



Report to: Development Services Committee

Meeting Date: December 6, 2021

SUBJECT: OLT Appeal of Heritage Permit Application for a Fence
3 Victoria Lane, Unionville (Ward 3)

PREPARED BY: Claudia Storto, City Solicitor and Director, Human Resources

RECOMMENDATION:

- 1) That the Report titled “OLT Appeal of Heritage Permit Application for a Fence, 3 Victoria Lane, Unionville (Ward 3)” dated November 9, 2020 be received; and
- 2) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to advise that an Ontario Land Tribunal (“OLT”) appeal has been scheduled for January 20, 2022 in respect of the Heritage Permit application for a chain link fence installed by the owners of 3 Victoria Lane.

BACKGROUND:

This matter arises from the installation of a chain link rear yard fence by the Owner of 3 Victoria Lane, which is located in the residential portion of the Unionville Heritage Conservation District (See Location Map Figure 1). The fence is located between the subject property (a modern infill dwelling) and 31 Victoria Avenue (a historic dwelling c. 1885) as well as along the south side of the Victoria Avenue pedestrian pathway leading to the adjacent valley open space.

As the properties are located in the Unionville Heritage Conservation District, they are designated under Part V of the *Ontario Heritage Act*. Therefore, alterations to the exterior of the properties, including the installation of fences, are subject to review and approval by the Municipality to ensure that the proposed work complies with the City’s by-laws and heritage policies. The subject fence, which was erected in August 2020, requires a Heritage Permit.

A Heritage Permit application was submitted and considered by the Heritage Markham Committee on September 9, 2020. The Committee recommended denial because the fence was deemed to be visible from the public realm and therefore inappropriate for maintaining the heritage character of the District.

The matter was considered by Council on November 10, 2020. The Minutes of the Council meeting and staff report may be found at this link:

<https://pub-markham.escribemeetings.com/Meeting.aspx?Id=27aa73ac-2081-41c5-93d7-0ee43e7ba8f3&Agenda=PostMinutes&lang=English&Item=63&Tab=attachments>

Council approved the Heritage Permit subject to the following conditions:

- a. The submission of the Heritage Permit application fee for unauthorized work; and
- b. The removal of a portion of chain link fence installed on 3 Victoria Lane adjacent to the eastern property of 31 Victoria Avenue, acknowledging that an application for a heritage picket fence from the owner of 31 Victoria Ave has been approved.

The Owner of 3 Victoria Lane has filed an appeal of condition b) above. The reasons for the appeal are summarized as follows:

- The Unionville Heritage Conservation District Plan (HCD) does not specifically prohibit chain link fences in rear yards;
- Black chain link fences in rear yards are permitted in other Heritage Conservation Districts in Markham;
- The fence is not visible from the street, and is partially visible from the Bruce Creek recreational trail;
- The black chain link fence is unobtrusive, recedes into the landscape, and vegetation next to the fence helps further obscure it. The fence does not distract from the heritage character or negatively impact heritage attributes of the Unionville HCD;
- There are several extant examples of black chain link fences in highly visible locations in the Unionville HCD, including in the public realm itself, that were erected when the HCD was in place;
- City Heritage Planning staff recommended approval of our Heritage Permit without including a condition that a portion of the fence be removed, stating in their report that “[a]lthough the chain link fence may not be the type of fence the owner of the historic house at 31 Victoria Avenue prefers, this fence is not negatively impacting any heritage attributes and the owner can apply for other types of fencing to be installed along the mutual property boundary”;
- The traditional picket fence approved for 31 Victoria Avenue would only be 36 to 42 inches (3 to 3.5 feet) in height, which is very low and would not provide the security we are seeking for our property; and
- In addition, the picket fence is recommended for front yard fencing in the Unionville HDC Plan, and not rear yard fencing.

The OLT has issued Notice of a Hearing for the appeal of the decision of Council (Case No. MM200032), scheduled for **January 20, 2022 at 10:00am**, to be held by video conference.

Legal Advice

Prior to determining the City's position for this appeal, confidential legal advice, which is subject to solicitor-client privilege, will be provided for consideration by the Development Services Committee and Council. Once finalized, the City's position will be shared publicly.

FINANCIAL CONSIDERATIONS

Not applicable

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES

Not applicable

BUSINESS UNITS CONSULTED AND AFFECTED

Planning and Legal Services Departments.

RECOMMENDED BY:

Claudia Storto
City Solicitor and
Director, Human Resources

ATTACHMENTS:

Figure 1	Location map
Figure 2	Location of chain link fence
Figure 3	Photographs of chain link fence

Figure 1- Location Map



Figure 2- Location of chain link fence



Figure 3 –Photographs of the chain link fence



Looking south showing the east boundary between 31 Victoria Ave and 3 Victoria Lane



Looking south across the property at 31 Victoria Ave to the fence in the distance



Close up view of the fence near the pedestrian pathway

