



January 13, 2015

Planning Committee  
Hamilton City Hall  
71 Main Street West,  
Hamilton, Ontario  
L8P 4Y5

Dear Mesdames & Sirs,

**Re: Application for an Amendment to the City of Hamilton Zoning By-law  
No. 05-200**

**For Lands located at 98 James Street South (Hamilton)**

**PED 15007, Ward 2**

**Overall position:**

A good portion of the former James Street Baptist Church at 98 James South has been demolished to the dismay of the DNA. However, the developer has produced a Concept/Site Plan proposal with the assistance of an architectural firm that assures the City that the major facade of the designated church and certain other salvaged materials of heritage value will be preserved and incorporated into a 30-storey mixed-use development. The "DNA" supports the development in principal for the reason that we would abhor losing what is left of this designated heritage structure. The DNA does not oppose intensification and has not raised any concerns with respect to the design of the 30 storey above grade floors of the current proposal. As you are aware, our initial concerns dealt only with the below grade parking issues.

We would now like to add two other concerns of serious nature with respect to 98 James Street South that have yet to be fully addressed by the City.

## **1. Development Implications of the Existing Light Easement.**

**Concern:** According to this staff report, “the owner of 100 James Street south is currently exploring and marketing development options for the site, including adding additional storeys to this building. It is our understanding that the property is currently zoned D2 which could allow for up to 6 storeys. However, the report also confirms that there is a light easement in place on 100 James South in favor of 98 James Street South. The DNA wishes some clarification on the restrictive implications of this light easement on the properties that share boundaries to this light easement.

- We would like to know the development restrictions in height and setback for 100 James Street South by way of this light easement?
- We would like to know the specifics of how the light easement allows for an increase in the spatial separation and limiting distance requirements under the Ontario Building Code for the proposal at 98 James Street South. It is clear that without this light easement the curtain wall glazing along the bottom 3 storey podium on the south elevation of 98 James Street South would not be possible as it is in such close proximity to the property line.

**To date we have only the following answer from City staff with regards to the character of this easement:**

*The property located at 100 James Street South is subject to an easement in favour of 98 James Street South (formerly James Street Baptist Church) with regard to light along the south lot line of 98 James Street South.*

*The deed registered on title on 100 James Street South (Instrument No. VM261216) indicates that the property is "Subject to an easement for light from and over the 25 feet of the lands herein immediately adjoining on the south the said northerly 117 feet of said Lots 75 and 76 as contained in the Deed from John W. Rosebrugh to William J. Copp et al dated August 7, 1878, and registered in the Registry Office for the County of Wentworth in Book for the City of Hamilton on September 6, 1878 as Instrument No. 18856 and together with the benefit of the covenant as to building restrictions contained in said Instrument No. 18856. "*

Staff has yet to produce Instrument No. 18856.

**The release of the easement wording by staff led to the following queries by the DNA back to staff:**

- Are we correct to understand that this light easement from 1878 cited would only restrict building on that 25 foot strip of land, and does nothing to stop a multi storey building on the same property at 100 James Street South from blocking the view and light of the property of 98 James St South? Are there no shadow restrictions?
- Is there an agreement in principal between the City of Hamilton and Stanton Renaissance and or their architect that allows for a greater percentage of glazing on the south face of 98 James St South then allowed under the O.B.C. limiting distance requirements based on the fact there is a light easement on the adjacent property restricting development within the 25 foot strip of adjacent property?

- Is it recorded anywhere of a reason or purpose of this easement from 1878 such as to restrict development adjacent to the church at 98 James St South to allow for light and views to the church property or is this only the assumed purpose?

**The DNA has yet to receive response from staff to the above questions. In the meantime the DNA has done some limited research on light easements.**

The DNA understands that a “light easement” is a type of negative easement that prevents an adjoining land owner from building a structure that would obstruct the passage of light from reaching the dominant land. The right to receive a minimum quantity of light is the purpose of this type of easement with secondary purposes that often relate to the right to fresh air and preservation of views.

Further, the DNA understands that an owner may require a light easement to prevent or limit the construction of an adjacent building along a common property line, to ensure the continued availability of natural light. Such an easement is generally obtained through negotiation since it often diminishes the use and value of the adjacent landowner’s property. A payment of money is generally required for granting such an easement.

The DNA can only assume that the original builders of the former James Street Baptist church would have negotiated this easement at great cost to ensure natural sunlight be guaranteed, and that large expanses of primary south facing glazing be granted even at such close proximity to the property line. It is also possible that the light easement served to ensure views of the church façade would remain unobstructed by future development. What seems certain is the easement went on title of property and has continued in effect through generations and carried with it the restrictive covenants on the neighbouring landowner.

**In summation, can the City further clarify the development implications from the light easement on both landowners, including from where the spatial separation and limiting distance setback would be taken for a future proposal at 100 James Street South.**

## **2. A History of Public Engagement Gone Wrong**

**Concern:** The lack of transparency by way of public engagement by the City with respect to the file for 98 James Street South.

### **Chronology of DNA’s Challenges with the City of Hamilton with respect to 98 James Street South.**

#### **September 13, 2013: Heritage Permit (HP2013-058) submitted.**

In October 2013, the DNA emails Councillor Jason Farr to request that he address our concerns to appropriate City staff, specifically to emphasize that, *“demolition and the subsequent redevelopment cannot be considered independently.”*

#### **January 2, 2014: Heritage Permit Approved by Permit Review Committee.**

The DNA has no opportunity to voice its objections as the partial-demolition (alteration) application followed the approval route through the Heritage Permit Review Committee, a sub-committee of the Municipal Heritage Committee to the Director of Planning.

#### **May 22, 2014: Presented at Design Review Panel.**

According to the Panel's mandate, meetings are open to the public and minutes are taken. The DNA requested the minutes. We were told there were no minutes. However, on Page 42 there are several notations made by the Panel. Why would these not have been made available upon request by the DNA?

**August 6, 2014: Open house and Information session.**

Directors of the DNA attend and fill out Comments Chart

**September 30, 2014: Circulation of Notice of Complete Application**

The DNA did not receive Notice (our mailing address not within 120 meters). This is difficult to comprehend considering the DNA had been active with this file since September 2013. Fortunately, a DNA member on the distribution list advised us of the application. Councillor Farr also did not inform us. In his defense, this was during Municipal elections. The DNA sends its submission November 5, 2014. (Appendix "D" to Report PED 15007)

**October 9, 2014: Circulation of Revised Notice of Complete Application.**

The DNA did not receive the Revised Notice of Complete Application.

**December 19, 2104: Notice of Public Meeting mailed to 324 properties.**

The DNA did not receive this notice. Councillor Farr provides Notice to the DNA on January 6' 2015. Considering our submission was received November 5, 2014 and acknowledged by the planner, the DNA asks why we did not receive the notice December 19, 2014?

On page 54 of (PED 15007), this report concludes with the ***Alignment to the 2012-2015 Strategic Plan***  
The DNA directs you to ***Strategic Priority #2 – Valued & Sustainable Service, Strategic Objective 2.2 Improve the City's Approach to engaging and informing citizens and stakeholders.***

In conclusion, the DNA requests that Planning Staff and Council consider reviewing and improving engagement and informing citizens and stakeholders to address the lack of transparency by way of public engagement by the City as the DNA experienced with 98 James Street South.

Respectfully Submitted,  
Janice Brown,  
President,  
Durand Neighbourhood Association