26/8/75 Bill No. 240

The Corporation of the City of Hamilton

BY-LAW NO. 75-237

To Designate:

Municipal Nos. 35, 39, 41 and 43
Duke Street - Sandyford Place

As Property of:

HISTORIC AND ARCHITECTURAL VALUE AND INTEREST

WHEREAS The Conservation Review Board did hold a hearing pursuant to subsection 8 of section 29 of The Ontario Heritage Act, 1974 on Thursday, the 21st day of August, 1975 to determine whether the property located at Nos. 35, 39, 41 and 43 Duke Street, sometimes known as Sandyford Place, should be designated to be of historic or architectural value or interest;

AND WHEREAS The Conservation Review Board did make a report dated the 22nd day of August, 1975, wherein the Board found "that the Council of the City of Hamilton has acted in the historic and architectural best interest of the citizens of the community in designating Sandyford Place as a property of historic and architectural value and interest";

AND WHEREAS The Conservation Review Board recommended that Sandyford Place be duly designated by by-law under the provisions of The Ontario Heritage Act, 1974;

AND WHEREAS it is desirable to designate Sandyford Place in accordance with the recommendation of The Conservation Review Board.

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

1. The Council herein adopts the report of The Conservation Review Board, dated the 22nd day of August, 1975, annexed hereto as Schedule "A", as its reasons for designating the property referred to in section 2, under The Ontario Heritage Act, 1974.

2. The property municipally known as Nos. 35, 39, 41 and 43 Duke Street, sometimes known as Sandyford Place, situate on parts of Lot 22 and Part Lots 123 and 124, Registered Plan 1270, and more particularly described in Schedule "B", hereto annexed, is hereby designated as property of historic and architectural value and interest.

3. The City Solicitor is hereby authorized and directed to cause a copy of this by-law, together with reasons for the designation to be registered against the property affected in the proper registry office.

4. The City Clerk is hereby authorized and directed,

(i) to cause a copy of this by-law, together with reasons for the designation to be served on the owners and The Ontario Heritage Foundation;

(ii) to publish a notice of this by-law in a newspaper having general circulation in the Municipality of the City of Hamilton.

PASSED this 26th day of August, A.D. 1975.

E. A. Lampson
City Clerk

Victor K. Copps
Mayor

(1975) 9 R.P.D.C. 3, March 4
(1975) 17 R.B.C. 16, April 8

RECEIVED 26/8/75
AUG 25 1975
LEGAL DEPARTMENT
THE CORPORATION OF
THE CITY OF HAMILTON

Ontario

Conservation
Review Board

77 Grenville Street
Queen's Park
Toronto, Ontario
M7A 1E8

RE: CITY OF HAMILTON - INTENTION TO DESIGNATE SANDYFORD PLACE - 35,39,41,43 and 47 DUKE STREET

Ernest Valorie Swain, Q.C., Chairman August 22, 1975.
Joyce E. Bowerman

HEARING pursuant to s29(8) of The Ontario Heritage Act, 1974 of the notice of intention given by the Council of the Corporation of the City of Hamilton to designate parts of Lot 122 and part Lots 123 and 124, registered plan 1270, in the City of Hamilton to be of historic or architectural value or interest.

P.M. EKER, for the City of Hamilton
G.R. STANGER,Q.C., for La Jolla Holdings Limited and Fin-Cup Holdings Limited
L. CULVER, for Douglas Martin and the Durand Neighbourhood Association Inc.

R E P O R T

The Board attended at the City Hall of the City of Hamilton on Thursday, August 21, 1975. A public hearing was conducted in order to determine whether civic numbers 35, 39, 41, 43 and 47 Duke Street should be designated as being of historic or architectural value or interest. The properties in question were referred to throughout the hearing and are herein referred to as Sandyford Place.

The City of Hamilton uses "neighbourhoods" as a planning unit. There are 114 of these of which the Durand Neighbourhood in which Sandyford Place is situate is one.

This is Schedule "A" to By-law No. 75- 237 passed the 26th day of August,1975.

THE CORPORATION OF THE CITY OF HAMILTON

City Clerk Mayor

It is one of four comprising the downtown core of the city. The area is zoned E3 which permits high density multiple dwellings. By a decision dated June 26, 1975, the Ontario Municipal Board gave temporary approval to DE3 zoning which permits low density multiple dwellings restricted to three storeys. This approval lapses on the expiry date of the 180 days provided under The Ontario Heritage Act.

It should be noted that the owner of 35 Duke Street, the most easterly unit, did not object to the designation by City Council. It was further acknowledged by a city official that 47 Duke Street, a low rise apartment unit separated from Sandyford Place, was not included in the DE3 zone and no evidence was directed towards its preservation.

This Board sees its responsibility to be to consider the merit of Sandyford Place in the context of its historic or architectural value or interest. Historic considerations should include the social aspect of living in a particular structure at a particular point in time. This Board is examining only whether the municipality was correct, having regard to all the facts, to designate these properties. This Board is not dealing with the future of the building, the economic feasibility or viability of its preservation, or conservation, or its possible demolition. In that sense, the function of this Board is rather circumscribed.

The premises are part of a terrace block built in 1858 of Hamilton limestone. One architect called by counsel for the city commented that the buildings were classic Greek

architecture via Scotland and reflected the Scottish heritage of Hamilton. Another noted it was one of the few stone terraces and the best in the city, and possibly in Canada, a view supported by all expert witnesses.

From the historic viewpoint, every structure is a visible manifestation of the history of that community. Sandyford Place is an indicator of the character of living and the aspirations of the citizens in mid 19th century Hamilton. A number of notable persons resided in these premises which were apparently designed by the builder to impress and give a sense of distinction. It is an example of the building era in the days before the large, single family dwelling with grounds and gardens came into prominence. The builder sought street frontage and accommodation in accordance with his Scottish urban development experience. It is an indicator of the geographic expansion of the city from the commercial - industrial waterfront area.

This Board had the opportunity to view the premises before and during the hearing and to tour the immediate area. Sandyford Place is located in a district that has the largest concentration of fine stone buildings in the city. With its prominent corner site, it is the anchor for historic preservation in the Durand Neighbourhood.

The expert evidence presented to the Board indicates the uniqueness of the premises in question. They have a simple, symmetrical, well-proportioned architectural aspect and appear to be the last terrace block of its kind in Canada. Many such

....

buildings were built in England and Scotland, but only a few in Canada. Its intrinsic value lies in the fact that it is four separate units which create an architectural totality. A very competent builder has left Hamilton with a distinctive case study of earlier Victorian residential construction.

The ashlar stone work is of simple, plain lines. There was unanimity of the expert witnesses that the Front Facade was of prime importance for preservation. Attention was drawn to the window pediments, carved cave brackets, lintels, three-sided dormers with hipped roof and side lights and the cornice. As for the interior, reference was made to the staircases, fireplaces and undercut mouldings of plaster. All these elements create a building of exceptional architectural significance to the municipality, the province and, quite possibly, to the nation.

It is noteworthy, and counsel for the owners was quite candid in acknowledging this fact, that the expert evidence presented by the city in support of its desire to designate was uncontroverted. From direct evidence of an officer of the owner corporations and the cross-examination of the experts called by the city, it was apparent that the thrust of the objections to designation related solely to cost of repairs to the electrical, heating and plumbing services, roof, front steps and dormers. It was suggested that such expenses could amount to $50,000 per unit. No evidence, however, by either party was presented to establish such costs or to outline any potential structural weaknesses.

....

It is not relevant to the deliberations of this Board to know if potential purchasers are available to buy the buildings if the intention to designate is perfected by by-law, or to what uses the buildings could be put, or whether it is economically feasible to operate the buildings in any Fashion. Such considerations are beyond the limited function assigned to this Board by The Ontario Heritage Act.

In resume, this Board finds that the Council of the City of Hamilton has acted in the historic and architectural best interests of the citizens of the community in designating Sandyford Place as a property of historic and architectural value and interest. We, therefore, recommend that Sandyford Place be duly designated by by-law under the provisions of The Ontario Heritage Act.

Ernest Valorie Swain

Joyce E. Bowerman

PROPERTY MUNICIPALLY KNOWN AS NOS.

35, 39, 41 and 43 DUKE STREET

IN THE CITY OF HAMILTON

Parcel No. 1: Municipal No. 35 Duke Street, more particularly described in Instrument No. 38018 A.B. in the Registry Office of Wentworth (No. 62) registered on the 30th day of December, 1966 in the Registry Office at Hamilton, Ontario.

Parcel No. 2: Municipal No. 39 Duke Street, more particularly described in Instrument No. 273625 A.B. in the Registry Office of Wentworth (No. 62) registered on the 30th day of November, 1972 in the Registry Office at Hamilton, Ontario.

Parcel No. 3: Municipal No. 41 Duke Street, more particularly described in Instrument No. 273709 A.B. in the Registry Office of Wentworth (No. 62) registered on the 1st day of December, 1972 in the Registry Office at Hamilton, Ontario.

Parcel No. 4: Municipal No. 43 Duke Street, more particularly described in Instrument No. 277551 A.B. in the Registry Office of Wentworth (No. 62) registered on the 5th day of January, 1973 in the Registry Office at Hamilton, Ontario, but not including the property at Municipal No. 47 Duke Street.

Bill No. 240

This is Schedule "B" to By-law No. 75-237 , passed on the 26th day of August, 1975

THE CORPORATION OF THE CITY OF HAMILTON

E. A. Simpson
City Clerk

Victor K. Copps
Mayor

SCHEDULE "B" CONTINUED

Parcel No. 1

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Hamilton, in the Regional Municipality of Hamilton-Wentworth, in the Province of Ontario, being composed of an easterly portion of Lot Number One Hundred and Twenty-four (124) in Peter Hunter Hamilton's Survey and more particularly described in Instrument No. 38018 A.B. in the Registry Office of Wentworth registered on the 30th day of December, 1966.

Parcel No. 2

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Hamilton, in the Regional Municipality of Hamilton-Wentworth in the Province of Ontario, being composed of part of Lot Number One Hundred and Twenty-four (124) in Peter Hunter Hamilton's Survey, Plan 1270, and more particularly described in Instrument No. 273625 A.B. in the Registry Office of Wentworth registered on the 30th day of November, 1972.

Parcel No. 3

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Hamilton, in the Regional Municipality of Hamilton-Wentworth in the Province of Ontario, being composed of part of lots numbers One Hundred and Twenty-three (123) and One Hundred and Twenty-four (124) in Peter Hunter Hamilton's Survey, Plan 1270, and more particularly described in Instrument No. 273709 A.B. in the Registry Office of Wentworth registered on the 1st day of December, 1972.

Parcel No. 4

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the City of Hamilton, in the Regional Municipality of Hamilton-Wentworth in the Province of Ontario, being composed of part of Lot Number One Hundred and Twenty-three (123) in Peter Hunter Hamilton's Survey, Plan 1270, and more particularly described in Instrument No. 277551 A.B. in the Registry Office of Wentworth registered on the 5th day of January, 1973.

DATED August 26th, 1975

THE CORPORATION OF THE CITY OF HAMILTON

BY-LAW NO. 75-237

To Designate:

Municipal Nos. 35, 39, 41 and 43

Duke Street - Sandyford Place

As Property of:

HISTORIC AND ARCHITECTURAL
VALUE AND INTEREST

K. A. Rouff,
City Solicitor.

26/8/75

626

DB 42 69

R 752362

Ontario

Ontario Municipal Board

IN THE MATTER OF Section 35 of The Planning Act (R.S.O. 1970, c. 349)

- and -

IN THE MATTER OF an application by The Corporation of the City of Hamilton for approval of its Restricted Area By-law 75-231

C O U N S E L :

Paul M. Eker	-	for the City of Hamilton
Jay N. Rosenblatt	-	for Joseph N. Sole

DECISION OF THE BOARD delivered by P. M. BROOKS

By-law 75-231 of the Corporation of the City of Hamilton is a neighbourhood by-law applying to the Landsdale neighbourhood, located in the lower portion of the City of Hamilton. The enactment of the by-law was the end result of an elaborate and sophisticated planning process, involving a considerable amount of public participation, described as a "Developed Neighbourhood Study Programme".

The neighbourhood is bounded by Wellington Street North on the west, Wentworth Street North on the east, the C.N.R. tracks on the north and Main Street East on the south. It is a heavily populated area - 10,600 persons in 1972 - the residential accommodation which is mostly houses rather than apartments. There is little industry, and commercial development is in strips on Barton, King and Main Streets East principally.

The by-law is in partial implementation of Official Plan Amendment No. 309, which is a secondary plan applying to the Landsdale neighbourhood. The amendment was adopted in July of 1975 and approved on April 15, 1976. The secondary plan

indicates a general intention to maintain the low-rise homogeneous family residential character of the neighbourhood. Commercial uses are intended to be limited on Barton, King and Main Streets East, with recognition of some existing commercial development on Cannon Street East but a policy of reducing strip commercial on the latter street where feasible.

The basic reason for the rezoning of the neighbourhood is that a large proportion of it has been over-zoned for many years. Very little of the permitted high density apartment development has occurred, and it has been decided that the haphazard apartment development permitted by the present zoning should be prevented. The rezonings effected are quite complex, but the major changes in terms of area covered are the interior of the area bounded by Wellington Street North, Wentworth Street North, Cannon Street East, and Barton Street East, which is rezoned from various categories, the largest in terms of area being "E" (Multiple Dwellings) (an apartment zoning) to "D" (Urban Protected Residential, 1 and 2-family dwellings). This is a much more restrictive zoning, and a much more accurate reflection of existing uses. Other large areas rezoned are the areas roughly bounded by East Avenue North, the rear of the properties on the west side of West Avenue North, Cannon Street East and Wilson Street from "E" to "D" - again, a rezoning to reflect existing use and character, and the block bounded by East Avenue North, Victoria Avenue North, King William Street and Wilson Street, from "E" to "DE3" (Multiple Dwellings), a compromise zoning more restrictive than the present "E" zoning but less so than the recommended "D" zoning. Other quite substantial areas are redesignated, all from less restrictive to more restrictive designations.

At the opening of the hearing, counsel for Dr. Joseph N. Sole, the owner of Victoria Nursing Home, 176 Victoria Avenue North, advised that he was requesting that the by-law not be approved in respect to 176 Victoria Avenue, and counsel for the City stated that he would consent to this.

R. Sterman objects to his property at 99 Victoria Avenue North being redesignated from "E" to "D". This property is used as a triplex. It is not clear whether the use will be permitted as a converted dwelling house, or legally non-conforming, but Mr. Sterman objects to down-zoning an area within walking distance of downtown. The planning evidence, as previously indicated, was that "E" zoning is excessive, and that there is enough land in the Central Core (in which this area is not included) for high density development for a period of at least 20 years. Mr. Sterman has no specific plans for alternative development of his property. If he should decide that he wishes to proceed with any such project, he can apply to Council for an amendment which can then be assessed on its merits.

Dale Heneberry, owner of 67 East Avenue North, objects to the "DE3" zoning proposed to be applied to the block in which his property is located. As indicated above, this zoning is a less restrictive compromise than the "D" zoning recommended, but is more restricted than the present "E" zoning. Mr. Heneberry would prefer the more restrictive "D" zoning as a protection to the area. This is in accordance with the preference of Mr. Abraham, one of the planning witnesses. Apparently, Mr. Heneberry became the owner of this property a little too late to make his contribution to the planning process.

The Board has examined the provisions of Zoning By-law 6593 and, at least as to permissible uses, "DE3" zoning does

The planning evidence that the entire area is overzoned applies to Mr. Boehmfeld's objection. Mr. Boehmfeld gave no indication that he has any specific plans for redevelopment. If and when such plans materialize, they can be dealt with on their merits in the context of any necessary rezoning application.

The Board for all the foregoing reasons concludes that By-law No. 75-231 should be approved as enacted except as to the property known municipally as 176 Victoria Avenue North, and the Board's order will issue accordingly.

DATED at Toronto this 9th day of June, 1976.

P. M. BROOKS
MEMBER

E. A. SEABORN
MEMBER