3: North Side Façade of Subject Property (2024)

An updated Statement of Significance on the property's cultural heritage value was taken to the Heritage Kitchener Committee on February 6, 2024. On this meeting date, the Committee recommended that pursuant to Section 29 of the *Ontario Heritage Act*, the cultural heritage value or interest of 91 Madison Avenue South be recognized, and designation pursued.

Communication History

The process established for the Kitchener Municipal Heritage Register Review includes engagement procedures outside of those that are legislatively required by the Ontario Heritage Act. The City contacted all owners of listed properties within Kitchener through an initial letter dated May 23, 2023. This letter informed them of work being undertaken by the City in response to the provincial amendments to the Ontario Heritage Act associated with Bill 23, and invited commentary and concerns. Several responses were received in the following months from recipients. No response was received from the Owner of 91 Madison Avenue South in this instance.

Per the City's established process, after evaluations were completed and identified that 91 Madison Avenue South met sufficient criteria under Ontario Regulation 9/06, and it was confirmed by the Heritage Committee that designation should be pursued, the owners were contacted a second time via a communication package. This package included a second letter dated February 20th, 2024, which again invited the property owners to contact the City's Heritage Planner with any comments, questions, or concerns they may have, while the additional material included the updated Statement of Significance as well as a copy of the City's *Guide to Heritage Designation for Property Owners*. No response was received from the Owner of 91 Madison Avenue South in this instance.

Subsequently, a Notice of Intention to Designate Report (DSD-2024-138) was taken first to Heritage Kitchener Committee on April 2nd, 2024, and then Council on April 8th, 2024.

Decision History

The Heritage Kitchener Committee indicated their support of the designation on April 2nd, 2024. On April 8th, 2024, 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 91 Madison Avenue South as being of cultural heritage value or interest as outlined in Development Services Department report DSD-2024-138."

The Notice of Intention to Designate was published in the Kitchener Record and served via a letter to the Owner on April 12th, 2024. This was the third opportunity for comments provided and the only one mandated by provincial legislation, fulfilling the notice requirements under Section 29(3) and 29(4) of the OHA.

COMMENTS:

Heritage Planning Staff were contacted by a representative and member of the Church Board on April 23rd, 2024, regarding concerns with the proposed designation of 91

Madison Avenue South. A call was scheduled and held between Heritage Planning Staff and the representative on April 24th, 2024, to discuss the concerns. A formal Notice of Objection was served to the City on May 5th, 2024.

Heritage Planning Staff have reviewed the Notice of Objection dated May 5th, 2024 and prepared by Nego Radulovic on behalf of the Board for the International Fellowship Church of God. A copy of the Notice of Objection is included with this report as Attachment A. The primary concerns identified within the letter related to the financial implications of heritage designation as well as limitations to the use or ability to adapt the property to suit changing needs.

Financial Implications

The Notice of Objection outlines a concern that a heritage designation would place additional financial burden on the Church and limit its ability to continue its spiritual and community-building activities.

Consideration has been provided for the potential increase in financial cost that might be incurred with designation. Section 33(1) of the Ontario Heritage Act states that Owners must apply for alterations to a Part IV designated property if the alteration is likely to affect the property's heritage attributes as identified in the designating by-law. This process is done via a Heritage Permit Application, which is similar in requirements to a Building Permit Application. There are no fees charged by the City for Heritage Permit Applications, but higher standards of work may be expected or required. The maintenance of designated heritage properties is encouraged and supported through the Heritage Grant program, which is intended to help with the costs of work and repair. Regular care and maintenance of a property, regardless of its heritage status, is the best and most efficient intervention to avoid sustaining costs.

There are no interior attributes proposed to be included within the designating by-law, so a Heritage Permit would not be needed and no heritage requirements would be imposed for any interior work to 91 Madison Avenue. In addition, Heritage Planning Staff have proposed modifications to the wording of the designating by-law with the intention of providing some flexibility and reduce potential strain on the Owners while still providing protection to those features which speak to the identified heritage value of the property. For example, while multi-paned windows are included within the heritage attribute list, the exact composition of the panes is not provided. This means that should replacements be needed in the future, while the new windows would need to be multi-paned, they would not necessarily need to be exact custom replicas of what currently exists.

It should also be noted that there is precedence for flexibility in approvals or requirements when work needs to be done on a designated property but there are financial constraints or exorbitant costs. This can be seen for properties both within the Heritage Conservation Districts or that are individually designated. For properties individually designated under Part IV of the Ontario Heritage Act, the City of Kitchener follows The Standards and Guidelines for the Conservation of Historic Places in Canada, which is a collaborative effort between Federal, Provincial, and Territorial governments to establish a conservation framework. Minimal intervention – such as replacing only deteriorated or missing parts as opposed to entire built features – is encouraged within the Standards and Guidelines. It

also notes that where exact replications are not technically, economically, or environmentally feasible, then compatible substitutions can be considered.

There are a number of places of worship within the City of Kitchener which are designated either individually under Part IV of the Ontario Heritage Act, as proposed for 91 Madison Avenue, or are within Heritage Conservation Districts and designated under Part V of the Ontario Heritage Act. Examples include 64 Water Street North (First Church of Christ Scientist), 73 Young Street (St Mary Our Lady of the Seven Sorrows Roman Catholic Church), 40 Chapel Hill Drive (Carmel New Church), 54 Benton Street (St. Matthews Lutheran Church), and 137 Queen Street South (Historic St. Paul's Lutheran Church), amongst many others.

Adaption of Property

The Notice of Objection identifies concerns that the designation may impact the ability to adapt the property and building to accommodate evolving needs and practices. A heritage designation does not mean properties can not be adapted to suite expanding or changing needs or improve functionality, but is rather intended to be a tool to help manage that change. There are numerous precedents of additions or other modifications being permitted on residential, commercial, and institutional buildings both individually designated and designated as part of a Heritage Conservation District which demonstrate this. For example, 137 Queen Street South (Historic St. Paul's Lutheran Church) recently obtained heritage approval in 2023 to develop and construct a detached, 6-storey apartment building.

Further, and as noted previously, the designation does not apply to any interior attributes. This means that the Church retains the ability to make any modification to the interior of the building without having to go through the process to obtain approvals, so long as identified exterior attributes are not impacted.

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. Heritage conservation is not intended to prevent growth and progress, but rather help guide change so development can occur 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 economic, environmental, and informational values. Heritage conservation is capable of enhancing property value and assessments, attracting investments, and creating opportunities for tourism and other specialized industries. The most sustainable and environmentally friendly buildings are ones that already exist; heritage buildings contain embodied carbon, and their use or reuse reduces the release of emissions and material consumption while keeping waste material out of the landfill. Finally, designated buildings can impart knowledge about both the history and tradition of the City, as well as information related to resilient development, techniques, and material use.

It should be recognized that our heritage resources are a finite and non-renewable resource. The City plays a critical role and has a responsibility towards the conservation of cultural heritage properties. 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. 91 Madison Avenue is an example of architectural style rare within the City and, as the first synagogue within Kitchener, also speaks to the history of a minority group.

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 91 Madison Avenue South meets the criteria for designation as prescribed by Ontario Regulation 9/06 (amended through Ontario Regulation 569/22), meeting six (6) of nine (9) criteria where only two (2) criteria need be met. 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, 2027, after which it will be removed according to the changes enacted by Bill 23 and amended through. Once removed, it cannot be re-listed on the Register again for five (5) years, i.e., January 1, 2032.

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, April 2nd, 2024.

CONSULT– Heritage Planning staff have consulted with the Heritage Kitchener Committee regarding designation under the *Ontario Heritage Act*. The Property Owner was invited to consult via two separate letters dated May 23, 2023 and February 20th, 2024. 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 April 8th, 2024.

Heritage Planning Staff were contacted by a member of the Church Board after a Notice of Intention to Designate letter was sent by the City. Heritage Planning Staff spoke to Nego Radulovic via phone on April 24, 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.

PREVIOUS REPORTS/AUTHORITIES:

- *Ontario Heritage Act*
- Notice of Intention to Designate 91 Madison Avenue South – DSD-2024-138

REVIEWED BY: Garrett Stevenson, Director of Development Approvals and Housing

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

ATTACHMENTS:

Attachment A – Notice of Objection, dated May 5th, 2024

Attachment B – Draft Designating By-law for 91 Madison Avenue South