



Conservation  
Review Board

Ministry of  
Culture and  
Communications

Commission des  
biens culturels

Ministère de la  
Culture et des  
Communications

4th floor  
400 University Ave  
Toronto ON M7A 2R9  
Tel (416) 314-7137  
Fax (416) 314-7175

4e étage  
400 avenue University  
Toronto ON M7A 2R9  
Tél (416) 314-7137  
Télééc (416) 314-7175

September 15, 1992

Mayor John Counsell and Members of Council,  
City of Guelph, City Hall,  
59 Carden Street,  
Guelph, Ontario  
N1H 3A1

Attention: Ms. Lois A. Giles  
City Clerk

Dear Mayor Counsell and Members of Council:

**Re: Proposed designation of 122-124 Cardigan Street under Part IV  
of the Ontario Heritage Act, as a building of historic and  
architectural value and significance**

This is the report of the Board as to whether property appurtenant to the building known as 122-124 Cardigan Street should be designated as a property of architectural and historical significance under Part IV of the Ontario Heritage Act.

A hearing was held on June 5, 1991 in the Council Chambers of the City of Guelph. Michael B. Vaughan, Q.C., Chairman and Gerald M. Wineberg, Member of the Conservation Review Board were in attendance. In addition to receiving evidence at the hearing, the Board attended at the property to view the building. Ms. Lois Payne, Solicitor for the City of Guelph, presented the City's case and Mr. David Johnson, President of De-jai Holdings Inc., owner of the property, presented the case in opposition to the proposed designation on behalf of the owner. Ms. Nel Grond, a representative of the Goldie Mill Neighbourhood Association testified.

In addition to having the benefit of viewing the property and hearing the testimony which extended over a full day, the Board was assisted with 45 exhibits filed by the City and by Mr. Johnson.

## **Summary of Evidence**

### Karen Frosch

Ms. Frosch is the LACAC co-ordinator with the City Planning Department. She gave the evidence on behalf of the City.

At its meeting on August 26th, City Council considered a report by Ms. Frosch containing the LACAC's recommendation that the property be designated as a building of architectural and historical significance. The background recited in that report in support of the recommendation for designation is as follows:

With this report, the Guelph LACAC is recommending to City Council the designation of the two storey limestone building located on the southwest corner of the intersection of London Road and Cardigan Street, known municipally as 122-124 Cardigan Street, as a building of architectural and historical significance under the Ontario Heritage Act. The Committee resolved to take this step at their meeting held August 12, 1991 in response to the removal of the roof of the building by the owner, David Johnson on August 8.

As City Council is aware, the subject building and property form part of an assembly of land along with two adjacent buildings and properties having frontage along London Road and which are currently being processed for a zoning amendment from the M.2-15 (Industrial) Zone to a Specialized R.4 (Multiple Residential) Zone to allow redevelopment of the property for multiple residential use. As part of this application, the Guelph LACAC understood that the owner had intended to retain the corner limestone building for conversion into 4 dwelling units, which was supported by the Guelph LACAC, and which formed part of the recommendations put forward to the Guelph Planning Advisory Committee by Planning staff and the Staff Planning Advisory Committee for their consideration at their meeting held June 5, 1991. At that meeting, the G.P.A.C. deferred consideration of the application for a 2 month period and reconsidered the proposal at their meeting held August 7, 1991,

where the Committee recommended refusal of the Zoning Amendment. The following day the owner began to remove the existing roof from the building. The rezoning application is scheduled to be considered by City Council at their August 26 meeting.

Prior to the owner's application for this zoning amendment, which was filed last November 1990, the owner was considering the addition of three storeys to the limestone building to facilitate conversion of the building to five dwelling units under the existing zoning provisions for the property. The Guelph LACAC was made aware of this proposal, and resolved to monitor the situation as they were concerned the addition of several storeys to the building would compromise the building's architectural and historical integrity. The Committee was not aware that a permit had been issued in March of 1990 to remove the roof of the building to facilitate these proposed modifications once the owner received the necessary approvals from the City, including site plan approval, to commence this work. The Committee was satisfied that the building would be maintained through the zoning application made by the owner in 1990.

The Guelph LACAC considers this two storey limestone building to have significant heritage value and are very concerned over the likely deterioration of the building now that the roof has been removed. The Committee would reiterate that they also do not support the modifications which the owner may now be considering (i.e. adding several storeys to the original structure) and are concerned that the owner's prior willingness and intent to preserve the building as part of the proposed zoning amendment currently under consideration have now been compromised through his recent actions. The building's age, stone construction, character and contribution to the streetscape should justify its preservation, and the LACAC recommends the resolution noted above for Council's consideration.

The specific elements of the building recommended for inclusion in the designation are detailed in the "Statement of Reasons for Designation", which also outlines the historical and architectural significance of the building. It has been recommended that the form of the original roof line (i.e. that which existed prior to August 8) be designated to prevent unsympathetic upper storey additions to the original two storey structure.

The Statement of the Reasons for Designation included in that report and recommendation was as follows:

Built about 1853, this two storey building, constructed of local limestone, dates from an early period in the development of some of Guelph's original industrial lands along the Speed River east of Cardigan Street. The building was first constructed as a tavern operated by innkeeper Bernard Kelly, a native of County Longford, Ireland, who purchased the lands from the Canada Company in 1853. Kelly, who also operated a successful cooper shop on Cardigan Street, resided above the tavern with his wife, Ellen, until his death in 1876. The building was converted into a two unit- dwelling under the ownership of Mrs. Kelly and later James Goldie, owner and operator of Goldie's Mill and a prominent Guelph businessman. The building continued to be leased for residential use under the ownership of Robert Stewart, operator of the Stewart Lumber Company and later the Stewart family through to the mid 1980s.

This former inn likely served the residents and numerous employees of the various saw, flour and grist mills which flourished along the Speed River in the mid 1800s. When considered as part of the neighbourhood with nearby Goldie's Mill, it is a valuable reminder of the life which once occurred in this part of the City. The building's age, early stone construction, character and its contribution to the streetscape also justify its preservation.

The designation includes the entire two storey exterior limestone walls of the original building, including all door and window openings, but does not include later wooden additions to the rear of the building. The original roof line of the building, as existed prior to August 1991, is also designated.

Council authorized the clerk to advertise the intention to designate. That was done and a notice of objection to the proposed designation was filed by David Johnson on behalf of the owner on September 6, 1991.

The City referred the objection to this Board for a hearing on March 16, 1992, six and one half months after the objection was received. We would note that the Act requires that the matter be referred to the Board within 30 days of first publication of the notice of intention, which was first published on or about August 30, 1991.

A further letter was received by the City on September 20th by Thelma G. Harvey. A copy of that letter is certified to be a true copy of a notice of objection to the designation but, on reviewing that letter, the Board has difficulty in reaching the conclusion that it is an objection to the designation.

Ms. Payne explained that the property proposed for designation is Part I on Plan 61R-4367. We would note that the quantum of land proposed to be designated extends much beyond the portion of the building referred to in the reasons for designation and includes a substantial amount of vacant land as well as an additional building. There was no indication in the evidence as to the relevance of such a large quantity of land to the heritage value of the building. The intention to designate such a large quantity of land, most of which is vacant, is relevant to the arguments raised by Mr. Johnson. Ms. Frosch testified that the indications are that the building was constructed in approximately 1854, the builder, Bernard Kelly, having purchased the property in March of 1853. At that time the property was at the northern boundary of the town. The building was shown as a tavern in a map dated May 18, 1855 and is shown as an inn in a survey in May of 1856. Bernard Kelly owned and apparently operated the tavern and inn until he died in 1876. He was a cooper and operated a cooperage nearby on Cardigan Street. Mr. Kelly is referred to in the Guelph Street directory of 1875 as "the civil Barney Kelley" (sic).

In 1847 an entry appeared in THE GUELPH HERALD AND LITERARY AGRICULTURE AND COMMERCIAL GAZETTE, under the heading "a criminal abroad" as follows:

Escaped from the undersignd on the 19th instant, a person named Bernard Kelly, an Irishman by birth and a cooper by trade .... about three-quarters of his nose is missing ... a quarrelsome character with a charge against him of stabbing a man - liberal reward offered for his arrest.

He was convicted on April 19, 1847 of assault and battery, fined 10 shillings, given one week to pay the fine and the fine remained unpaid on July 3rd of that year.

His wife, Ellen Kelly, owned the property until 1882 and changed it to two dwelling units. There were a number of men living in the building with a variety of occupations relating to the milling industry over the years.

The property was sold in 1882 to James Goldie who, again, rented it out to a number of workers. Mr. Goldie was a prominent miller and owner of Goldie's mill across the street from the property. He sold it to the Clemmens family and it was subsequently sold to Robert Stewart Company Limited in 1813. That company owned one of the major lumber mills at the time. The Stewart family owned the property until 1988 and continued to use it for residential use.

In 1854, the drive shed and cooperage were in the immediate vicinity to the south of the building. Sawmills, a tannery, a piggery, a smithy and other related industrial uses were in the immediate vicinity.

Ms. Frosch referred to several texts and papers indicating that in the 1850s Guelph was a prominent grain marketing, milling and industrial centre. The cooperage, tavern, inn and workers housing functioned as a necessary part of the overall local economy. Guelph, as a major mill town, attracted a number of farmers and the inn was therefore necessary for the travellers. In this centre of the milling area, only the ruins of Goldie's mill and the Kelly tavern remain from the 1850s.

She described the building as being constructed of local limestone, two storeys in height with recent additions to the rear. It is at the intersection of Cardigan Street and London Road and is a simple Georgian building in style with several doors to the exterior. In its simple design it was a representative of the style for taverns for this time period. The corners display larger stone coining. There are keystones over the windows and transoms at the top of the doors. The roof line is referred to in the reasons for designation but it is not the roof itself that is intended, as that has been removed, but rather the intent is to encourage the continuation of the impression or a reminder of the previous roof line. The stone is intact and people were living in the building in the late 1980s.

The area is a termite control area and there have been termites in the building. There are no termite orders in effect at the moment with respect to the building. The only items that are of heritage significance and are referred to in the reasons for designation are the elements in the original stone structure. There will be a later Schedule C to the By-law which will contain detailed reasons for designation, in accordance with the Ministry's guidelines and those reasons will not extend beyond the original structure. Accordingly, it is her evidence that the balance of the property proposed to be designated would not be affected by the reasons for designation.

She referred to the designation criteria for the Guelph LACAC and indicated that, in terms of historic value, the building dates from an early period in the development of Guelph. It is a representative example of the work of a local builder and illustrates Guelph's social, cultural and economic history.

In terms of architectural value, she testified that it was constructed of local limestone in about 1854. There are not many buildings remaining from the 1850s and that method of construction was not used extensively after the 1870s or 1880s. As such, it is a representative example of a method of construction now rarely used. It is a representative example of an architectural style or period of building, namely of a simple Georgian inn or tavern type of building. It makes an important contribution to the streetscape. It is highly visible, in a landmark location at an intersection. It is recognizable neighbourhood landmark and is related to the Goldie's mill neighbourhood and the river valley.

In response to the notice of objection., she testified that a number of properties identified by Couling as being priority 2 have been designated and in any event the City's current criteria supersede the priorities set out in the Couling inventory. She agreed with Couling's statement that imagination and ingenuity could do much to justify the preservation of the building.

Concerning the Couling statement that later additions have robbed the building of much of its original character, she felt that that could be remedied. With respect to the termite issue, she felt that that issue could be dealt with and concerning the roof, it was really the roof line that was important rather than the roof itself and felt that any additions could be dealt with in the context of a rezoning application.

Ms. Frosch referred to a number of provisions of the official plan that are intended to protect and promote the heritage of the City through protecting and encouraging the enhancement of the unique architecture of the central business district including the limestone houses. It is the City's policy to foster development which incorporates and utilizes heritage features. The official plan refers to the fact that it is the heritage characteristics of the central business district that give the City and that district its unique character and, for that reason, it is the City's policy to encourage the preservation of historic landmarks and the maintenance of historic or architecturally significant buildings.

She referred as well to the zoning by-law. Under cross-examination by Mr. Johnson, she referred to the processes followed by LACAC and advised that, in accordance with the Act LACAC would be obliged to consider any development on the entire property proposed to be designated and whether such development would affect the reasons for designation.

She referred to the complicated history of applications for permits and rezoning with respect to the property and to the City's differing interpretations of the zoning by-law.

Mr. Johnson, president and owner of the company owning the property in question referred to a series of permits issued by the City to permit demolition of the interior because of the termites and demolition of the roof in order to permit the addition of three further storeys to the top of the building which he understood to be permitted by the zoning by-law.

The history of the applications is clearly complex and may be relevant to the equities of the matter but does not appear to bear on the question before the Board, namely the heritage value of the building.

Mr. Johnson advised that he owns a number of stone properties in Guelph and is familiar with stone buildings and with the costs of rectifying such buildings. Skilled tradesmen are required with respect to stonework to bring the property into a satisfactory state of repair. Mr. Johnson testified that he does not believe that the building is in sufficiently good condition to merit its designation. He referred to deterioration in the stonework in various locations and advised that an engineer would be required to determine the repairs necessary. He referred to the problem in trying to preserve the building in the form that the LACAC was requesting; that is, through re-construction of a roof similar to the previous roof.



He referred to the extensive delay between the City's determination to designate the building and its forwarding the matter to this Board and advised that the demolition prohibition period had expired by the time the matter came to the Board.

He advised that the designation process was initiated by the City only after he had completed the requirements to construct an addition to the building. At that point the City realized it would be required to issue a demolition permit for part of the building so it re-interpreted the zoning by-law in order to prohibit the vertical expansion which it had earlier indicated would be permitted by the by-law.

He was of the opinion that it was appropriate that some incentive be provided in order to bring the building up to standards.

He advised that he did not agree that the building had sufficient heritage value to be designated. None of the industrialists such as Goldie or Stewart had lived there. He asked why it was appropriate to designate a "criminal's tavern". If the building had been in its original condition or if the later additions had been proper or if the roof and much of the interior had not required removal, it would be more feasible to restore the building.

He referred to Ms. Frosch's rationale for the 180 day demolition delay required by the Act as being "for discussions" but he advised that none had taken place, that no one has approached him with one exception to buy the property or to discuss the matter. It was his view that the City's intention to designate was based not on the heritage merit of the building but on the City's attempt to frustrate his efforts to develop the property. He referred, in addition, to efforts he had made to secure approval to use the property as a tavern, one of the heritage uses.

Ms. Grond advised that she represented the Goldie Mill Neighbourhood Association and that the property was in the centre of the neighbourhood in question. She felt there was a need to maintain the link to the historic past. It appears that the Association is unincorporated, that there is no resolution authorizing her to speak, that she is not an officer, director or member of the executive of the Association and that there are no minutes or resolutions by the members in support of her position or authorizing her to speak on behalf of the organization. Her attendance at the Board was settled at a meeting called for another purpose which was attended by 10 people.

Under cross-examination Mr. Johnson further detailed the difficulties with using the existing building including the fact that the second floor is only 7 ft. 4 in. high which does not meet the building code requirement. That poses a difficulty with complying with the roof line stipulation in the proposed reasons for designation. He recited his various applications, negotiations and so forth. It would appear both from his evidence and from that of Karen Frosch that there are matters before the Court and before the OMB that concern the property and it would be inappropriate in those circumstances for this Board to make findings relevant to those matters and appeals, except as required by the mandate of the Board.

It was Ms. Payne's submission that the building could be used for 4 to 5 residential units in accordance with the existing zoning, as a matter of right and it was her submission that the proposed designation was not an attempt to thwart the development potential of the property.

Mr. Johnson submitted that his association with the property goes back to 1988. He realized the building was infested with termites when he purchased it but contemplated development either by rezoning or by extending the building vertically in accordance with the then interpretation of the existing zoning by-law. He has made a number of development proposals for the site including vertical extension, use of the building as a tavern, development on the balance of the site and so forth but there has not been a meeting of minds between him and the responsible officials of the City. He pointed out that after the City had refused his application in August of 1991 they then decided to initiate the designation process and did so in response to his removal of the roof of the building which he had done pursuant to the permit issued by the City itself. He felt that the designation was initiated not in response to the City's criteria but in response to the removal of the roof. He said that he was not prepared to bear the cost of restoring or re-building the structure having in mind its present condition but, rather, would prefer to proceed with development on the site. He indicated that he intends to exercise his right to add 3 additional storeys to the structure.

In his opinion the process of designation was initiated to thwart his attempt to develop the property. He is of the opinion that the City should have referred the matter to this Board immediately after receiving his notice of objection. The City's change of interpretation of the zoning by-law in order to deny him the addition that the City had earlier indicated that he was permitted to make to the

building and the City's refusal to permit demolition under its Demolition Control By-law despite the fact that the demolition delay period under the Ontario Heritage Act had expired, are, in his submission, further evidence of the City's real motivation in seeking to designate the property.

He submitted that the building has been altered enormously over the years, is not habitable and is not consistent with the other fine properties that have been designated in the City of Guelph.

He feels that the building is now unsafe and that in light of the costs involved, the only way to preserve the building is to find a way that makes it economically viable to do so.

### **Findings**

The Board accepts Ms. Frosch's evidence as to the historic and architectural value and interest of the building. The subsequent alterations, removal of the roof, and removal of extensive portions of the interior do not in our view so detract from the historic or architectural value or interest of the building as to destroy its heritage value. The building is not the most important heritage structure in Guelph but it is an integral part of the social, cultural and economic fabric of old Guelph. The wild Irish cooper-cum-innkeeper with threequarters of his nose missing, charged with stabbing, fined a shilling, refusing to pay it, is as much a part of the history and heritage of Guelph as the finely carved cold grey stones in other buildings. The "civil Barney Kelly" with his tavern, inn and family remind us of the rough and energetic part of our heritage as much as the quiet churches and elegant homes remind us of other parts. The two stone facades facing Cardigan Street and London Road are appropriate to the nature, purpose and function of the building and they, at the very least, should be preserved.

Mr. Johnson made reference to the fact that his development plans were what precipitated Council's intention to designate the property. He referred to the 6 1/2 month delay between Council's receipt of his notice of objection and the City's referral of the matter to this Board and in that connection referred to Council's obligation under Section 29(7) of the Ontario Heritage Act to refer the matter to the Board upon the expiration of the 30 day period for objection.

He further referred to the extensive amount of land that is proposed to be designated, land that extends very substantially beyond the walls of the part of the building that is referred to in the reasons for designation and land that even includes a separate building that is not referred to in the reasons.

Whether or not the City has acted in good faith is not for this Board to determine nor can this Board deal holistically with the overall development problem or proposals for the site. Those issues can be addressed only in other places.

Having reviewed the plans whereby an additional three storeys were proposed to be added to the top of the building, we do not find it surprising that the City officials might have viewed such a development proposal as posing a threat to a heritage structure. Municipalities, because of budgetary, staff and other constraints, must often move to designate properties only in response to perceived threats to those properties and in that respect, the action of the City in this instance is not unusual. In any event we do not consider that the procedural tail should wag the heritage dog.

### **Recommendations**

(1) In light of the foregoing we would recommend that only such property as is necessary to protect that part of the building that has substantial heritage value, be designated. Because the Act takes away certain rights of ownership it is important not to subject a greater amount of property to designation than is genuinely required for protection of the heritage value. In this instance the amount of property proposed to be designated substantially exceeds the amount necessary for heritage purposes, in light of the evidence and information before us. Two of the facades of the building abut streets and the vistas to those facades are therefore protected. There does not appear from the evidence to be a heritage incentive to preserving the views to the other two facades. Accordingly we recommend that the property to be designated include only the land on which the original part of the building is located; that is, the footprint of the original building.

(2) The imposition of the strictures of the Act on a property may entail an obligation at least to address the practical economic feasibility of how to preserve the heritage structure. Council may consider that it is appropriate to set a process in motion to seek to find an economically viable way to ensure the preservation of the building.

(Original Signed by)

---

Michael B. Vaughan, Q.C.  
Chairman

---

Gerald M. Weinberg  
Member