



## Memorandum

January 26, 2018

**Memo To:** Mayor and Council

**Copy To:** Neil Garbe, Chief Administrative Officer

Antonio Dimilta, Town Solicitor

Stephen Huycke, Town Clerk

**From:** Kelvin Kwan, Commissioner  
Planning and Regulatory Services

**Subject:** **Adoption of By-law 2-18 (designation of 41 Elgin Mills Road East) and adoption of Heritage Richmond Hill Minutes of December 5, 2017 pertaining to an application to demolish structures at 41 Elgin Mills Road East (File No. D12-07172)**

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### Recommendations:

1. That the application to demolish the William Neal House located at 41 Elgin Mills Road East be denied;
2. That prior to issuance of a Building Demolition Permit for only the accessory structures occupying 41 Elgin Mills Road East, the owner be required to install a 6 foot tall secured chain link fence encircling (at a distance of 2 metres from) the William Neal House to the Town's satisfaction;
3. That By-law 2-18, attached as Appendix A to SRPRS.18.006 be adopted to designate 41 Elgin Mills Road East (site of the William Neal House) as being a property of cultural heritage value or interest under Part IV, Section 29, of the *Ontario Heritage Act*; and
4. that Notice of Passing of the By-law be mailed to the Ontario Heritage Trust and the property owner.

### Background:

In September of 2012, Council adopted the Heritage Richmond Hill (HRH) recommendation to designate the property at 41 Elgin Mills Road East. The owner of the property subsequently appealed that decision to the Conservation Review Board (CRB). The CRB decision upheld Council's decision to designate the property but noted that the Statement of Cultural Heritage Interest be amended to remove the reference to "architectural merit" regarding the house.

In October of 2015, staff brought forward the by-law to designate the property. At the request of the owner, Council deferred consideration of the by-law until the completion of the German Mills Creek Flood Remediation Class EA Study wherein it could be determined what impacts there might be on the property. This study was completed in January of 2017 and the impact of the recommended works will result in all of the property coming out of the floodplain.

The owner of 41 Elgin Mills Road East filed a demolition application on November 14, 2017 to demolish the William Neal House. On December 5, 2017, HRH recommended that the demolition permit be denied. The Ontario Heritage Act is clear that Council must make a decision on the demolition application within 90 days of the Clerk giving notice of receipt of the application (the 90 days is up on February 12, 2018). If Council fails to make a decision, the demolition application is deemed to be consented to (refer to Section 34(2), *Ontario Heritage Act*).

### **January 22, 2018 Committee of the Whole Meeting**

On the basis of the completed EA Study noted above as well as the impending demolition application, staff brought forward the by-law to designate the subject property as well as the HRH Minutes from December 2017 to refuse the demolition application.

At the January 22, 2018 Committee of the Whole (COW) meeting, an agent of the owner appeared as a delegation and indicated that he would be willing to withdraw the demolition permit application so that he could solidify plans for the redevelopment of the property and determine means by which the cultural heritage merit of the site could be commemorated.

### **Questions Raised at the January 22, 2018 COW Meeting**

- 1) *Can an applicant withdraw an Ontario Heritage Act demolition application and suspend the 90 day time limit in which Council must make a decision?*

Legal and Planning staff have determined that once a demolition permit is filed, Council must make a decision within 90 days. The *Act* provides no ability to withdraw an application and hence suspend the 90 day time period in which Council must make a decision.

- 2) *Can an applicant appeal Council's passing of a heritage by-law that has been the subject of a CRB hearing?*

Section 29 (14.1) of the *Ontario Heritage Act* is clear that in these circumstances, the decision of Council is final.

- 3) *What is the cultural heritage value of the property at 41 Elgin Mills Road East?*

As confirmed by the CRB, the cultural heritage merit of the property is "historical/ associative" as defined by Regulation 9/06 of the *Ontario Heritage Act*. Historical/associative merit relates to events, persons or activities which are significant to the community. As noted in the January 22, 2018 staff report, William Neal was the first mayor of the Town and prominent in the early days of automobile sales and registration in Richmond Hill.

The CRB was careful to note that although the William Neal house embodies the historical/associative merit, the house itself does not possess architectural merit sufficient to merit designation.

- 4) *Can a structure that embodies cultural heritage merit on a designated property be moved, altered or demolished?*

A municipal council, after consulting with its heritage advisory committee, is free to allow movement, alterations or demolition of any and all heritage structures as it considers appropriate. Such decisions should be subject to submission of detailed plans and information as required by the municipality.

- 5) *Can an applicant appeal a Council decision that refuses an alteration or demolition?*

Pursuant to Section 34.1 of the *Ontario Heritage Act*, an applicant may appeal Council's refusal of an alteration or demolition, or appeal any conditions of approval imposed by the Council. Such appeal is to the Ontario Municipal Board.

- 6) *Has Richmond Hill Council permitted the movement, alteration or demolition of structures on a designated property in the past?*

Council has on several occasions permitted the movement, alteration and even demolition of structures on designated properties. Often when a redevelopment of a designated property is proposed and an adaptive re-use of a structure is not apparent, it may be best to commemorate the significance of persons or events by other means.

A recent example is the designated property in Oak Ridges that housed Académie de la Moraine where the school board could not incorporate the early 20th century schoolhouse into a functional design of a new school. In lieu of this situation, the Town required that the 150 years of education activity on the site be commemorated by the retention of a portion of an original wall of the existing schoolhouse on the site as well as the provision of pictures of the original structures and a narrative of the history of the site within the new school structure.

- 7) *Can Council require the protection of property heritage attributes if the property is not designated?*

In the absence of a property being designated, Council has no legal authority to require any sort of conditions related to heritage matters. If the property is designated, Council does have authority under the *Ontario Heritage Act* to impose conditions regarding movement, alteration or demolition of structures including commemoration.

- 8) *Development proposal for 35 Wright Street.*

The property known as 35 Wright Street is listed in the Town's Heritage Register. No application for demolition has been submitted. The heritage issue regarding the potential to demolish the

existing Harry Endean House is being considered in the context of a rezoning application. Staff continue to have meaningful discussions with the owner on development options for the property.