

Conservation
Review Board

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biens culturels

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CONSERVATION REVIEW BOARD

CRB0807

RE: THE MUNICIPALITY OF THE VILLAGE OF MERRICKVILLE-WOLFORD - REFUSAL OF AN APPLICATION BY DIANA McCAVERA AND MICHAEL McCAVERA UNDER S.32 OF THE ONTARIO HERITAGE ACT TO REPEAL PART OF BY-LAW 10-82 UNDER S.29 OF THE ONTARIO HERITAGE ACT DESIGNATING THE PROPERTY KNOWN MUNICIPALLY AS 212 DRUMMOND STREET EAST IN THE VILLAGE OF MERRICKVILLE-WOLFORD.

Peter A.P. Zakarow, Chair
Richard McDonald, Member

August 10, 2009

This hearing was convened under s.32(2)(a) of the Ontario Heritage Act, R.S.O. 1990, Chapter O.18, amended to 2006 ("Act"), for the purpose of reporting to the Council of the Municipality of the Village of Merrickville-Wolford ("Town"), whether, in the opinion of the Conservation Review Board ("Review Board"), on the basis of the evidence it heard, the property known as 212 Drummond Street East should have its protection by by-law under s.29 of the Act repealed as per an application under s.32 of the Act.

The current legal description of the affected property is Lot 60, south side, Drummond Street East, Plan 6, Merrickville, Ontario, and the current owners are Diana McCavera and Michael McCavera ("Owners").

This property is occupied by the Owners as a private dwelling. The 80ft by 120ft lot contains two structures; a two and one-half storey brick house; and a single storey, metal clad outbuilding. The property is currently protected under s.29 of the Act by By-law 10-82, which was passed in 1982 to designate this property and several other properties under the Act.

Under Schedule "B" of By-law 10-82, it is noted that Lot 60, south side, Drummond Street East, Plan 6, *"is recommended for designation as being of architectural value. The original two and one-half storey brick building was built in the early part of the century. The building, of brick, with stone foundation, has a large, full width verandah on the front and verandah and balcony across the rear. The windows are symmetrically placed on the east and west side, and several semi-circular larger windows. The house represents a particular style of large brick dwelling."*

The referral to the Review Board is based on the refusal by Town Council of an application by the Owners to have the by-law repealed under s.32 of the Act. An issue surrounding the alteration of the front verandah seems to be the precipitating factor in the Owners' application for by-law repeal.

The Review Board held two pre-hearing conferences on this matter, July 10, 2008, and December 1, 2008. The second pre-hearing conference was held to prepare the Parties for a hearing and to advise of a change in the presiding Review Board Chair for this proceeding. There was no settlement agreement flowing from these pre-hearings.

Notice of this hearing was given by the Review Board, in the manner required under the Act, in the local publication *The Record News EMC*, on March 5, 2009. An affidavit by the Review Board's Case Coordinator with respect to this notice was filed as Exhibit 1 (Ex 1).

The hearing day commenced with a site visit of the subject property at 9:00am on March 25, 2009, and the hearing convened the same day at 10:00am in the Merrickville-Wolford Council Chambers, 317 Brock Street, in Merrickville. While two days were scheduled for this hearing, all Parties concluded their cases at the end of the first day.

Parties in Order of Appearance

Mr. John D. Simpson, Counsel, Village of Merrickville-Wolford ("Town")
Mr. Michael D. McCavera and Diana McCavera ("Owners")

Witnesses in Order of Appearance

Ms. Anne Barr, Chair, Village of Merrickville-Wolford Municipal Heritage Committee ("Committee")

Members of the Public in Order of Appearance

None

Jurisdiction of the Board

All Parties were reminded that the primary jurisdiction of the Review Board in this proceeding is to hear evidence within the framework of Ontario Regulation 9/06, which is part of the Act, to assess the cultural heritage value or interest of the property in relation to the application under s.32 to repeal the by-law currently affording protection to the property under s.29 of the Act.

The Review Board does not address any planning applications or issues that are under the jurisdiction of the Planning Act, or consider any future use of the property.

Evidence on any of these matters will only be heard if it gives context to the discussion of cultural heritage value or interest and any heritage attributes or features that may support that value or interest. The relative weight of this evidence will be assessed by the Review Board in formulating its final recommendation.

The Review Board indicated that it would be diligent in adhering to these parameters and reminded all Parties of the practice of limiting evidence and argument deemed to be outside of this scope.

Procedural Matters

Ability to Raise Reply Evidence and Call Additional Witnesses

The Town raised a procedural issue seeking clarification from the Review Board on the Town's ability to raise reply evidence and call witnesses after the Owners' case has concluded. Given that the referral is a s.32 by-law repeal by the Owners, the Review Board noted that similar parameters used in assessing s.29 designations would be applied to this case, as this would bring the best applicable evidence and argument to the Review Board's attention. In this way, the Review Board noted that an assessment of the cultural heritage value or interest of the property, employing Ontario Regulation 9/06, would be the best way for both Parties to make their case, which echoed the sentiment of the second pre-hearing conference. The Review Board asked the Town to first present their case supporting the continued protection of the property under s.29, followed by the Owners' case supporting a repeal of the existing by-law. Given that the hearing is a mechanism to transparently and accountably hear evidence and argument from all Parties, the Review Board agreed to permit the Town to raise reply evidence and to call additional witnesses to address any issues that could arise through the presentation of the Owners' case.

Case for the Town of Merrickville-Wolford

Witness – Ms. Anne Barr

Ms. Barr's credentials were presented to the Review Board. The Review Board accepted Ms. Barr as having some advanced experience in architecture, with some limited experience in its application to heritage properties.

Ms. Barr is the current Chair of the Village of Merrickville-Wolford Municipal Heritage Committee ("Committee"). She noted that in the photo in Tab B of Ex 2 the earlier verandah shown is very different from the current, replaced verandah elements. This is an Arts and Crafts style house and it is asserted that any loss of a heritage component does cause the loss of cultural heritage value, but even with the loss of the verandah the Committee believes that the property has significant cultural heritage value.

Merrickville has 33 designated properties of a wide range of styles, and the Town's overall heritage plan is a "jigsaw puzzle" where each property is a piece. The Town asserts that this property is still an important piece. The property was designated by by-law in 1982 for reasons outlined in Schedule B of the by-law (Ex. 2 Tab C p.9). Ms. Barr still believes that the property is worthy of designation, in reference to these original reasons.

Ms. Barr suggested that having 33 designated properties in the municipality is very significant, especially for such a relatively small community. The cohesive nature of local built heritage is an important draw for tourism to the community. There is another house on Colbourne Street that has the same type of verandah and is designated, while others in town are not.

Ms. Barr outlined the communication the Committee had with the property Owners by reviewing her Witness Statement (Ex. 2 p.1). In late September 2007, the Committee received a letter from the Owners describing a plan and rationale for modifying the front verandah. The letter was tabled at the October 2007 Committee meeting, along with photos. The Committee noted that the verandah is described in the by-law as part of the heritage attributes of the property, and made the decision that it was still in good condition and thus decided not to approve its alteration. This recommendation not to approve the Owners' application to alter the verandah was referred to Council for its November 2007 meeting. Prior to this meeting of Council, the Owners made alterations to the front verandah, which resulted in the loss of railings, balustrades, posts, and possibly other elements. Ms. Barr clearly communicated that the Committee's decision to not approve the alteration was based on the fact that they could not find an example of the proposed design and style for the new verandah anywhere else in the village.

It was noted that the Owners sent a request to the Town on January 30, 2008, to remove the designation from their property. As the Committee felt that the property still held heritage significance, they recommended that Council refuse the request to repeal the designation by-law. Council endorsed this recommendation on February 11, 2008.

The Committee asserts that the architectural style of the dwelling on this property is a vernacular interpretation of the very common American Foursquare design, with arched and bay windows with stained glass, and ornate balustrades, rails, and posts that display the local building trend at that time. Ms. Barr noted that the subject property has cultural heritage value or interest under s.1.(2)(1) and s. 1.(2)(3)(i) and (ii) of Ontario Regulation 9/06, and is a very important part of the built heritage of the town.

Cross-examination – Owners (McCavera)

The witness was asked to provide examples of properties where she had undertaken an evaluation for heritage designation purposes. Ms. Barr has not been involved in any evaluations for designation and has never applied Ontario Regulation 9/06.

Mr. McCavera clarified that he never wanted to remove the front verandah, but had made a written request to the Committee to modify it. It is asserted by Mr. McCavera that there were

safety issues with the railing given wood rot and decay. The Committee did not come onto the property to assess the current condition of the railing, but rather viewed the railing from the street. It is also noted that the local Chief Building Official is an advisor to the Committee, yet Ms. Barr notes that he was never asked to look at the railing.

In terms of the decision making process, the Owners asked Ms. Barr why they were never invited to the Committee meeting. Ms. Barr explained that the Owners were informed they would be on the agenda and that the public typically knows when the Committee meets. Mr. McCavera noted that the Ontario Heritage Toolkit states that an owner must be consulted by the Municipal Heritage Committee on issues such as this, and that it should be a cooperative process. Ms. Barr explained that the Committee did a “face to face” process with another owner, and that it was not positive, so they instituted an exchange of letters process. Ms. Barr commented that the Committee may have been too formal in their process, but that the Owners had already made changes to the verandah before ever hearing the reply from the Committee.

Mr. McCavera noted that specific reference to the “verandah railing” is not made in the description of heritage attributes in the by-law. Ms. Barr said that the Committee is trying to “clean up” old by-laws but it has been a difficult process of interpreting the language used (when drafted). There has not been a designation in Merrickville since 1982, so there has been no update to designation by-law practices and no local evaluation criteria policies developed. The Committee provides property owners with the Toolkit.

Ms. Barr outlined that after the decision on the subject property was made, the Committee undertook a review of Foursquare properties in town. Specifically, Ms. Barr acknowledged that the Committee decision was initially made very quickly, with little to no justification, and therefore they thought that a more formal analysis would be appropriate. This review had the Committee walk around town to qualify properties as Foursquare. Through questioning by Mr. McCavera, it became evident that few architectural or heritage related resources were used in undertaking this review. The use of reference books was limited and there was no involvement of anyone with expertise in built heritage. When asked by the Review Board Chair, Ms. Barr noted that there are no members of the Committee with heritage expertise, only that she has some background in architecture, and that the other members are an antique dealer and a house painter, respectively.

A question was raised by Mr. McCavera as to whether the verandah was original to the construction of the house. Ms. Barr believes so, but agreed that the five foot drop to street level was unusual, and there was a further question as to whether the spindles of the railing were original or not. Ms. Barr noted that in heritage conservation, a railing or verandah can be an important part of the overall protection of the cultural heritage value or interest of a larger structure. As well, a building design can fit into a community from a contextual view. Mr. McCavera was told that his proposed railing option would not fit in with the community.

When asked by the Review Board Chair to explain the alteration process, Ms. Barr asserted that the Committee “immediately” rejected the request without any analysis because they were “told” in Mr. McCavera’s letter that the alteration was going to take place, rather than it being presented as a request for permission. Ms. Barr added that a member of the Committee

informed the group that he grew up in a very similar house and that it did not have a verandah railing like the one being proposed by the Owners. Ms. Barr again noted that none of the Committee members have heritage expertise and she was unsure whether the Committee actually justified their decision by noting that the proposed railing did not mesh with the Foursquare style, or with the surrounding community. When asked by the Chair to review the minutes of the applicable Committee or Council meeting, there were no minutes available to give context to Council's refusal of the application for the new railing.

Ms. Barr noted that the Committee prefers preservation in the form of repair *in situ* of the heritage attributes, but claims that they are also pragmatic and work with property owners to help them through changes. A recent example is the Committee working with a property owner who could not afford to preserve a fence.

Mr. McCavera noted that he sent his request letter to the Town on August 9 and that it took six weeks to get to the Committee and onto their October meeting agenda. Ms. Barr did not know the reason for the delay.

Ms. Barr acknowledged that the proposed railing design is indeed representative of the Arts and Crafts style of the day, and that one of the Committee members had originally agreed with the request. She acknowledged that the Committee never contacted the property owners to discuss options or how they could amend their design proposals to comply with the Committee's position.

At this point, the cross-examination was complete and there was nothing new in re-examination. When Ms. Barr was dismissed, the Town announced that their case was concluded. The Review Board Chair asked counsel for the Town whether any further argument or evidence would be provided, including assessment or analysis on the issue of the cultural heritage value or interest of this property, as it spoke to the very reason for the hearing, the application by the Owners to repeal the designation by-law. Counsel advised that the Town's case had been fully presented and nothing further would be added.

Case for the Owners – Michael and Diana McCavera

Witness – Mr. Michael McCavera

While the Owners were not calling any expert witnesses, and were not represented by legal counsel, the Review Board Chair agreed that it would be best for Mr. McCavera to be sworn or affirmed as a witness to present his perspective and to be cross-examined by the Town. This was agreed to by all Parties.

Mr. McCavera explained that as a former bureaucrat with the Government of Canada, he has been involved in numerous projects that have dealt with heritage sites. He noted that there is no intention to demolish the house on the property, and that apart from the railing issue the Owners want to live on their property and allow it to appreciate in value over time. They have invested about \$50,000 in the nine years they have lived on the property, mostly for exterior

improvements.

The Owners prepared a submission document book that is entered as Ex 3. A detailed description of the property is given on p.1 and an analysis of Ontario Regulation 9/06 is undertaken to justify their request to repeal the designation by-law.

Design or Physical Value:

Relating back to the original description in the by-law, it is asserted that the verandah is not “large,” as it is only seven feet deep, although it does span the width of the house. Photos presented in Tabs 5-8 illustrate that the windows are not symmetrically placed and that there are no semicircular windows. It is asserted that “cube” is not an architectural style, but rather was meant to provide cost effective, simple, kit-formed structures. The American Foursquare is purported to be a combination of Prairie Style and Craftsman Style, and there is no evidence of any designer or architect of note who expressed the cube around the time the subject property was built. Mr. McCavera’s analysis also notes that stone is the early, signature building material of the Rideau Canal and its surrounding lands, and that the brick construction of the subject property does not link to the style of the Canal Corridor. This is a plain, cube structure with few to none of the qualities of ornate or expert craftsmanship.

Historical or Associative Value:

Mr. McCavera demonstrated the spatial and historical development of Merrickville as being centred on the Rideau River and its connection to roads and highways. Analysis shows that the subject property is located outside of the core axis of development and historical importance. A history of title does not demonstrate the subject property being built or occupied by any important historical figure within the town’s development. In fact, the title analysis seems to demonstrate a middle class association that further emphasizes the role of the cube in providing economic housing.

Contextual Value:

It is argued by the Witness that any contextual connection to the community has been eroded by the Town’s decision to disrupt the historical lot layout of the area by permitting a severance and the construction of a new dwelling that destroys the western view of the subject property. It is noted that a contextual relationship to similar properties on Elgin Street could have existed at the time of designation, but that this has been lost through the severance and construction of the new, modern dwelling that was not designed to blend with the built form of the community.

Through this analysis, Mr. McCavera asserts that the criteria of Ontario Regulation 9/06 are not met, and thus this property is not of significant cultural heritage value or interest to be protected by by-law.

Cross-examination – Town

Counsel for the Town noted that the owner has incorrectly reproduced some language from the by-law, which was promptly corrected.

Mr. Simpson queried why Mr. McCavera did not include in his letter any of his evidence about

insects and deteriorating wood as the fundamental reasons for the need to replace the front railing. Mr. McCavera noted that the Ontario Heritage Toolkit outlines a consultative process that allowed him to assume that there would be an opportunity for him to raise these reasons as justification for his request. Mr. McCavera also noted that he has attempted on numerous occasions to speak to members of Council and the Committee, but that all refuse to speak to him on this issue.

Mr. Simpson noted that the McCaveras were fine with the designation of this property for the last seven or eight years but then changed the railing and now are seeking to have the designation repealed. Mr. Simpson stated that “Mr. McCavera is seeking to cover up his own improprieties by seeking to repeal the by-law.” Mr. McCavera responded to this statement, but was then aggressively interrupted by Mr. Simpson who abruptly ended his questioning.

Re-examination – Owners (McCavera)

Mr. McCavera reiterated that he was never asked to enter a consultative process with the Committee or Council. Rather, after submitting his request letter to the Town, he was contacted only by the Chief Building Official. Mr. McCavera informed the Review Board that he has been convicted of a building permit infraction for replacing his railing without a permit. Mr. Simpson was counsel for the Town in that matter.

As part of the re-examination, Ms. McCavera addressed the Review Board stating that while the railing issue was the precipitous event to start a process, as they began researching their property within the context of Ontario Regulation 9/06 they came to conclude that the property was likely not worthy of designation. They are not simply “crying wolf” by seeking a by-law repeal just because their porch is under investigation. She pointed out that there is no expert heritage evaluation of this property, nor records or original notes from 1982 when the property was designated. In fact, there are no municipal records of minutes of the Council meeting approving the designation. The Owners have spent \$225 on MFIPPA requests for research time and photocopying, but did not access any substantive records.

Mr. McCavera outlined how they designed the railing proposed to the Committee through research and their own passion for the Arts and Crafts movement. All of the furniture in their house is based on this design period. He showed numerous examples from magazines and books, including a photo of a Foursquare front verandah with railing examples from Arts and Crafts Home and Revival magazine, as well as Stickley furniture photos that appear identical to the new railing design he proposed and built.

Mr. Simpson interjected that the Owners’ statements conflict with what was said in court. Specifically, while Ms. McCavera stated that they were not “crying wolf,” Mr. McCavera said in court that if he could keep his (altered) porch, he would drop the designation repeal request. Mr. McCavera explained that this was part of the settlement discussion and that “the offer still stands.” The Review Board Chair acknowledged that the Parties were instructed during the pre-hearing conference to engage in such settlement discussion and that this is undertaken without prejudice.

Ms. Barr interjected that there was no further compromise by the Owners, as they would not

entertain suggestions for new materials, balustrades, or an overall design. She noted that the new railing had been completed by this time.

Summary – Owners (McCavera)

The Owners summarized their case by outlining that they followed the directions of the Review Board, as communicated in the second pre-hearing conference, by presenting their case within the context of Ontario Regulation 9/06. While they admit that they are not heritage experts, they consider that they have undertaken research and analysis in a way that demonstrates that this property does not merit designation under the Act. By following the Toolkit and their analysis, the Owners are asking the Review Board to recommend that the part of the designation by-law pertaining to their property be repealed.

Summary – Town

Mr. Simpson outlined that there are relevant and non-relevant aspects to this case. It is wrong that Mr. McCavera says he understands the process under the Act, and then goes against the building permit process and commits a crime, only to come before the Review Board to be excused for his indiscretion.

Mr. Simpson stated that the Contextual value of this property is all that is important here. Ms. Barr says that the structure is representative of Merrickville and is very important within this context. Her assessment is based on the Contextual criteria of Ontario Regulation 9/06. Mr. Simpson stated that the architectural and historical criteria are not important here, specifically phrasing “who cares how high the building is.” The Town wants this property to remain designated by by-law. Mr. McCavera knows he should not have removed the railing; in fact, he “destroyed” the railing. The Town considers this railing replacement a “diminution” of the heritage significance of the property, but that the property still holds much cultural heritage value.

Findings of the Board

Identification of Issues

1. Scope of Inquiry: Alteration versus By-law Repeal

The Review Board is aware that the Parties concurred in their decision to proceed with this matter under s.32 of the Act as designation by-law repeal.

While the application for a hearing under s.32(1) through the Owners’ initiative is valid and defines the scope of this proceeding, it became clear through evidence and argument that the dispute truly arose through a s.33 request and its subsequent denial to the Owners by Council to alter the front verandah railing.

The Owners wanted to replace a front verandah railing on their dwelling, and that verandah is identified as a heritage attribute of a property protected by by-law under s.29 of the Act. The Act states that for properties protected under s.29, an owner must request permission of Council to alter the property. Council will determine what impact the alteration will have on the cultural

heritage value of the property by generally seeking guidance from the listing and description of the heritage attributes in the designation by-law (or equivalent language before the pre-2005 amendments of the Act). In this case, the Owners submitted a request to the Municipal Heritage Committee which advised Council to deny the request. Council concurred with the Committee recommendation. The Owners proceeded without permission.

Without reiterating any of the substantive issues surrounding the reasons for denying this application to alter, the Act affords an opportunity to appeal this refusal through a proceeding with the Review Board. This option was never exercised by the Owners. Rather, through testimony, the Owners stated that they undertook the proposed work; and that through their research and analysis on this alteration issue, they began to question the validity of the designation of this property, thereby justifying an application under s.32 to repeal the by-law.

The Owners' application under s.32(1) to repeal the by-law was denied by the Town and the Owners applied for a Review Board proceeding. The scope of this proceeding and anticipated types of evidence were explained by the Review Board to the Parties during a pre-hearing conference.

It is the opinion of the Review Board that this matter could have been dealt with as a s.33 (alteration) application, thereby perhaps avoiding escalation to a s.32 by-law repeal application. In this regard, it is apparent that both Parties failed to conduct a reasonable process and avail themselves of the provisions under s.33 of the Act. It seems clear that the Committee and Town did not exercise proper diligence in rendering a decision on an alteration proposal that seems to have been crafted by the Owners by adopting appropriate design characteristics to complement the original design of the home. While not in receipt of a timely response to their application under s.33, it does not seem that 90 days had passed to allow the Owners to assume that council had deemed consent under s. 33(5), and thus the owners should not have proceeded with the alteration of their railing. Regardless, for the purpose of this case, it is agreed by all that the proceeding before the Review Board pertains to an owner initiated request under s.32 of the Act to repeal the by-law designating under s.29 of the Act, the property known municipally as 212 Drummond Street East.

Whether or not the Owners and Council acted within the requirements of the Act with regard to the alteration of a protected heritage property has been rendered irrelevant to this s.32 by-law repeal enquiry.

2. Presentation of a Case

It is well documented in past hearing reports that the role of the Review Board is to act in an objective way to weigh the evidence and argument raised by Parties in a hearing, in order to formulate a final recommendation to Council. In an open and accountable hearing environment, all Parties are given the opportunity to present their case and compel the weight of recommendation in their favour.

The Review Board has also enacted practices to better prepare Parties to best use their opportunity at a hearing, through directing the Parties in a pre-hearing conference to understand

the scope of enquiry, the process of the hearing, and the requirements for disclosure and conduct. It is rare for a Party, especially a municipality, to be seemingly unprepared to present a well-reasoned case that speaks directly to the scope of enquiry before the Review Board.

In all proceedings, the assigned Review Board Chair and Member are tasked with weighing the relative positions of the Parties and assigning value to the evidence and argument presented. Some factors that affect the weighting are the use of expert and/or knowledgeable witnesses and the compelling arguments used to forward a Party's position.

In this case, it was explained at the pre-hearing conference that a s.32 by-law repeal is effectively a reverse s.29 evaluation, and thus the primary scope of enquiry would be a determination of the cultural heritage value or interest of the property under the criteria of Ontario Regulation 9/06. The Review Board can only make recommendations based on the evidence presented at the hearing.

In this case, the Town presented some perspective that spoke directly to the alteration process issue that was never completed through a s.33 application and subsequent referral for a hearing. Even to this end, in the opinion of the Review Board, no substantive case was presented by the Town. Specific to the s.32 by-law repeal that defined this hearing, the Town relied on the evidence of Ms. Barr and the opportunities presented by cross-examination. Even then, the Town presented very limited and non substantive evidence or argument.

3. Role of a Municipal Heritage Committee

Under s.28(1), a municipality may by by-law establish a Municipal Heritage Committee to advise and assist Council on matters relating to the Act, including the protection of a property under s.29, Part IV, of the Act. While it is not a requirement to establish a Committee, where it exists, the Committee must be consulted by Council.

In this case, the testimony the Review Board heard from Ms. Barr as Chair of the Merrickville-Wolford Committee was problematic in many ways. Ms. Barr acknowledged that the Committee refused the application by the Owners for permission to replace the railing, and admittedly did so without any reasoned justification. While heritage expertise is not required of a Committee member, the Review Board would argue that investigative and reasoned conclusions should form the basis of the Committee recommendation to Council.

Also, it is reasonable to assume that a Municipal Heritage Committee is enacted to be a liaison between the property owner as applicant and Council to ensure that a facilitative dialogue exists. While this does not guarantee that there will not be disputes, it does ensure more of a shared understanding of issues from both sides. It was stated by Ms. Barr that the Merrickville-Wolford Committee now has a policy of not contacting owners, of not communicating meeting dates directly to those affected, and not engaging in any consultative process. This could be construed as a failure to educate heritage property owners of their rights to due process under the Act.

4. Evaluation of Cultural Heritage Value or Interest

As noted, the Review Board weighs the evidence and argument of the Parties in formulating its position for a recommendation to Council. In this case, the Review Board agreed to a procedural motion at the commencement of the hearing to allow the Town the ability to call additional witnesses and raise reply evidence at the conclusion of the Owners' case. This ensured that the Town was positioned to best address issues raised by the Owners.

The opinion of the Review Board is that the Town was remiss in focussing its case on the alteration issue, instead of identifying what continuing cultural heritage value or interest may be held by the subject property. In his summary, Mr. Simpson did adopt the language of Ontario Regulation 9/06 to support the continued designation of this property based on Contextual value or interest; and stated that Design or Physical (architectural/design) and Historical or Associative criteria did not apply to this property. This conflicted with testimony given by Town witness Ms. Barr and is particularly troublesome given that the original reason for designation in Schedule B of By-law 10-82 only identifies architectural value as the primary rationale for designation.

When asked to provide minutes of the 1982 Council meeting, other notes, or any heritage evaluation report conducted for this property, Mr. Simpson said that none exist. The Review Board could only extrapolate based on Mr. Simpson's evidence and position, that the Town had abandoned its original reasons for designating this property (Ex. 2 p.9) and instead are focusing on new reasons that speak only to the Contextual value of the property within the community.

Conversely, the diligence of the McCaveras in their research and analysis, especially as it spoke directly to the evaluation of the cultural heritage value or interest of this property, was evident to the Review Board. A substantive case was made diminishing the Design or Physical (architectural) value or interest of the property, adopting an argument around the rationale for cube construction as being more focused on economy rather than design. It was asserted that the property has minimal to no Historical or Associative value or interest.

Finally, the analysis by the Owners of the Contextual value of the property was very useful for the Review Board as this is the only category the Town is employing to justify continued protection under the Act. The argument that any Contextual value has been significantly undermined by the Town's decision to grant severance and construction of a modern dwelling that completely blocks the west façade of the subject dwelling is compelling. If the Contextual value of this property and its community is significant, it is the Owners' contention that it is reasonable to anticipate that the Town would have mitigated this negative impact on the designated property and its environs, and, at a minimum, placed design restrictions on the new development.

Discussion

The evidence presented by the Town argues that the subject property has Contextual value or interest, and seemingly discounts or undervalues any Design or Physical, and Historical or Associative values or interests, as defined by Ontario Regulation 9/06. It is unfortunate that in

1982 when the Town undertook to protect this property, no notes or justification for its designation were retained and/or none were introduced to the current proceedings to either support or refute an application to repeal this by-law. Minimal attempt was made by the Town to justify that decision made in 1982. In absence of that material, additional perspective and analysis must be conveyed to assess the cultural heritage value or interest in this property. In the opinion of the Review Board, the Town failed to do so.

The Owners employed the criteria of Regulation 9/06 to argue that the property has no Design or Physical, nor Historical or Associative values or interests, and that the Contextual value has been eroded by infill development permitted by the Town.

As the recommendation of the Review Board is based on the evidence heard at the hearing, it can only be concluded that the subject property no longer holds sufficient cultural heritage value or interest as defined by Regulation 9/06. The property, therefore, is no longer suitable for protection under s.29 of the Act and that part of By-law 10-82 that protects the property should be repealed.

Board Recommendation

For the reasons given, the Review Board recommends that the Council of the Municipality of the Village of Merrickville-Wolford proceed under s.32(2)(b) to consent to the repeal of that part of designation By-law 10-82 (Schedule B) that protects under s.29 of the Ontario Heritage Act, R.S.O. 1990, c.O.18, as amended 2006, the property known municipally as 212 Drummond Street East.

The Review Board recognizes that the final decision in this matter rests with the Council of the Village of Merrickville-Wolford, but asks that Council seriously consider that this recommendation is based on a balanced, objective hearing process.

The Board appreciates the efforts of all participants in these proceedings.

(ORIGINALLY SIGNED BY)

Peter A.P. Zakarow, Chair
August 10, 2009

(ORIGINALLY SIGNED BY)

Richard McDonald, Member
August 10, 2009

Schedule 1

Exhibits List

Exhibit 1: Affidavit of Notice of Hearing, submitted by the Review Board

Exhibit 2: Municipality of the Village of Merrickville-Wolford Document Book, submitted by the Town

Exhibit 3: Document Book, submitted by Owners Michael and Diana. McCavera

Exhibit 4: Copied letters from Mr. Wilkinson, Chief Building Official, submitted by the Owners