



The Town of Niagara-On-The-Lake

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1593 Four Mike Creek
Road
P.O. Box 190
Virgil, Ontario
L0S 1T0

Report: MHC-19-039

Committee Date:

October 08, 2019

Report To: Municipal Heritage Committee

**Subject: 114-122, 126 Queen Street, 115-119 Johnson Street, 129 Johnson, 219
Victoria Street & 222 Gate Street**

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 the Heritage Permit Application to temporarily relocate the structure locally referred to as the "Smithy" building from 114-122, 126 Queen Street, 115-119 Johnson Street, 129 Johnson and 219 Victoria Street to the residential property at 222 Gate Street and then back to the original properties, as per the specifications provided by Merit Contractors Niagara Ltd and dated September 20, 2019, be approved, subject to the following conditions:
 - a) Prior to relocation of the dwelling, an amendment be provided for the Temporary Protection Plan to include detailed specifications and mapping for the relocation of the Smithy;
 - b) Prior to any soil disturbance as a result of relocation of the Smithy building or the removal of the gravel, that the conservation of archaeological resources be addressed as required by the Ministry of Tourism, Culture and Sport who must confirm that all licensing requirements have been met and there are no further archaeological concerns, and that all archaeological reports and associated compliance letters be submitted to the Town.
- 1.2 condition 1.1 of this report be cleared to the satisfaction of the Director of Community and Development Services.
- 1.3 no charges be pursued under the *Ontario Heritage Act*, as this time, for alterations to landscaping on the property at 222 Gate Street, undertaken with Council approval and a Heritage Permit.

2. PURPOSE / PROPOSAL

The purpose of this report is to provide a recommendation to Council concerning the Heritage Permit Application (attached as **Appendix A**) to temporarily relocate the structure, locally referred to as the "Smithy" building (herein referred to as the "Smithy") to the property at 222 Gate Street and finally to the interior of the subject properties at 114-122, 126 Queen Street, 115-119 Johnson Street, 129 Johnson Street, and 219 Victoria Street, with respect to the policies of the Queen-Picton Heritage Conservation District Plan.

Furthermore, this application addresses an alteration to the landscape (the laying of gravel), at the property known municipally as 222 Gate Street, undertaken without Council approval and a Heritage Permit. In addition the property has been used as a parking lot during construction on the subject properties.

3. BACKGROUND

3.1 Site Description

The properties are located within the block bounded by Queen, Victoria, Johnson and Gate Streets (see **Figure 1**). The new development will be located in the interior portions of the subject properties and includes a hotel addition to 126 Queen Street, construction of an underground parking garage, relocation of the Smithy building, and associated landscaped grounds.

4. DISCUSSION / ANALYSIS

4.1 Ontario Heritage Act, R.S.O. 1990, c. O.18

The subject properties are located within the Queen-Picton Heritage Conservation District (herein referred to as the "District"), designated under Part V of the Ontario Heritage Act (the "OHA"). Section 42 (1) of the OHA states:

Erection, demolition, etc.

No owner of property situated in a heritage conservation district that has been designated by a municipality under this Part shall do any of the following, unless the owner obtains a permit from the municipality to do so:

- 1. Alter, or permit the alteration of, any part of the property, other than the interior of any structure or building on the property.*
 - 2. Erect, demolish or remove any building or structure on the property or permit the erection, demolition or removal of such a building or structure.*
- 2005, c. 6, s. 32 (1).*

No alterations can take place on a property until Council approval and a Heritage Permit has been received by the applicant. It is the applicant's responsibility to obtain all necessary planning and building approvals.

The OHA states the following with respect to Offences and Restoration Costs:

Offences and restoration costs

69 (1) Subject to subsection (2), every person who,

(a) knowingly, furnishes false information in any application under this Act or in any statement, report or return required to be furnished under this Act or the regulations;
(b) fails to comply with any order, direction or other requirement made under this Act; or

(c) contravenes this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing of false information, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1990, c. O.18, s. 69 (1).

Corporations

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$250,000 and not as provided therein. R.S.O. 1990, c. O.18, s. 69 (2).

(2.1) Repealed: 2005, c. 6, s. 44 (1).

Exception

(3) Despite subsections (1) and (2), if a person is convicted of the offence of contravening section 34 or 34.5, demolishing or removing a building or structure in

contravention of section 42 or contravening subsection 48 (1) or if a director or officer of a corporation is convicted of knowingly concurring in such an act by the corporation, the maximum fine that may be imposed is \$1,000,000. 2005, c. 6, s. 44 (2).

(4) Repealed: 2005, c. 6, s. 44 (3).

Property altered in contravention of the Act

(5) Subsection (5.1) applies if,

(a) property designated under Part IV is altered in contravention of section 33 or 34.5; or

(b) property located in a heritage conservation district designated under Part V is altered in contravention of section 42. 2009, c. 33, Sched. 11, s. 6 (22).

Recovery of restoration costs

(5.1) In addition to any other penalty imposed under this Act, the council of the municipality or the Minister, as the case may be, may restore the property described in subsection (5) as nearly as possible to its previous condition, if it is practicable to do so, and may recover the cost of the restoration from the owner of the property. 2009, c. 33, Sched. 11, s. 6 (22).

4.2 Queen-Picton Heritage Conservation District Plan, 1986

The subject property appears to be identified as a category 'C' building, consisting of buildings that are "unrelated to the historic character of the street." The Queen-Picton Heritage Conservation District Plan (herein referred to as the "District Plan") provides the following description and policies for category 'C' buildings:

The 'C' building stock consists of both new and old buildings that are unrelated to the historic character of the street. It is not the intent or desire of this plan to be disrespectful to this building stock but rather to encourage, over time, complementary alteration to integrate better the building stock into the streetscape as a whole. The strength of a heritage conservation district is its overall historic and architectural integrity as a streetscape of special character and quality. Accordingly the policy for the 'C' buildings is that complementary alterations shall be encouraged in accordance with the following criteria:

Set Back - Set back of new buildings shall be similar to that of the existing buildings so as to maintain an integrity of building edge. Where the existing set back is exceptionally deep, a maximum 20 feet set back will prevail.

The District Plan does not contain policies that address the relocation of "C" buildings. However, there are policies that speak to setback requirements. The building will be subject to the 7.5 metre (24.6 feet) setback requirements of the Established Residential (ER) Zone in Zoning By-law 4316-09. The District Plan does not recommend a setback of greater than 6 metres (20 feet). Staff have recommended that a map be submitted as part of the amendment to the Temporary Protection Plan (that was required as part of the Site Plan Application submitted for

the development) to indicate the area of relocation. Adherence to setback requirements will be reviewed with the submission of the detailed mapping.

With respect to the alterations to 222 Gate Street, the laying of gravel on the property was not approved by Council, nor does the use as a parking lot conform to the permitted uses under the Town's Zoning By-law. The previous dwelling on the property did have approval from Council and a Heritage Permit prior to demolition. Given that Staff do not anticipate that the alteration will result in any lasting negative impacts to the District, it is not recommended that charges be pursued under the OHA, at this time.

However, there may be unknown archaeological resources on the property at 222 Gate Street, which is within the area of archaeological potential as identified in the Town's Archaeological Master Plan (2001). As such, if there is to be any soil disturbance/excavation as a result of relocation of the Smithy or removal of gravel, then an archaeological assessment will be required for the entire property at 222 Gate Street as well as any associated letters of compliance from the Ministry of Tourism, Culture and Sport confirming that all licensing requirements have been met and there are no further archaeological concerns prior to site disturbance.

4.3 Standards and Guidelines for the Conservation of Historic Places in Canada, 2010

The primary purpose of the Standards and Guidelines for the Conservation of Historic Places in Canada (the "Standards and Guidelines") is to provide sound, practical guidance to achieve good conservation practice. This document establishes a consistent, pan-Canadian set of conservation principles and guidelines.

Standard 8 of the Standards and Guidelines recommends:

Conserve the heritage value of an historic place. Do not remove, replace or substantially alter its intact or repairable character defining elements. Do not move a part of an historic place if its current location is a character-defining element.

The Town does not have historical research on the Smithy, and the Heritage Impact Assessment submitted in support of the Planning Applications for the hotel development does not provide additional historical research on the structure. However, research undertaken as part of an archaeological assessment for the subject properties indicates that the Smithy was moved from a previous location on the north side of Queen Street to its current location on the subject properties in 1920. The structure has had a long association with the current property, however the exact location has not been established as a character-defining attribute. It is recommended that the structure may be temporarily relocated to 222 Gate Street, and finally relocated to be incorporated as part of the new interior development where it will adaptively reused and remain a part of the landscape.

5. STRATEGIC PLAN

Not applicable.

6. OPTIONS

Not applicable.

7. FINANCIAL IMPLICATIONS

There is no fee for a Heritage Permit Application and any Staff review and administrative costs are borne by the Town. Building Permit fees are borne by the applicant.

8. COMMUNICATIONS

The recommendations of the Municipal Heritage Committee will go to Council for final approval. Sections 33 and 42 of the OHA set out that, within 90 days after the notice of receipt is served on the applicant, the council may give the applicant:

- (a) the permit applied for;*
- (b) notice that the council is refusing the application for the permit; or*
- (c) the permit applied for, with terms and conditions attached.*

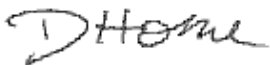
The OHA should be consulted in regard to process and for further information.

9. CONCLUSION

Application has been made for a Heritage Permit to relocate the Smithy from 114-122, 126 Queen Street, 115-119 Johnson Street, 129 Johnson and 219 Victoria Street to the residential property at 222 Gate Street and then back to the original properties. Staff are recommending approval of the Heritage Permit Application as the proposal does not appear to contradict the policies of the District Plan.

Staff are not recommending that charges be pursued under the OHA, at this time with respect to alterations to the landscape at 222 Gate Street. However, to ensure conservation of cultural heritage resources, an archaeological assessment of the property is recommended prior to any further site disturbance.

Respectfully submitted,



**Denise Horne, MA, Diploma Heritage Conservation
Planner II**

ATTACHMENTS

First Capital of Upper Canada - 1792

Appendix A



Department of Community & Development Services
1593 Four Mile Creek Road
P.O. Box 100, Virgil, ON L0S 1T0
905-468-3266 • Fax: 905-468-0301

www.notl.org

APPLICATION FOR HERITAGE PERMIT

A. APPLICANT INFORMATION

Applicant Name	NICK CAPASSO
Mailing Address	342 TOWNLINE RD, NOTL, LOS 110
Phone Number	905 687-8027 x 2245
E-mail ***	ncapasso@qssweb.com
Is the applicant the owner of the property?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

B. PROPERTY OWNER INFORMATION

Property Owner Name	PENNCAPITAL HOLDINGS INC.
Mailing Address	342 TOWNLINE RD
Phone Number	905 687-8027 x 2245
E-mail ***	g.mcconnell@qssweb.com

*** By providing an e-mail address you agree to receive communications and notices from the Town and the Municipal Heritage Committee by email

C. SUBJECT PROPERTY & PROPOSED PROJECT

Application is made to:	
<input checked="" type="checkbox"/> Construct	<input type="checkbox"/> Alter <input type="checkbox"/> Demolish <input type="checkbox"/> Erect a Sign
Subject Property Address	114-122, 126 QUEEN ST., 222 GATE ST. 115-119 JOHNSON 129 JOHNSON
Explain all work to be undertaken as part of this project (for detailed projects and any project with an associated building permit or planning application attach extra pages as necessary)	1) TO MOVE SMITHY BUILDING FROM CURRENT LOCATION IN REAR LANDS OF 115-119, 129 JOHNSON ST TO TEMPORARY LOCATION ON 222 GATE ST TO ALLOW CONSTRUCTION OF PARKING GARAGE. 2) WHEN PARKING GARAGE IS COMPLETE TO MOVE SMITHY TO FINAL LOCATION PER APPROVED SITE PLAN

- SEE MAP OF LOCATIONS IN APPENDIX A.

<p>Explain: Reasons for proposed alterations</p>	<p>TO ALLOW CONSTRUCTION OF PANICING GARAGE. PER JULY 2019 TEMPORARY PROTECTION PLAN: "THE STRUCTURE WILL BE RELOCATED TO 202 CATE ST DURING THE EARLY COURSE OF CONSTRUCTION UNTIL THE PROPOSED UNDERGROUND PANICING STRUCTURE IS PREPARED FOR FINAL RELOCATION"</p>		
<p>Explain: How the proposal enhances the cultural heritage attributes of the property and/or meets the policies of the Heritage Conservation District Plan</p>			
<p>Are any other works or projects being considered in the near future? If so, please explain</p>			
<p>Other necessary approvals include:</p>			
<p> <input type="checkbox"/> Building Permit(s) <input type="checkbox"/> Site Plan <input type="checkbox"/> Sign Permit <input type="checkbox"/> Other </p>			
<p>For (specify work):</p>			
<p>D. MATERIAL DETAILS</p>			
Attribute to be impacted	Existing Material	Proposed Material	Proposed Colours
Exterior Treatment			
Roof			

Trim			
Doors			
Windows			
Porch/ Verandah			
Fencing			
Landscaping			
Interior Features			
Other			

The following information must be submitted with every Heritage Permit Application:

- ☐ Recent photos of all elevations to be impacted (current condition within last 2 months)
- ☐ Site Plan of property and buildings
- ☐ Perspective Drawings
- ☐ Building Elevations
- ☐ Proposed colours & materials (where there is a change or repair)
- ☐ Specifications for type and application of materials (where there is a change or repair)
- ☐ Historic photos of property (where available)

Information which may be required in consultation with staff depending on the project includes:

- ☐ Heritage Impact Assessment
- ☐ Streetscape Study
- ☐ Landscape Plan
- ☐ Floor Plans
- ☐ Other: _____

I hereby certify that I am the _____ property owner or their _____ authorized agent and that the above information is true to the best of my knowledge.

I/We the Owner(s)/Agent of the subject property, and the applicant(s) of this subject application, by signing this application agree to allow either staff and/or a Committee Member of the Town of Niagara-on-the-Lake Municipal Heritage Committee the right to enter onto my property, as necessary, to view & photograph the property for the proposal. Failure to allow access onto the property may result in the application being considered incomplete.

The applicant acknowledges that the Municipality considers the application forms and all supporting materials including studies and drawings, filed with any application to be public information and to form part of the public record. With the filing of an application, the applicant consents and hereby confirms that the consent of the authors of all supporting reports have been obtained, to permit the Municipality and Region to release the application and any supporting materials either for its own use in processing the application, or at the request of a third party, without further notification to, or permission from, the applicant.

Date: SEPTEMBER 19, 2019 Print Name: NICK CARASSO

OWNER Signature: 

**Email Heritage Permit to: _____

** By providing an e-mail address you agree to receive communications and notices from the Town and the Municipal Heritage Committee by email

EMAIL TRANSMISSION

Date: September 20, 2019

Company: Merit Contractors Niagara Ltd

Attention: Dan Ruzgys

Email: druzgys@meritcontractors

From: Scott McNeil

Re: Smithy Building Move

Process for the relocation of the Smithy building from one location on site to a staging area on the same site.

The building is currently cribbed up on 5 structural steel beams at a height that would allow us to raise it and reload onto our beams and dollies. The building is moving approximately 300'

The structural steel beams and building would be raised 6" to 12" using 6 hydraulic lifters.

Once raised we would place our moving dolly trailer under the building and lower it down using the same 6 jacks. Our structural steel beams would be secured to our moving beams with chains. The building would then be moved over to the new location as prepared by Merit Contractors.

The building would be raised back up our dolly trailer removed from under the structural steel and the building cribbed level.

MEMBERS OF

International Association Of Structural Movers · Specialized Carrier And Rigging Association

P.O. Box 362, Grimsby, Ontario L3M 4H8

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