

Conservation Review Board
Commission des biens culturels



ISSUE DATE: June 03, 2016

CASE NO.:

CRB1504

PROCEEDING COMMENCED UNDER subsection 29(5) of the *Ontario Heritage Act*, R.S.O. 1990, c.O.18, as amended

Owners/Objectors: James & Dino Deluca
Subject: Notice of Intention to Designate (Collings House)
Property Address: 108 Moore Street
Legal Description: LTS 90 TO 89, PT LT 88 N/S FREDERICK ST PL 56 AS IN R0739577; BRADFORD-WGW
Municipality: Town of Bradford West Gwillimbury
CRB Case No.: CRB1504
CRB Case Name: Deluca v. Bradford West Gwillimbury (Town)

Heard: May 5 and 6, 2016 in the Town of Bradford West Gwillimbury

APPEARANCES:

Parties

Counsel

Town of Bradford West Gwillimbury

Leo Longo

James and Dino Deluca

Paul Peterson and Will Thomson

Participants

Mary Saint

Self-represented

Jim Masin

Self-represented

Dave Crocker	Self-represented
Joe Van Dyk	Self-represented
Max Papillon	Self-represented
David Chambers	Self-represented

REPORT OF THE BOARD DELIVERD BY BRUCE W. KRUSHELNICKI AND ROBERT V. WRIGHT

OVERVIEW

[1] This is a report to Council for the Town of Bradford West Gwillimbury (the “Town”) by the Conservation Review Board (the “CRB”) regarding the hearing of an objection by the owners of 108 Moore Street in the Town (the “Property”, or “Collings House”) to a notice of intention to pass a draft Town by-law (the “Draft By-law”) that would designate it as a property of cultural heritage value or interest under s. 29 of the *Ontario Heritage Act* R.S.O. 1990, c. O.18 (the “OHA”). A copy of the Draft By-law is attached as Appendix 1.

[2] For the reasons that follow, the CRB recommends to Town Council that it proceed with a by-law under s. 29(14) of the *Ontario Heritage Act* to protect the Property by designating it to be a property with cultural heritage value or interest as it meets the criteria of design, associative and contextual values.

[3] However, a decision by the Ontario Municipal Board (the “OMB”) on related *Planning Act* matters involving the same parties and panel members is forthcoming. That decision will allow the proposed consent to sever the northerly portion of the Property, which does not contain any heritage attributes. Therefore, if the Town Council accepts the cultural heritage value or interest designation recommendation in this report

after the consent to sever, then the designation need only apply to the remainder, or northern portion, of the Property.

[4] The CRB further recommends that the Town amend the Draft By-law, including the Statement of Cultural Heritage Value attached as a schedule, to reflect the above consent to sever and the evidence at the hearing, and clarify the descriptions of contextual value and the heritage attributes that establish the contextual value of the Property.

Background

[5] While this report is made under the *OHA*, the hearing concerned two matters:

- the above objection to the Draft By-law heard by the CRB under the *OHA*; and
- a set of three appeals to the OMB (two appeals of consents to sever and one appeal pertaining to a related variance) under the *Planning Act* R.S.O. 1990, c. P.13 (see OMB File No. PL150787).

[6] This was not a consolidated hearing and so the matters were heard concurrently, with joint evidence, by two members who are cross-appointed to the CRB and the OMB (collectively the “Boards”), as set out in a procedural order of the Boards issued on April 12, 2016. Therefore, this report by the CRB specifically relates to the first matter and there will be a separate decision by the OMB regarding the three appeals under the *Planning Act*.

[7] The parties to the proceedings before the Boards are the Town and the Owners, James and Dino Deluca (the “Owners”). At the hearing, the following persons, who live in the Town or its vicinity and who demonstrated their interests in the two matters, were given participant status to make oral submissions to the Boards: Mary Saint, Jim Masin,

Dave Crocker, Joe Van Dyk, and Max Papillon. David Chambers was also given participant status. He filed a written submission and spoke briefly about it.

[8] The detached house on the Property was built in the 1870s. The interior of the house is not included in the designation by-law. There are some accessory structures on the Property that were added later and are not relevant to the designation proceeding. The house is described in the notice of designation as “a two storey, L-shaped building with gothic revival and neoclassical features. The construction is of load bearing brick masonry with a parged stone foundation.” The Property rises in elevation from its southeast corner to the northwest.

[9] The proposed designation, if adopted by Town Council, would raise the status of the Property from being “listed” on the Municipal Registry for Heritage Properties to being “designated” under the *OHA*.

[10] At the commencement of the hearing, counsel for the parties advised the Boards that the Owners and the Town agree that the Property has cultural heritage value because of its design value (the house is a representative example of late 19th century domestic architecture) and its historic associations (past occupants of the house have had long-standing associations with the community). They disagree as to whether the Property should also be designated as having cultural heritage value or interest on the basis of contextual value.

[11] One of the schedules to the Draft By-law is the “Statement of Cultural Heritage Value or Interest” required under s. 29(3) of the *OHA*. Regarding the matter of contextual value, it provides:

Statement of Cultural Heritage Value

The Collings House has cultural heritage value due to its architectural design, its historic associations, and its contextual value in contributing to its immediate context. The site is associated with the ongoing evolution of the Bradford West Gwillimbury community, from its formative period in the mid-19th century to the present. ...

The house contributes to its context by its setback from the intersection of Moore and Frederick, providing an open space at the corner. Also, its south elevation faces onto Frederick Street and contributes to the character of the streetscape.

Description of heritage attributes

- General form and massing, including peaked roof, two storey height and L-shaped plan. ...
- General composition of the east elevations, including the location of existing windows and the main entrance door. ...
- The setback of the house from the intersection of Moore and Frederick streets.

[12] Prior to the hearing, the Town and the Owners provided to one another, and to the Boards: witness statements, copies of heritage assessment reports and background reports of Town staff, and a common document book with some of those items and extracts of relevant policy and legislation.

[13] The members of the Boards and representatives of the parties conducted an inspection of the Property on the first day of the hearing. This did not include an inspection of the interior of the house, or inspection of other structures on the Property, because the Town does not consider them to be heritage attributes that contribute to the Property's cultural heritage value or interest.

[14] The witnesses at the hearing were:

- on behalf of the Owners, Dan Currie (qualified by the Boards as a professional planner to provide evidence on municipal and private sector planning and heritage planning);
- on behalf of the Town, Andrew Pruss (qualified by the Boards as a professional architect to provide opinion evidence on heritage conservation planning related to "built" and heritage matters; and
- Carolyn Murphy (qualified by the Boards as a professional planner to give opinion evidence in land use planning matters, but not heritage).

[15] In addition to the evidence of the above witnesses, the Boards heard the submissions of counsel for the parties, and brief evidence and submissions of the participants.

Relevant Legislation and Regulation

[16] The relevant provisions of the *OHA* and Ontario Regulation 9/06 (“O. Reg. 9/06”) Criteria for Determining Cultural Heritage Value or Interest are attached as Appendix 2. The provisions of most relevance to the issue in this proceeding are reproduced here for ease of reference:

Ontario Heritage Act, Designation of Properties by Municipalities

Designation by municipal by-law

29. (1) The council of a municipality may, by by-law, designate a property within the municipality to be of cultural heritage value or interest if,
 (a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by regulation, the property meets the prescribed criteria; and ...

Report

(12) Within thirty days after the conclusion of a hearing under subsection (8), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the property should be designated under this Part and any information or knowledge used by it in reaching its recommendations, and the Review Board shall send a copy of its report to the other parties to the hearing.

...

Decision of council

(14) After considering the report under subsection (12), the council, without a further hearing,
 (a) shall,
 (i) pass a by-law designating the property, ...
 or
 (b) shall withdraw the notice of intention to designate the property by causing a notice of withdrawal, ...

Decision final

(14.1) The decision of the council under subsection (14) is final.

Ontario Regulation 9/06: Criteria for Determining Cultural Heritage Value or Interest

Criteria

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act.

(2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

...

3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark.

Issues

[17] As indicated, the parties agree that the Property has cultural heritage value because of its design value and its historic associations under ss. 1(2)1 and 1(2)2, respectively, of O. Reg. 9/06.

[18] Therefore, the issues that pertain to the heritage designation are:

- whether the Property should be designated to be of cultural heritage value or interest under s. 29 of the *OHA* because of its architectural design and historic associations;
- whether the Property should also be designated on the basis that it has contextual value; and
- whether part of the Property can be designated as having cultural heritage value or interest.

Discussion

[19] Although the focus of this report is the proposed heritage designation and the Draft By-law, it is also necessary to understand the context of the *Planning Act* appeal matters. Briefly, the Owners seek to sever the Property into three lots, as depicted in the sketch by Sperling Surveying Inc. dated March 5, 2015, attached as Appendix 3. The northerly parcel "A" shown in the sketch would be adjacent to McDonald Lane to

the north and Moore Street to the east. It would extend the width of the northerly portions of lots 89 and 90. Parcel "B" would be adjacent to Frederick Street to the south and Moore Street to the east. It would be wholly on a portion of Lot 90. Its southeast corner would coincide with the intersection of those two streets (the "Intersection"). Parcel "C" would be adjacent to Frederick Street to the south. The house is located on what would become Parcel C. It would be wholly on a portion of lot 89. The variance would be required for Parcel B because of its smaller lot size and to permit reduced setbacks for the existing structure.

[20] If the Property is severed as requested, then the view of the house from Frederick Street would be the same for the width of Parcel C, but as one moves farther east along Frederick Street toward the Intersection, and depending upon the viewline, the view of the easterly façade of the house could be partially obstructed by development on the proposed building envelope on Parcel B. The sketch indicates that a viewline of less than 47 degrees from the Intersection would obstruct the view to some extent. For example, a viewline of 29 degrees (as proposed by the Owners) could result in an obstructed view from the Intersection of at least half of the easterly façade of the existing building on Parcel C.

[21] It is this "viewscape" of the house on the Property from the east and the south that is at the heart of the contextual value issue. The parties agree that the viewscape from the north, i.e., McDonald Lane, and west are not relevant to the issue.

Case for the Owners

[22] The Owners submit that the landscape on Parcel B is not identified as a significant heritage feature in the heritage reports put in evidence. Without conceding that is a heritage attribute of contextual value, the Owners have nevertheless proposed a "no build zone" on Parcel B so that a structure on the proposed building envelope on Parcel B would be placed to allow a partial view of the easterly face of the house on Parcel C from the Intersection, i.e., the south-east corner of Parcel B.

[23] There were four reports put in evidence by the parties that refer to heritage matters. They are:

- the report prepared in 2014 for the Town by ERA that assessed the heritage value of the Property (the “ERA Report”);
- the report prepared in 2015 for the Owners by Su Murdoch for the purpose of commenting on the ERA Report (the “Murdoch Report”). Ms. Murdoch was not called as a witness at the hearing;
- the report prepared in 2015 for the Town by ERA to review the Murdoch Report (the “Second ERA Report”); and
- the report prepared in 2015 for the Town by Unterman McPhail to review the ERA and Murdoch Reports (the “McPhail Report”).

[24] Mr. Currie, the planner who gave evidence for the Owners, testified that the ERA Report describes the heritage attributes as setback and visibility, with no mention of landscape or views from other sides. He referred to the Murdoch Report, which describes the proposed severance plan as reflecting “a reasonable attempt to accommodate the heritage attributes of this property as described in the Notice of Intention to Designate”. He said that he agrees with Ms. Murdoch’s description of the view-lines of the house from Parcel B, but his opinion is that the viewscape is not a heritage attribute, and that the ERA Report did not describe the setback from the Intersection as a heritage aspect.

[25] Mr. Currie said that the McPhail Report confirms that there is no evidence of a designed landscape on the Property and that it has an “evolved” landscape that is not a heritage attribute. In his opinion, the heritage value is in the house and the landscape and vegetation on the Property do not have heritage value. He further opined that the setback from the Intersection is not a heritage attribute.

[26] Mr. Currie’s view is that the house is wholly located on the original lot 89 (of which proposed Parcel C is the largest part), that there is no evidence that the house

was oriented to lot 90 (of which Parcel B is the largest part), and that lot 90 was always intended to be a building lot. While Mr. Currie agrees that the house merits heritage designation, in his opinion Parcel B is really just a vacant lot and it is not necessary to designate the entire Property and the proposed severance can retain the heritage design. He stated that the proposed severance will not change the setback and that the “no-build-zone” will provide a view of the east façade of the house from the Intersection, with a 29 degree viewline, and so that if the view is a heritage attribute, then it will be preserved.

[27] Mr. Currie also gave evidence more particularly directed at the *Planning Act* appeals (the severances and the minor variance). He, and the witnesses for the Town, talked about relevant provisions of the Act, the Provincial Policy Statement, 2014, and the County and Town Official Plans. However, that evidence is not discussed in this report as its focus is the *OHA* heritage matter.

[28] On cross-examination by counsel for the Town, Mr. Currie agreed that he had not prepared a heritage report on the Property but was commenting on the reports of others. He also agreed that the Murdoch Report described that a structure on Parcel B would interfere with the “now open space” and affect the contextual value of the property and dwelling. Mr. Currie agreed that the Murdoch report lists the steps that the Owners propose to take but does not make those recommendations, and that the viewline from Lot B was proposed by the Owners. Mr. Currie agreed that “open space character” can include landscaping and vegetation but is different, and that the subject area on proposed Parcel B is “open space”. He agreed that the proposed development would alter the historic fabric and appearance of the Property but said that this would not impact the heritage features, pointing out that the described attribute is the “set back” and not “open space”, and there will still be a set back.

[29] Mr. Currie testified that it is not necessary to see the entire east façade of the house for it to be a heritage attribute, and that, in his view, the front façade of the house is on Frederick Street from which there is a walkway to the front door, despite the front

door facing Moore Street to the east. Nevertheless, he agreed that lot 90 has been used as a front yard open space area for the house. Mr. Currie said that “contextual value” is how something relates to the surrounding area and that setback helps to establish context. He agreed that the ERA Report recommends that a view-line to the house be maintained, but he said that the report does not say that it should, or needs to, be a view-line of the entire house. Mr. Currie agreed that his opinion that lot 90 was always intended to be a building lot was drawn from the ERA and Murdoch Reports and not based on any specific evidence to that effect.

[30] On re-examination by counsel for the Owners, Mr. Currie stated that the ERA Report identified the view of the south façade of the house from Frederick Street as significant and not the view from the Intersection. Nevertheless, he added that if the setback allowing a view of the house from the Intersection is a heritage attribute, then a view of a portion of the easterly façade of the house is sufficient and can be accomplished by a 29 degree sight-line from the Intersection. Mr. Currie said that he equates “reasonable accommodation” to mean mitigation.

Case for the Town

[31] The Town submits that the setback of the house from the Intersection is a heritage attribute with contextual value. The Town further submits that until Council makes its decision after receiving this report, the Planning Act appeals would be determined in a “vacuum.” The Town submits that there is no issue regarding the Property’s historical and architectural attributes, that heritage attributes are to be conserved and that in this case, the test is not whether “reasonable accommodation” has been made to address contextual value.

[32] The Boards qualified Andrew Pruss as an architect providing opinion evidence on heritage and conservation planning related to built and heritage matters. He is employed by ERA. He provided some evidence on the historical value of the house. Regarding contextual value, he testified that the house was designed for a corner

property to front on both Moore and Frederick Streets, from which it is set back 19 meters and 8 meters, respectively. He said that the more substantial frontage is on Moore Street. Regarding the former porch on the east side of the house, Mr. Pruss described it as an originally significant feature that clearly defined the frontage on Moore Street. He said that there has been considerable alteration on the east side of the house, e.g., the porch has been removed and the entrance has been moved a short distance to the south on the east wall. He referred to the last two items in the Draft Statement of Cultural Heritage Value in the ERA Report as the heritage attributes relating to contextual value. They describe: “The setback of the house from the intersection of Moore and Frederick streets”, and “The visibility of the south elevation from Frederick Street.”

[33] Regarding the Murdoch Report, Mr. Pruss said that the 29-degree view-line from the Intersection appears to have been recommended by the Owners and not Ms. Murdoch and that her assessment that it is a “reasonable attempt to accommodate the heritage attributes of this property” is the most minimal concession to heritage value possible for this site.

[34] Mr. Pruss specifically disagrees with Mr. Currie regarding setback; it is his opinion that setback is a heritage attribute. He described the setback of the house from the Intersection as its “visual setting”.

[35] Mr. Pruss believes that the original owner of the Property had assembled the lots for one house and did not intend lot 90 to be used as another building lot.

[36] On cross-examination, Mr. Pruss did not agree that the trees and shrubs obstruct the view of the house in regards to contextual value. He said they do not make the view less significant. He said that an angle of view from the Intersection that exposes the full easterly façade of the building (47 degrees) would meet the heritage attribute requirement for contextual value. Mr. Pruss referred to a 1905 photograph of the house

to confirm that historically the full eastern façade of the house could be seen from the Intersection.

[37] Carolyn Murphy was qualified by the Boards to give opinion evidence in land use planning matters. Therefore, she did not give evidence regarding the heritage issue, except as it relates to the “character of the neighbourhood”.

Participants

[38] The participant Mary Saint said that she is a long-time resident of Bradford on Frederick Street and that builders may come and go but she has enjoyed an open view of the house for 65 years.

[39] The participant Jim Masin said that he was born and raised in Bradford. He has a family recollection that a friend of his mother used to park her horse at the carriage house on the Property. He is concerned about losing the view of the house when coming up Main Street and that congestion will destroy the heart of Bradford.

[40] The participant David Crocker lives at a house to the north of the Property, on Moore Street on the other side of McDonald Lane. He is a member of the Save Our Heritage Organisation and said that a 500-name petition had been sent to Town Council opposing the proposed development. He said that the Property, with the house and the carriage house (now removed), has a long history. It is his view that the house faces Moore Street and that there is only a side-view from Frederick Street. He too is concerned that the view of the house from Moore Street will be diminished. In answer to a question from counsel for the Town, he said that the open space of the Property is the heritage attribute that should be preserved.

[41] The participant Jon Van Dyk has lived on Hurd Street in Bradford for 15 years. His house backs onto McDonald Lane, to the north-west of the Property. He is against intensification in a historical area, as he described it.

[42] Mr. Papillon urged the Boards to decline the severances and variance. He felt they would not be compatible and that intensification of this kind generally has not contributed to neighbourhood. He said that there are other areas of the Town more suited to this kind of development.

[43] The participant Mr. Chambers lives in Bond Head. He is concerned about the future of Bradford heritage. He only spoke briefly at the hearing but filed a written statement. He wrote that he has “been a champion of heritage preservation in South Simcoe at the grass roots level for the past 40 years” and that he has served as a founding member and chair of two heritage committees. He has written about heritage and received a lifetime achievement award from the Ontario Heritage Trust. He describes the Property as a landmark and a valuable cultural heritage asset in the downtown core of Bradford and asked that it remain in its present state. He agreed with counsel for the Owners that the area is “evolving” over time but he also wrote that “Bradford is lacking any downtown assets that might attract people except its collection of heritage buildings” and “[t]he survival of the downtown core rests largely on the degree to which we can attract people.”

Final Submissions of the Parties

[44] In final submissions, counsel for the Owners submits that it appears that it was never planned that the “views” of the Property would be protected and that the view is not a significant heritage attribute. The Owners submit that the view has always been obstructed and that the original context was always compromised. The Owners argue that the parties largely agree on the heritage issue and that the main point of disagreement is the setback from the Intersection. The Owners further argue that the initial ERA Report did not indicate that a view of the entire easterly façade of the building was so significant that it should be permanently protected and that a 47 degree sightline is “overreaching”, and is inconsistent with that report, and that the evidence of Mr. Pruss should therefore be discounted.

[45] The Owners submit that this case is very similar to the situation in *Qureshi v. Mississauga (City)*, 2015 CanLII 99223 (C.R.B.), (the “*Mississauga*” case), and demonstrates that part of a property can be designated. In that case the issue was whether the heritage designation should be extended to the entirety of a 2.15 acre property in Mississauga that is the remnant of a hundred acre farmstead. In 1984 the City designated the southern portion of the property under s. 29 of the *OHA*, and the 2014 notice of designation was for the entire property. The CRB recommended that the City not designate the entire property, finding that the house was the essential heritage attribute and that it was adequately protected by the existing designation.

[46] The Town’s final submission underscores that under s. 29 of the *OHA* it is the “property” that is designated. The Town submits that this report and any recommendation can add clarity to the yard open space area and its significance to the site. The Town submits that the Boards should prefer the evidence of Mr. Pruss over the evidence of Mr. Currie because of his greater experience as an architect; he is the only witness to have researched and written on the topic, and his firm prepared the ERA report; his evidence was given in a straight forward and honest manner; and ERA did the research on the Property, whereas Mr. Currie only reviewed that work.

[47] The Town argues that the Murdoch Report neither endorses nor rejects the notice of designation. The Town submits that the Murdoch Report did consider the heritage attribute of a visual setting to include views, in this case from the Intersection, giving the property contextual value.

[48] The Town further submits that Mr. Currie agreed that equally consistent with his theory that lot 90 was intended to be a building lot is that the lots were consolidated for the purpose of centrally locating the house on a large property and that it had been treated as such by every owner until now.

[49] The Town submits that a 47 degree angle sightline from the Intersection will provide greater protection of the viewscape and that the CRB can make that recommendation to clarify the draft notice of intention to designate.

[50] The Town submits that the *Mississauga* case does not stand for the proposition that a property can be partially designated. The Town submits that the correct course is to designate an entire property under a by-law and limit the wording of the designation such that it does not protect all of the features.

Analysis and Findings

[51] On the first issue, based upon the evidence and the agreement of the parties, the CRB finds that the Property should be designated to be of cultural heritage value or interest under s. 29 of the *OHA* on the basis of architectural design and historic associations.

[52] The next issue is whether the Property should only be designated on the above basis, or whether it should also be designated because it meets the contextual value criterion.

[53] There is no dispute in the evidence that the southerly portion of lot 90 (proposed Parcel B) has been used as front yard open space for the house. This contradicts Mr. Currie's opinion that the house only fronts on Frederick Street, but is consistent with the evidence of Mr. Pruss that the house has two frontages (on Frederick and Moore streets). Also, the fact that the front door faces Moore Street and the walkway is from Frederick Street supports the opinion of Mr. Pruss. The CRB prefers the evidence of Mr. Pruss over that of Mr. Currie for the reasons set out in the Town's submission, above. The CRB finds that the open space on the southerly portion of lot 90 has always been used as front yard open space for the house and that it fronts on both Frederick and Moore streets. The CRB further finds that the setback from the Intersection is a heritage attribute of the Property's contextual value.

[54] The CRB finds that there is no evidence to support Mr. Currie's opinion that lot 90 was always intended as a building lot. He did not undertake any independent research about this and that he "drew upon" the ERA and Murdoch reports. Those reports do not express that conclusion and Mr. Pruss gave evidence to the contrary. The CRB prefers the evidence of Mr. Pruss on this point and finds that it is more likely than not that original owner assembled the lots for the purpose of building a house on a larger property and that subsequent owners enjoyed the use of a larger property for approximately 150 years.

[55] The CRB finds that the Owners have not established on the evidence that the view of the house from the Intersection, and *vice versa*, has been obstructed by trees and shrubs to an extent that would negate its being a heritage attribute that contributes to the Property's contextual value. The CRB agrees with the opinion of Mr. Pruss, and finds, that trees and shrubs are part of the "viewscape" and in this instance do not make the view less significant as a contextual value heritage attribute.

[56] Furthermore, the criterion is whether (emphasis added): "The property has contextual value because it is ... visually or historically linked to its surroundings". The criterion refers to the property, which can include a structure such as the house in this instance, that is visually linked to its surroundings, which can include trees and shrubs in addition to open space. In this case, the criterion does not require a view of the house absent trees and shrubs.

[57] The CRB prefers the opinion of Mr. Pruss that a 47-degree sightline of the easterly façade of the house from the Intersection would be a heritage attribute contributing to the contextual value of the Property, and agrees with the Town's submission that would be more protective of the viewscape. A 29-degree sightline would only provide a view of approximately one-half of the easterly façade of the building and open space compared to the 47-degree sightline. There was no evidence that such a view would meet the contextual value criterion. It appears to simply be an arbitrary concession, or "saw-off", between no viewscape from the Intersection and a full

viewscape. (It was not contested whether the Intersection is the appropriate common point, or vertex.)

[58] The CRB therefore concludes that preserving the front yard open space on the southerly portion of lot 90 would make it possible to retain the Property's visual and historical link to its surroundings and its contextual value.

[59] As to the other factors of contextual value in s. 1(2)3 of O. Reg. 9/06, e.g., whether the property defines, maintains or supports the character of the area, or is a landmark, the parties did not focus their evidence or submissions on those factors and the CRB makes no additional findings in their regard. As already noted they had agreed that the Property has cultural heritage value or interest in respect of its architectural and historic associations.

[60] The third issue is whether part of the Property can be designated on either of the above bases as having cultural heritage value or interest. This is of particular importance in this case because the Owners' submit that only part of the property, i.e., two-thirds of lot 89 where the house is located (proposed Parcel C) should be designated as having cultural heritage value or interest because of its architectural design and historic associations. On the other hand, the Town argues that the Property should be designated on the additional basis of contextual value because of the heritage attributes that relate to lots 89 and 90 (proposed Parcels B and C). Neither party asserts that proposed Parcel A (the northerly one third of lots 89 and 90) has heritage attributes that contribute to the Property's cultural heritage value or interest.

[61] Under s. 29 of the *OHA*, Town Council has jurisdiction to "designate a property", and the CRB's jurisdiction is to "make a report to the council setting out its findings of fact, its recommendations as to whether or not the property should be designated." (Emphasis added.) O. Reg. 9/06 provides (emphasis added): "A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest". Each criterion also

refers to the “property”. None of the provisions in the Act of the regulation specify “part” of a property.

[62] The designation of a property and its heritage attributes are related but different. The latter are defined in the *OHA* as follows: “‘heritage attributes’ means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest”.

[63] Therefore, on a plain reading of the statute and its regulation and in the context of their relevant provisions, heritage attributes may relate to a part of a property and contribute to its cultural heritage value or interest, as do the architectural design attributes of the house in this case, but the designation of cultural heritage value or interest relates to the whole of a property.

[64] Counsel for the Owners submits that the *Mississauga* case supports the proposition that part of a property can be designated. In that case the CRB panel noted that the designating by-law was passed in 1984, before the *OHA* required a statement of cultural heritage value or interest in 2005. The report analysed the heritage attributes on parts of the whole 2.15-acre property and concluded that “there is merit in continuing protection of the southern portion of the 2.15 acres”, but recommended that the City of Mississauga should not proceed to protect the entirety of the 2.15 acres. The report further recommended (emphasis added) that the City:

weigh the advantages of amending By-law 224-84 to clarify or correct the statement explaining the property's cultural heritage value or interest and the description of the property's heritage attributes. The purpose of any such amendment would be to provide clarity for the long term protection of the property as a cultural heritage resource.

[65] The CRB agrees with the submission of counsel for the Town that the *Mississauga* case does not stand for the proposition that part of a property can be designated under s. 29 of the *OHA*.

[66] Further, in this case the heritage attributes of the Property's contextual value that contribute to its cultural heritage value or interest, relate to both lots 89 and 90.

RECOMMENDATIONS

[67] On the basis of the above evidence and findings, the CRB recommends to Town Council that it proceed with a by-law under s. 29(14) of the *Ontario Heritage Act* to protect 108 Moore Street in the Town of Bradford West Gwillimbury (the Property) by designating it to be a property with cultural heritage value or interest because it meets the criteria of design, associative and contextual values in accordance with O. Reg. 9/06.

[68] However, and as noted at the outset of this report, this matter directly relates to three OMB appeals with File No. PL150787. The decision on the OMB matter is forthcoming. For reasons that will be provided, based on the evidence at the hearing as it more specifically related to the *Planning Act* matter, including evidence not referred to in this report, and additional submissions of counsel for the parties, the OMB decision will allow the proposed consent to sever Parcel A. The decision will not allow the proposed consents to sever Parcels B and C because the heritage attributes of the Property that contribute to its contextual value relate to those remainder portions of lots 89 and 90. Therefore, if after the severance of Parcel A by the OMB decision, the Town Council accepts the cultural heritage value or interest designation recommendation in this report, then the designation need only apply to the remainder of the Property after severance of Parcel A, which the parties agree, and the CRB has found, has no relevant heritage attributes.

[69] The CRB further recommends that the Town amend the Draft By-law, including the Statement of Cultural Heritage Value attached as a schedule, to reflect the above consent to sever and the evidence at the hearing, and clarify the descriptions of contextual value and the heritage attributes that establish the contextual value of the Property, so that it can be protected as a cultural heritage resource. Amendments that

Town Council might consider could include, without limitation, detail regarding the easterly elevation of the house and its visibility from Moore Street, the two frontages of the house (on Frederick and Moore streets), and the significance of the open space on the southern portion of lot 90 (proposed Parcel B) as a heritage attribute.

“B.W. Krushelnicki”

BRUCE W. KRUSHELNICKI
EXECUTIVE CHAIR, ELTO
MEMBER, CRB

“R.V. Wright”

ROBERT V. WRIGHT
MEMBER, CRB

- Appendix 1 – Draft proposed Town Designation By-law with Schedules
- Appendix 2 – Relevant Legislation and Regulation
- Appendix 3 – Sketch of Property by Sperling Surveying Inc. dated March 5, 2015
- Appendix 4 – List of Exhibits

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Conservation Review Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Corporation of the Town of Bradford West Gwillimbury

BY-LAW 2015-XXX

Being a By-law to designate a property as being of
Historic and/or Architectural Value or Interest
The Collings House

WHEREAS Pursuant to Part IV of the Ontario Heritage Act, the council of a municipality is authorized to enact by-laws to designate a real property, including all or some of the buildings and structures thereon, to be of historic and/or architectural value or interest;

AND WHEREAS the Council of The Corporation of the Town of Bradford West Gwillimbury has caused to be served on the owners of the lands and premises at:

PART OF LOT 14, CONCESSION 7
108 Moore Street
Town of Bradford West Gwillimbury

and upon the Ontario Heritage Foundation, notice of intention to designate the Collings House at 108 Moore Street, and has caused such notice of intention to be published once in a newspaper having a general circulation in the municipality;

AND WHEREAS the reasons for designation are set out in Schedule 'B' attached hereto and forming part of this by-law;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF BRADFORD WEST GWILLIMBURY HEREBY ENACTS AS FOLLOWS:

- 1. THAT the following real properties, more particularly described in Schedule 'A' attached hereto and forming part of this by-law is hereby designated as being of historic and/or architectural value or interest:

The Collings House
108 Moore Street
Town of Bradford West Gwillimbury
County of Simcoe

- 2. THAT the town solicitor is hereby authorized to cause a copy of this by-law to be registered against the properties described in Schedule 'A' attached hereto in the property Land Registry Office.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS XX DAY OF XXXXX, 2015.

CLERK

MAYOR

SCHEDULE 'A' TO BY-LAW 2015-XXX

In the Town of Bradford West Gwillimbury, County of Simcoe, property description as follows:

CON 7, LOT 14; ROLL #431201000305500
PLAN 56 E PT LOT 88, LOT 89 TO LOT 90
108 MOORE STREET
TOWN OF BRADFORD WEST GWILLIMBURY
COUNTY OF SIMCOE

DRAFT

SCHEDULE 'B' TO BY-LAW 2015-XXX

REASONS FOR DESIGNATION – STATEMENT OF CULTURAL HERITAGE VALUE

The Collings House
108 Moore Street
Circa 1877

The Collings House is recommended for designation under Part IV of the Ontario Heritage Act as a property of cultural heritage value or interest, as described in the following Statement of Significance.

Description of the property

The Collings House, located at 108 Moore Street, is a two storey brick detached house. It was built in about 1877-1878, as indicated by tax assessment records, and has since been maintained as a private residence.

The interior of the building is excluded from this designation by-law.

Statement of cultural heritage value

The Collings House has cultural heritage value due to its architectural design, its historic associations, and its contextual value in contributing to its immediate context. The site is associated with the ongoing evolution of the Bradford West Gwillimbury community, from its formative period in the mid-19th century to the present.

The house has architectural value as a representative example of Late 19th century domestic architecture in Bradford West Gwillimbury. The exterior, which has undergone limited alterations, maintains the main features of the original design.

It has historical value having served as the residence of active members of the Bradford West Gwillimbury community, including members of the Collings family and Andrew and Mary Jane Thompson, proprietors of a main street hardware store in the town.

The house contributes to its context by its setback from the intersection of Moore and Frederick, providing an open space at the corner. Also, its south elevation faces onto Frederick Street and contributes to the character of the streetscape.

Description of heritage attributes

- General form and massing, including peaked roof, two storey height and L-shaped plan;
- Materials, including brick exterior walls and brick lintels, projecting brick belt course and recessed brick panels (on the projecting south bay) and historic foundation;
- The composition and features of the south elevation facing directly on to Frederick Street, including:
 - The first storey projecting bay window;
 - Paired second floor arch windows and 2-over-2 wood, sash windows;
 - Attic level opening; and,
 - Gable end and dropped finial.
- General composition of the east elevations, including the location of existing windows and the main entrance door.
- The placement of shutters on main elevations.
- The setback of the house from the intersection of Moore and Frederick streets.
- The visibility of the south elevation from Frederick Street.

This statement is prepared by the BWG Planning & Development Services Department based upon a heritage assessment for 108 Moore Street undertaken by ERA Architects Inc., November 2014.

Relevant Legislation and Regulation

Ontario Heritage Act, Designation of Properties by Municipalities

Definitions

1. In this Act,
“heritage attributes” means, in relation to real property, and to the buildings and structures on the real property, the attributes of the property, buildings and structures that contribute to their cultural heritage value or interest

Designation by municipal by-law

29. (1) The council of a municipality may, by by-law, designate a property within the municipality to be of cultural heritage value or interest if,
(a) where criteria for determining whether property is of cultural heritage value or interest have been prescribed by regulation, the property meets the prescribed criteria; and
(b) the designation is made in accordance with the process set out in this section.

Notice required

(1.1) Subject to subsection (2), if the council of a municipality intends to designate a property within the municipality to be of cultural heritage value or interest, it shall cause notice of intention to designate the property to be given by the clerk of the municipality in accordance with subsection (3).

Consultation

(2) Where the council of a municipality has appointed a municipal heritage committee, the council shall, before giving notice of its intention to designate a property under subsection (1), consult with its municipal heritage committee.

Notice of intention

(3) Notice of intention to designate under subsection (1) shall be,
(a) served on the owner of the property and on the Trust; and
(b) published in a newspaper having general circulation in the municipality.

Contents of notice

(4) Notice of intention to designate property that is served on the owner of property and on the Trust under clause (3) (a) shall contain,
(a) an adequate description of the property so that it may be readily ascertained;
(b) a statement explaining the cultural heritage value or interest of the property and a description of the heritage attributes of the property; and
(c) a statement that notice of objection to the designation may be served on the clerk within 30 days after the date of publication of the notice of intention in a newspaper of general circulation in the municipality under clause (3) (b).

Same

(4.1) Notice of intention to designate property that is published in a newspaper of general circulation in a municipality under clause (3) (b) shall contain,

- (a) an adequate description of the property so that it may be readily ascertained;
- (b) a statement explaining the cultural heritage value or interest of the property;
- (c) a statement that further information respecting the proposed designation is available from the municipality; and
- (d) a statement that notice of objection to the designation may be served on the clerk within 30 days after the date of publication of the notice of intention in a newspaper of general circulation in the municipality under clause (3) (b).

Objection

(5) A person who objects to a proposed designation shall, within thirty days after the date of publication of the notice of intention, serve on the clerk of the municipality a notice of objection setting out the reason for the objection and all relevant facts.

...

Referral to Review Board

(7) Where a notice of objection has been served under subsection (5), the council shall, upon expiration of the thirty-day period under subsection (4), refer the matter to the Review Board for a hearing and report.

Hearing

(8) Pursuant to a reference by the council under subsection (7), the Review Board, as soon as is practicable, shall hold a hearing open to the public to determine whether the property in question should be designated, and the council, the owner, any person who has filed an objection under subsection (5) and such other persons as the Review Board may specify, are parties to the hearing.

...

Report

(12) Within thirty days after the conclusion of a hearing under subsection (8), the Review Board shall make a report to the council setting out its findings of fact, its recommendations as to whether or not the property should be designated under this Part and any information or knowledge used by it in reaching its recommendations, and the Review Board shall send a copy of its report to the other parties to the hearing.

Failure to report

(13) Where the Review Board fails to make a report within the time limited by subsection (12), such failure does not invalidate the procedure.

...

Decision of council

(14) After considering the report under subsection (12), the council, without a further hearing,

- (a) shall,
 - (i) pass a by-law designating the property,
 - (ii) cause a copy of the by-law, together with a statement explaining the

cultural heritage value or interest of the property and a description of the heritage attributes of the property,
(A) to be served on the owner of the property and on the Trust, and
(B) to be registered against the property affected in the proper land registry office, and
(iii) publish notice of the by-law in a newspaper having general circulation in the municipality; or
(b) shall withdraw the notice of intention to designate the property by causing a notice of withdrawal,
(i) to be served on the owner of the property and on the Trust, and
(ii) to be published in a newspaper having general circulation in the municipality.

Decision final

(14.1) The decision of the council under subsection (14) is final.

O. Reg. 9/06: Criteria for Determining Cultural Heritage Value or Interest

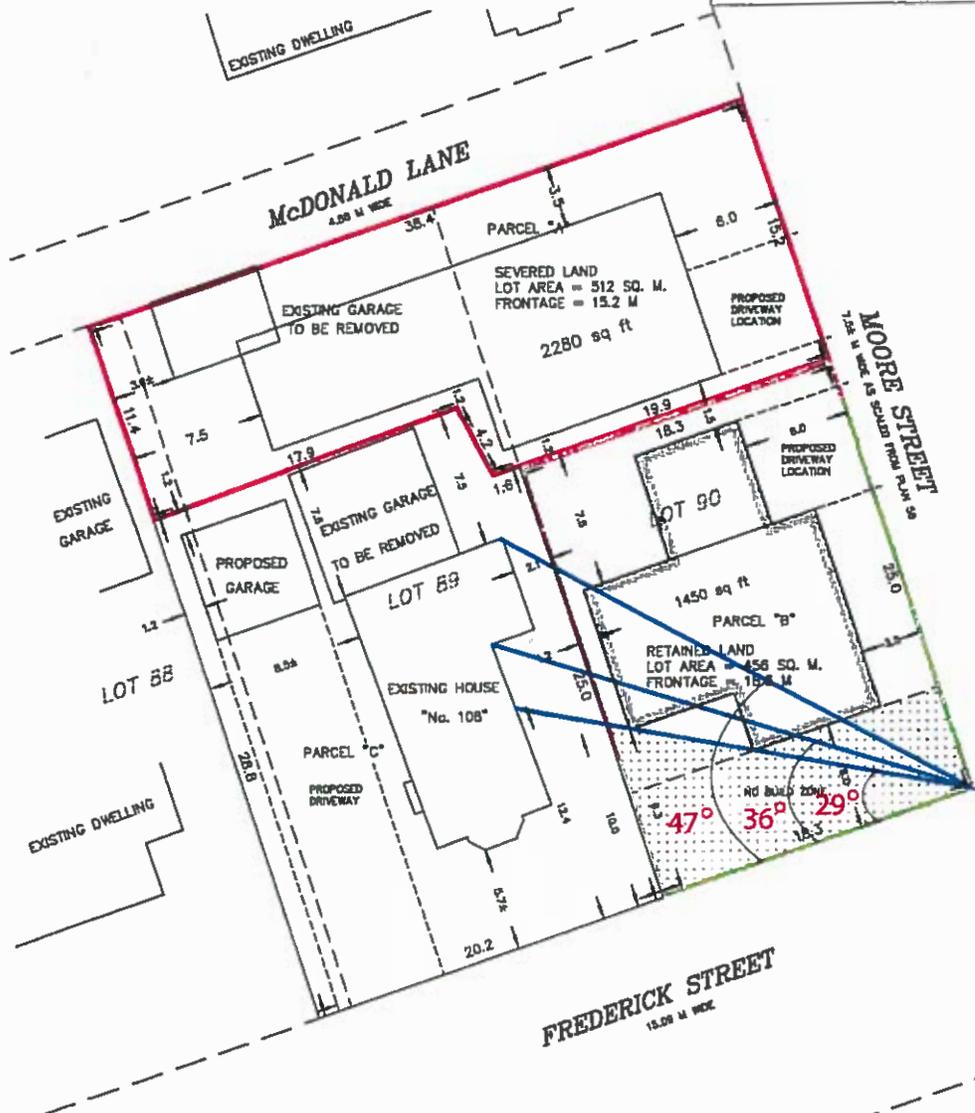
Criteria

1. (1) The criteria set out in subsection (2) are prescribed for the purposes of clause 29 (1) (a) of the Act.
- (2) A property may be designated under section 29 of the Act if it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:
 1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.
 2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
 - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
 3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark.

SKETCH TO ILLUSTRATE PROPOSED DIVISION OF
LOTS 89 AND 90 AND PART OF LOT 88
REGISTERED PLAN 56
TOWN OF BRADFORD WEST GWILLIMBURY
COUNTY OF SIMCOE



SPERLING SURVEYING INC.
 ONTARIO LAND SURVEYOR
 © COPYRIGHT 2015



NOTE:

THIS IS NOT A PLAN OF SURVEY AND HAS BEEN PREPARED FROM OFFICE RECORDS. IT IS TO BE UTILIZED SOLELY FOR DISCUSSION PURPOSES. ALL DIMENSIONS SHOWN HEREON ARE SUBJECT TO CHANGE PENDING FIELD VERIFICATION.

METRIC: DISTANCES SHOWN ON THIS SKETCH ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048

APP20F

SPERLING SURVEYING INC.
 ONTARIO LAND SURVEYOR
 2235 CANAL ROAD
 P.O. BOX 632, BRADFORD
 ONTARIO, L3Z 2B2
 (905) 954-5553

DRAWN BY ECS, OLS	DATE MAR 6, 2015	SCALE 1 : 250	FILE 14-153
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Exhibit List

- Exhibit 1: Affidavit of service of Notice of Hearing
- Exhibit 2: Joint Document Book of Parties
- Exhibit 3: Lot area analysis (large size)
- Exhibit 4: Photo of Moore Street and Food Bank parking
- Exhibit 5: Photos of Moore Street and house on Property
- Exhibit 6: Sketch of Property by Sperling Surveying Inc. dated March 5, 2015
- Exhibit 7: Witness statement of David Chambers
- Exhibit 8: Heritage Assessment Report by ERA Architects Inc. issued November 10, 2014 (in colour)
- Exhibit 9: Photo of house on Property
- Exhibit 10: Chart of estimated lot areas in assessment boundary area
- Exhibit 11: Plan of building lots
- Exhibit 12: Proposed conditions re. OMB appeals