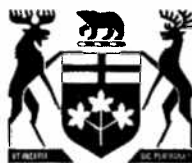


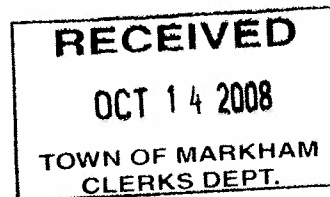
ISSUE DATE:
Oct. 10, 2008



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario



PL071258

PL071080

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Building Dep
Jim Baird

IN THE MATTER OF subsection 42(7) of the *Ontario Heritage Act*, R.S.O. 1990, c. O. 18, as amended

Appellant:	Irina Gordon
Subject:	Appeal of the Decision of Council to refuse to issue a permit to demolish a building or structure
Property Address/Description:	179 John Street
Municipality:	Town of Markham
OMB Case No.:	PL071258
OMB File No.:	PL071080

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Irina Gordon
Subject:	Minor Variance
Property Address/Description:	179 John Street
Municipality:	Town of Markham
Variance from By-law:	2237
OMB Case No.:	PL071258
OMB File No.:	PL071258
Municipal File No.:	A-117/07

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Subject:	Site Plan
Referred by:	Irina Gordon
Property Address/Description:	179 John Street, Plan 9766, Lot 31
Municipality:	Town of Markham
OMB Case No.:	PL071258
OMB File No.:	PL080285

APPEARANCES:

Parties

Town of Markham

Irina Gordon

Counsel

S. O'Melia

H. Elston

D. Berney

**DECISION OF THE BOARD DELIVERED BY J. R. AKER AND ORDER OF
THE BOARD**

Irina Gordon (Applicant/Appellant) is the owner of a residential property located at 179 John Street in the Town of Markham, in an area known as Old Thornhill. The one and a half storey house was constructed in 1948 and is located at the eastern boundary of the Thornhill–Markham Heritage Conservation District.

Ms Gordon proposes to demolish the existing dwelling and detached garage and to construct a new two-storey dwelling with an attached two-car garage, based on gothic revival brick architecture.

Application History

In August 2007, Ms Gordon submitted a Demolition Permit application, a Minor Variance application for three variances and a Site Plan Control application. On October 23, 2007, the Council of the Town of Markham refused the demolition permit for the house at 179 John Street based on a recommendation of Heritage Markham and indicated no objection to the demolition of the detached garage. On November 14, 2007, the Committee of Adjustment of the Town of Markham approved one of the three variances regarding lot frontage, which is an existing condition and refused a building height variance and a building depth variance. On January 22, 2008, the Council of the Town of Markham, in keeping with the previous decision to refuse the demolition permit, refused the Site Plan Control application. These decisions were appealed and consolidated for this hearing.

Witnesses and Evidence

Mr. Andrew Ferancik, a qualified planner, provided opinion planning evidence and heritage planning evidence in support of the proposal. Mr. Richard Schmid, a qualified home inspector, provided evidence on the existing condition of the dwelling and provided cost estimates to bring the building up to a liveable standard.

Mr. George Duncan, a heritage and conservation planner employed by the Town of Markham, provided opinion planning evidence in opposition to the proposed demolition.

Five participants provided evidence in the hearing. Mr. George Bitsakakis, a licensed architect and owner of the property directly west of the subject property, provided evidence in opposition to the proposed development. Mr. Danny Lew, the owner of 22 Ida Street, which is directly behind the subject property, spoke in opposition to the proposed development. Mr. William Wylie, representing the Ward One (South) Thornhill Residents Inc. and the Society for the Preservation of Historic Thornhill, spoke in opposition to the requested demolition. Mrs. Marion Matthias, a property owner in the Markham-Thornhill Conservation District, provided context of the area and spoke in opposition to the proposed development. Lastly, Mr. Karl Mahler, the owner of 20 Ida Street, spoke on preserving 179 John Street as a heritage property.

The hearing lasted four full days and included a view of the Heritage District, the existing streetscape, the grounds of the subject property and the exterior and interior of the existing dwelling.

Position of the Applicant/Appellant

In his testimony, Mr. Ferancik provided evidence on the Provincial Policy Statement 2005 (PPS), the Growth Plan for the Greater Golden Horseshoe 2006 (GGH), the York Region Official Plan, the Town of Markham Official Plan, the Thornhill Secondary Plan, the Thornhill-Markham Heritage Conservation District Plan (1986) and the Thornhill-Markham Conservation District Plan (2007), which has been adopted by the Council of the Town but was under appeal.

The evidence of Mr. Ferancik is that the PPS promotes healthy, liveable and safe communities. His evidence is that Section 1.1.2 encourages intensification and redevelopment within existing settlement areas, Section 1.1.3.1 states that settlement areas shall be the focus of the growth and their vitality and regeneration shall be promoted and Section 1.1.3.3 states that planning authorities shall identify and promote opportunities for intensification and redevelopment taking into account existing building stock.

In the opinion of Mr. Ferancik, the proposal represents redevelopment within an existing settlement area, which will help to achieve a healthy, liveable and safe community in keeping with Section 1.1.2 and 1.1.3.1, and according to Section 1.1.3.3, this opportunity should be promoted.

Mr. Ferancik referred to Section 2.6.1 of the PPS, which states that significant cultural heritage landscapes shall be conserved. The definition of built heritage resource in the PPS means:

...one or more *significant* buildings, structures, monuments, installations or remains associated with architectural, cultural, social, political, economic or military history and identified as being important to a community...

The evidence of Mr. Ferancik is that the existing dwelling, constructed in 1948, is not categorized as an architecturally and historically significant building in the Thornhill-Markham Heritage Conservation District Plan (1986), received a classification of Class C in the Thornhill-Markham Heritage Conservation District Plan (2007), and is not listed as designated under Part IV of the *Heritage Act*. In the opinion of Mr. Ferancik, the existing house is not a “significant built heritage resource” within the meaning of Section 2.6.1 of the PPS.

The evidence of Mr. Ferancik is that the GGH contains a set of policies to manage growth to the year 2031, and these policies encourage and mandate minimum levels of intensification within existing settlement areas.

His evidence is that Section 2.2.3 requires that by the year 2015 and for each year thereafter, a minimum of 40% of all residential development will be within the built-up area. In his opinion, this proposal does not represent intensification but the issuing of a new building permit will contribute to ensuring that the Town achieves the mandate set out in Section 2.2.3.

Mr. Ferancik referred to Section 4.2.4 e) of the GGH which directs municipalities to develop official plan policies in support of cultural heritage conservation, where feasible, as built-up areas are intensified. In the opinion of Mr. Ferancik, the GGH provides for the protection of heritage resources where it is feasible and, in this case, the protection of the existing house is not warranted. Mr. Ferancik requested to expand on this opinion later in his testimony.

Mr. Ferancik referred the Board to the York Region Official Plan and, in particular, Section 4.2 – Cultural Heritage. Section 4.2.1 states that it is the policy of Council to compile a list of significant cultural heritage resources and Section 4.2.3 requires area municipalities to adopt official plan policies to conserve significant cultural

heritage resources. Lastly, Section 4.2.4 encourages area municipalities to document other significant heritage resources.

In the opinion of Mr. Ferancik, the heritage policies require the preservation of significant heritage resources that are to be conserved, while other significant heritage resources will be documented and non-significant heritage resources are not mentioned. In his opinion, the existing dwelling does not represent a significant heritage resource and certainly not one that merits preservation.

Mr. Ferancik referred to the Town of Markham Official Plan and, in particular, Section 1.5 h) under the General Goals of This Plan which is to foster an understanding of and to endeavour to protect the heritage of the Town, and Section 2.1 under General Development. This section encourages the maintaining and strengthening of individual community identities and accommodating the anticipated future growth within a compact urban envelope. His evidence is that these policies provide a balanced protection of the character and heritage of the Town while facilitating future growth within a compact urban envelope. In the opinion of Mr. Ferancik, the proposal fulfills these general development principles by strengthening the community's character and allowing future growth within the urban envelope.

Under Visual Appearance – Section 2.3.1 a), the Town shall assess and may recommend revisions to proposals for any development with respect to its appropriateness of the character of the area and the location characteristics of the site, the preservation of the natural contours and features such as trees and hills, and the appearance including bulk and height of the buildings. The evidence of Mr. Ferancik is that the site is currently screened from view by vegetation and the grade difference from John Street to the proposed dwelling will remain unchanged. His evidence is that the proposed new dwelling is carefully designed and of high quality that considers the neighbourhood's heritage context. In his opinion, the guidelines with respect to visual appearance will be met by the proposed demolition and the design of the new dwelling.

Mr. Ferancik referred the Board to the Heritage Conservation Section of the Official Plan. One of the objectives under Section 2.5 b) i) is to ensure the protection, preservation and/or continued use of historically and/or architecturally significant buildings, areas and sites. Section 2.5.1 b) states that the Town has compiled an "Inventory of Heritage Buildings" and additional buildings of historical or architectural

merit may be added to the inventory. The evidence of Mr. Ferancik is that the existing house at 179 John Street is not listed in the "Inventory of Heritage Buildings".

The Town sets out criteria to be considered in the designation of buildings pursuant to Part IV of the *Ontario Heritage Act*. The criteria of Section 2.5.1 c) is as follows:

- ii) In determining candidates for designation, Council shall consider the following criteria:
 - the building or property is associated with the life of a person important in the history of the Town, the Province or the Nation; or
 - the building or property is the location of, or is associated in a significant way with an historic event; or the building embodies the distinctive visible characteristics of an architectural style, period or method of construction, or the work of an important building designer or architect; or
 - the building is an integral part of a distinctive area of the community or is considered to be a landmark of special value which contributes to the distinctive quality or identity of the Town.

The evidence of Mr. Ferancik is that the existing house does not meet any of the above criteria and, therefore, is not individually designated under Part IV of the *Ontario Heritage Act*. In the opinion of Mr. Ferancik, designated Heritage Conservation Districts often include non-heritage buildings and the existing building has no individual heritage significances simply by being within a heritage district. In his opinion, the proposal will meet the objectives related to heritage preservation by providing a sympathetically designed building and the character of the community will be maintained.

Mr. Ferancik referred to the Thornhill Secondary Plan and, in particular, Section 12.2 – Heritage Conservations District, which speaks to the preservation of the historical, village-like ambience. In his opinion, the demolition and construction of the carefully designed replacement house will maintain the "village-like ambience".

The evidence of Mr. Ferancik is that the Thornhill-Markham Heritage Conservation District Plan (1986) defined and established a heritage conservation district in the Town of Markham. Although Council adopted a new Thornhill-Markham Heritage Conservation District Plan (2007), as it was under appeal at the time of this hearing, the 1986 Heritage District Plan is currently in force.

The evidence of Mr. Ferancik is that there are thirteen objectives set out in Section 3.1 of 1986 Heritage District Plan. His evidence is that three of those objectives are most relevant:

1. to preserve architecturally and/or historically significant buildings; retain, where possible, buildings that are compatible; and, make incompatible buildings, where possible, fit with the visual character of the district;
3. to develop vacant building and redevelopment sites in a way which will enhance the district's character;
8. to preserve trees and other vegetation, and encourage the planting of species characteristic to the district;

The evidence of Mr. Ferancik is that the building is a small, one and a half storey, single-detached dwelling with wood clapboard siding. In his opinion, the existing house is not an architecturally or historically significant building and that demolition followed by a sympathetic replacement is more appropriate redevelopment than attempting to renovate a deteriorated building built just prior to 1950. The proposal will also maintain the significant foliage along John Street.

Section 3.3 entitled Architecturally and Historically Significant Buildings provides a list of thirty-seven properties that have buildings of architectural and historical significance. The evidence of Mr. Ferancik is that 179 John Street is not listed as a building of architectural and historical significance.

Mr. Ferancik referred to Section 3.3.4 of the 1986 Heritage District Plan entitled Demolition, which states, "The demolition of significant buildings will be strongly resisted". The evidence of Mr. Ferancik is that 179 John Street is not listed as a significant building and the 1986 Heritage District Plan is silent regarding preservation of buildings that are not specifically listed. In his opinion, there is nothing in the 1986 Heritage District Plan that requires the existing house to be retained.

Mr. Ferancik referred to the Thornhill-Markham Heritage Conservation District Plan (2007). There are eight properties that have been individually designated under Part IV of the *Ontario Heritage Act*. His evidence is that Section 2.2.2 introduces a classification evaluation for all buildings within the 2007 Heritage District Plan. The classifications of Class A, Class B and Class C indicate the relative significance of each property. For example, all properties designated under Part IV of the *Ontario Heritage Act* are Class A.

Class A are Buildings and Properties of major importance to the District. Class B are Buildings and Properties of importance to the District. Class C are all other Buildings and Properties in the District. The evidence of Mr. Ferancik is that 179 John Street is

rightfully identified as a Class C building as it satisfies the criteria set out in the 2007 Heritage District Plan. The criteria for a Class C building is the following:

- They are buildings/properties primarily post 1939.
- They include buildings/properties that are sympathetic to the District by virtue of their scale or design qualities.
- They include buildings/properties not sympathetic to the historic character of the District.

In the opinion of Mr. Ferancik, the classification of Class C applied to 179 John Street recognizes that the existing building is not a significant heritage building, especially in the context of the higher classifications. The objectives set out in the 2007 Heritage District plan are to retain and conserve the heritage buildings identified as Class A in the District Plan and to discourage the demolition of Class B buildings as they are supportive of the overall heritage character of the area. His evidence is that, under Section 4.3.3, demolition of Class C buildings will be considered on a case-by-case basis. In the opinion of Mr. Ferancik, the policies for Class C buildings do not preclude the option of demolition.

The evidence of Mr. Ferancik is that Section 4.4 – New Residential Buildings requires new, single, detached dwellings to have respect for and be compatible with the heritage character of the District and contains policies for new buildings. In his opinion, the proposed replacement dwelling with a gothic revival design meets the requirements of the 2007 Heritage District Plan.

In the opinion of Mr. Ferancik, the permit to demolish the existing house and garage should be approved. In his opinion, the demolition is consistent with the Provincial Policy Statement 2005 and with the Growth Plan for the Greater Golden Horseshoe 2006 with respect to conservation of significant heritage resources. In his opinion, the proposed demolition conforms to the York Regional Official Plan, the Town of Markham Official Plan and the Thornhill Secondary Plan by encouraging reinvestment in urban areas while maintaining the character of the community by providing a sympathetically designed dwelling complementary to the heritage district.

In the opinion of Mr. Ferancik, the proposed demolition conforms to the in-force Thornhill-Markham Heritage Conservation District Plan (1986) given that the existing

dwelling is not listed as a historically or architecturally significant building and that the proposed replacement dwelling conforms to the policies of this Plan.

In the opinion of Mr. Ferancik, the proposed demolition conforms to the emerging policy framework of the Thornhill-Markham Heritage Conservation District Plan (2007). The existing building is a Class C, which does not require that the building be retained in contrast to buildings determined to be Class A or Class B.

Mr. Ferancik provided evidence on the three requested variances that are required to facilitate the construction of the proposed two-storey dwelling. The Applicant/Appellant is requesting relief from the requirements of By-law No. 2237, as amended to permit:

- a) An existing lot frontage of 70 ft; whereas the By-law requires a minimum lot frontage of 75 ft,
- b) A building height of 13.33m; whereas the By-law permits a maximum height of 9.8m,
- c) A maximum building depth of 20.1m; whereas the By-law permits a maximum building depth of 16.8m.

The evidence of Mr. Ferancik is that the existing lot at 179 John Street is a very large lot of approximately 18,250 square feet (Exhibit 5A), with an existing lot frontage of 70 feet. The lot frontage of 70 feet is an existing condition of a registered lot created prior to the Zoning By-law.

The height variance is a result of the topography of the property and the location of the proposed dwelling, which will be elevated approximately four metres above John Street. The 13.33 metre height is a consequence of where the measurement is taken; which in By-law 2237 is the crown of the street. The actual height of the proposed house is 8.53 metres that is less than the maximum 9.8 metres that the B-law permits.

The depth variance also arises as a result of the elevation of the property. The By-law allows for a building depth of 16.8 metres with an extension up to 18.9 metres. The proposed building depth is 16 metres and is 18 metres with the extension, which complies with the By-law. However, one of the stipulations is that the extension does not exceed 4.6 metres in height. As a result of where the height is calculated at the crown of the road, the elevation of the site gives rise to this variance. In actuality, the height of the extension is 3.35 metres from grade.

In the opinion of Mr. Ferancik, these three variances conform to the Markham Official Plan and maintain the intent of the Zoning By-law. In the opinion of Mr. Ferancik, the variances are appropriate and desirable, as they will facilitate the architectural style of the proposed dwelling resulting in a home that is attractive and complementary to the existing homes in the area. In the opinion of Mr. Ferancik, the variances are minor as they are either an existing condition or a result of topographical conditions, and will not create any adverse impacts.

Mr. Ferancik provided the Board with a site plan, floor plans and elevations (Exhibits 5A - 5F Inclusive). The evidence of Mr. Ferancik is that the heritage planning staff of the Town of Markham has been working with Mr. Victor Guitberg, who designed the dwelling, and Ms Gordon to provide a gothic revival design that meets the guidelines of the Heritage Conservation District Plan.

Mr. Ferancik referred to comments from Mr. Peter Woral such as "The brick house that Victor drew up is a great house and has the traditional use of proportions and symmetry..." and "The design submitted is an excellent example of an "infill" house within a heritage district" (Exhibit 1 Tab 8).

In the opinion of Mr. Ferancik, the proposed site plan represents good planning and should be approved and the site plan agreement provided by the staff of the Town is appropriate.

Mr. Richard Schmid, a qualified home inspector, provided evidence on the existing condition of the dwelling. The evidence of Mr. Schmid is that there is basement water leakage which is causing mould and mildew around the basement perimeter, the roof has sway and is sagging, there is inadequate insulation and vapour barriers throughout the dwelling and probable asbestos wrap around boiler pipes that are both exposed and within the existing walls. Some of the above are health issues requiring remedial action. His evidence is that there have been aesthetic upgrades to the dwelling but structural upgrades have not been addressed.

In order to bring the existing vacant building up to a liveable standard, the evidence of Mr. Schmid is that there are immediate substantial upgrades necessary, which will cost between \$73,000 and \$88,000 and more common upgrades such as galvanized steel piping replacement and electrical updates, which will cost between

\$23,000 and \$35,000. His total estimate to correct deficiencies and update the dwelling is between \$96,000 and \$123,000 (Exhibit 1 Tab 32).

Position of the Town of Markham

Counsel for the Town of Markham, in his opening statement, advised the Board that the Town's strong issue is to maintain the existing dwelling at 179 John Street as part of the Thornhill-Markham Heritage Conservation District. He further stated that, if demolition is approved, the Town does not take a position with regard to the minor variances and will not provide evidence related to the site plan.

Mr. George Duncan, a land use planner with specific expertise in heritage planning, provided opinion evidence supporting the refusal of a demolition permit.

The evidence of Mr. Duncan is that the subject property has a frontage of 70 feet and an area of approximately 18,252 square feet. The lot has extensive tree cover and mature shrubs with a traditional white picket fence along its frontage. There is a one and a half-storey frame house with a pitched roof and clapboard siding and with a detached garage located in the rear yard. Assessment records indicate that the house was constructed in 1948. The house is sited on a promontory overlooking John Street and the valley of the Don River.

The evidence of Mr. Duncan is that Donald and Audrey Hills first occupied the home in 1948 and that Donald Hills was a carpenter. In 1950, Mr. Archibald Galbraith purchased the dwelling and sold it to Mr. Ernest Guffin in 1954. The further evidence in the hearing, provided by Mr. Duncan and a Mr. Lew, is that there have been five different owners since 1954, including Ms Gordon.

The evidence of Mr. Duncan is that the Official Plan designation of the subject property and the properties in the immediate vicinity is Urban Residential. The designation in the Thornhill Secondary Plan is Low Density Housing.

The evidence of Mr. Duncan is that the subject property is zoned R2 (Second Density Single Family Residential) requiring a minimum lot frontage of 75 feet and a minimum lot area of 9,750 square feet. This zoning is the same for the other properties on the south side of John Street in the immediate vicinity as well as properties on the north side of John Street.

The property is located within the Thornhill-Markham Heritage Conservation District Plan designated under Part IV of the *Ontario Heritage Act* in 1986. In 2007, Council adopted a revised Thornhill-Markham Heritage Conservation District Plan that did not alter the boundaries of the heritage district but updated the policies and guidelines to current heritage planning standards. The evidence of Mr. Duncan is that this document is in use by Town staff and Heritage Markham, even though a commercial property owner on Yonge Street had appealed it. During the hearing, Mr. Duncan advised the Board that the appeal has been withdrawn and the 2007 Heritage District Plan came into force.

Mr. Duncan stated that the Town's case for opposing demolition of the existing house is due to its cultural heritage value contributing to the Thornhill Heritage Conservation District in the following manner:

- its prominent location at the eastern boundary of the Thornhill Heritage Conservation District helps to define an architectural gateway;
- its construction, siting and scale are complementary to the Thornhill Heritage Conservation District and helps reinforce the village-like atmosphere of Old Thornhill;
- the house is a well-preserved example of mid-20th century domestic architecture and represents a style and period that is becoming increasingly significant and worthy of preservation.

Mr. Duncan provided extensive evidence on each of these three areas and the Board will summarize his evidence.

The property marks the eastern boundary of the Thornhill-Markham Heritage Conservation District and the house on John Street is at a significant entry point to the heritage district and is, therefore, considered a gateway feature. The house is the first building evocative of the village-like character of old Thornhill when approaching from the east and the last building before exiting old Thornhill. There is extensive vegetation cover on the property, which tends to mask the view of the house during the warmer months of the year. From November to early May, the house is much more visible as the tree and shrub cover goes through seasonal changes.

Mr. Duncan provided evidence on the construction, siting and scale of the dwelling. His evidence is that the house, the mature trees and shrubs, the traditional white picket fence and the grand driveway contribute to the village-like character of the heritage district. The frame construction with clapboard siding and low profile with a medium-pitched roof relate to similar houses built immediately after World War II. The

older homes in Thornhill are generally reflective of the pattern of modest homes on generous lots and this is an important aspect of the village-like character of the heritage district.

Mr. Duncan referred to the term “cultural heritage value of interest” which was introduced in the 2002 amendment to the *Ontario Heritage Act* replacing the term “historical or architectural significance”. In his opinion, this is a change in perception of what heritage resources are. He referred to a book by architectural historian John Blumenson called *Ontario Architecture*, who refers to this type of house as “Victory Housing” as these homes were constructed following the victory of the Allies in World War II. These modest homes were designed to serve the needs of veterans who were returning to civilian life and in many cases they were newly married and starting their families. The houses were affordable starter homes, sometimes built in large numbers, with each house being built on an individual lot, as was the case with 179 John Street. The homes are compact and neat, with efficiently arranged interiors.

The evidence of Mr. Duncan is that the design of “Victory Housing” was very traditional and evocative of the American Colonial Revival style, in particular, the Cape Cod Cottage. In Canada, we often refer to this style as Georgian Revival. The asymmetry of the façade and the large three-part front window of the existing dwelling are indications of a more modern approach to an older, traditional house form.

Mr. Duncan referred to the Provincial Policy Statement (2005) and Section 2.6.1, which states that significant built heritage resources and significant cultural heritage landscapes shall be conserved. In his opinion, 179 John Street is a significant built heritage resource providing contextual value supporting the heritage district.

Mr. Duncan referred to the *Ontario Heritage Act (2005)* and, in particular, Ontario Regulation 9/06, which sets out criteria for determining cultural heritage value or interest. In his opinion, the house at 179 John Street meets three of these criteria. In his opinion, the property has design value because it is a representative example of a style and type. Secondly, the property has associative value because it has direct association with a theme that is significant to a community. Lastly, the property has contextual value because it is important in defining, maintaining or supporting the character of the area.

Mr. Duncan referred to the Town of Markham Official Plan and the goal set out in Section 2.5 – Heritage Conservation, which is to preserve and continue the distinctive

tradition, history, and heritage of Markham's communities. His evidence is that the Official Plan provides for the designation of Heritage Conservation Districts and the creation of Heritage Conservation District Plans containing policies, guidelines and relevant information to implement the district. In his opinion, the Town of Markham is pro-active in heritage conservation.

Mr. Duncan referred to the 1986 Thornhill-Markham Heritage Conservation District Plan and its stated goal, which is to define and establish a heritage conservation district in Thornhill-Markham and to provide policies and guidelines in order to ensure the continuation and enhancement of this historical village-like ambience.

The first objective of this Heritage District Plan is to preserve architecturally and/or historically significant buildings and retain, where possible, buildings that are compatible. Mr. Duncan agrees that 179 John Street is not one of the properties listed as "significant buildings" but was included in the Heritage Conservation District. In his opinion, it is possible for this building to be retrofitted and retained.

Mr. Duncan referred to the 2007 Thornhill-Markham Heritage Conservation District Plan, which included 179 John Street, as the boundaries were not altered from the original plan. In Section 2.2 – Statement of Heritage Value, reference is made to Department of Veteran Affairs (DVA) housing that were built in the Cape Cod Cottage style and reflect the heritage styles in the village. His evidence is that the contribution and cultural heritage value of 20th century buildings was examined and recognized in the 2007 Thornhill-Markham Heritage Conservation District Plan.

The evidence of Mr. Duncan is consistent with the evidence of Mr. Ferancik that the classification of 179 John Street in the 2007 Thornhill-Markham Heritage Conservation District Plan is Class C. His evidence is that the Class C designation is due to the year of construction, which is post-1939.

Mr. Duncan referred to Section 4.3.1 – Additions and Alterations, which describes some Class C buildings as "good neighbours" to the heritage buildings. Section 4.3.3 – Demolition of Other Buildings, states that demolition of Class C buildings will be considered on a case-by-case basis. In the opinion of Mr. Duncan, a Class C designation is not a guarantee of demolition support or permission.

In the opinion of Mr. Duncan, the refusal of the demolition application is in conformity with the Town of Markham Official Plan, the 1986 Thornhill-Markham Heritage Conservation District Plan and the 2007 Thornhill-Markham Heritage Conservation District Plan.

Position of the Participants

Five participants provided evidence in the hearing. Mr. George Bitsakakis is the owner of 177 John Street, which is adjacent to the subject property on the west side. His evidence is that the proposed new house with its greater height and greater depth will extend beyond the south face of his house by 20 or so feet. His concern is that the new house will impact the enjoyment of his backyard deck and it will destroy his vegetable garden.

The evidence of Mr. Bitsakakis is that the existing house is clearly visible from the street as are the mature trees on the property. In his opinion, the proposed dwelling of approximately 4,700 square feet is too large and not a good example of Gothic architecture.

Mr. Bitsakakis is concerned with the natural heritage and tree canopy in the village. His evidence is that two mature trees on the subject property have already been cut down and a third tree has been severely cut back and may not survive. In his opinion, the proposed new home will require two other trees to be taken down and trees such as these are extremely valuable for the community and have to be protected.

Mr. Danny Lew, the owner of 22 Ida Street, which is directly behind the subject property, has lived at this location for fourteen years. He provided a history of the four owners of 179 John Street in that time frame.

He was concerned that the Town was not providing evidence in opposition to the three variances. He is concerned with the height and depth of the proposed dwelling as it will impact the amount of sunlight, the privacy and the picturesque view enjoyed by the property owners at 177 John Street, 20 Ida Street and 22 Ida Street.

In cross-examination, he agreed that the rear wall of the proposed dwelling was 80 to 85 feet from the rear lot line and that the north, rear wall of his dwelling is 35 feet to his property line for a total building separation of 115 to 120 feet.

Mr. William Wylie was representing the Ward One (South) Thornhill Residents Inc. and the Society for the Preservation of Historic Thornhill. His evidence is that the Council of the Town of Markham and Heritage Markham have consistently opposed demolition within the Thornhill-Markham Heritage Conservation District. In his opinion, the case is much more than a simple planning issue. It is a matter of conservation of heritage and protection of the wishes of a community.

Mrs. Marion Matthias lives at 33 Colborne Street in the Heritage District. Her evidence is that the Town of Markham has made a concerted effort to preserve and conserve the heritage of the Town. She stated that the existing house at 179 John Street is compatible with the Heritage District even though it is only 60 year old. In her opinion, it is crucial that this house be enhanced or has an appropriately designed addition rather than be demolished, as demolition will fragment the Heritage District.

Mr. Karl Mahler is the owner of 20 Ida Street, which is close to the subject property. He is concerned that some majestic trees have been removed from the property without any respect for nature. The property has not been occupied since December 2007 and, in his opinion, is deliberately being placed into a state of disrepair. He sees no reason to demolish 179 John Street but there appears to be irreconcilable issues between the applicant/appellant and the Town. In his opinion, the owner should be prepared to sell the property.

Findings and Conclusions of the Board

In the hearing, the Board listened carefully to all of the viva voce evidence of each witness. During the hearing, thirty-six exhibits were provided as evidence. During the hearing, the Board had the opportunity to take a view of the Heritage District and the subject property. All of the evidence and the submissions of Counsel have been considered by the Board.

The uncontested evidence is that 179 John Street is located in the Thornhill-Markham Heritage Conservation District designated under Part V of the *Ontario Heritage Act* and is the first property as one approaches from the east along John Street. The further uncontested evidence is that the existing house and property is not individually designated pursuant to Part IV of the *Ontario Heritage Act*.

At the time of the application, the 1986 Thornhill-Markham Heritage Conservation District Plan was in-force. The 1986 Thornhill-Markham Heritage Conservation District Plan, in Section 3.3 under the heading Architecturally and Historically Significant Buildings, provides specific identification or properties with architectural and historical significance. The exact wording of Section 3.3.1 is that:

3.3.1 Identification

For the purposes of this plan, the following properties are considered to have buildings of architectural and historical significance (hereafter called “significant buildings”):

There are thirty-seven properties identified as “significant buildings” with seventeen of them located on John Street. The uncontested evidence is that 179 John Street is not listed as “significant buildings” in the 1986 Thornhill-Markham Heritage Conservation District.

During the course of the hearing, the 2007 Thornhill-Markham Heritage Conservation District Plan came into full force and effect. The Board looks for guidance when emerging legislation comes into effect even though it is not the in-force legislation at the time of application. The evidence in the hearing is that a comprehensive review of the existing policies and guidelines was undertaken in preparing to update the new district plan. The resulting 2007 Thornhill-Markham Heritage Conservation District Plan contains significant improvements. Every building/property within the Heritage District has been evaluated with each being assigned to one of three categories. These classifications are as follows:

- Class A – Buildings/Properties of major importance to the District
- Class B – Buildings/Properties of importance to the District
- Class C – Other Buildings/Properties in the District

After evaluation, the subject property at 179 John Street was assigned a Class C.

Based on all of the evidence in the hearing, the Board prefers the evidence of Mr. Ferancik in this matter.

Based on the evidence, the Board finds that the Town of Markham is pro-active in heritage conservation as demonstrated in its planning documents and the updating of its heritage district plans. Based on the evidence, the Board finds that the 1986 Thornhill-Markham Conservation District Plan did not list 179 John Street as “significant

buildings". Based on the evidence, the Board finds that 179 John Street was assigned the lowest classification category, a Class C, in the new 2007 Thornhill-Markham Heritage Conservation District Plan. Based on the evidence, the Board finds that the Town of Markham has never made application to designate this property under Part IV of the *Ontario Heritage Act*. The Board finds that the listing of properties and the later classification of properties to be reasonable and deliberate.

The Provincial Policy Statement (2005) defines "Built heritage resource" which is previously set out in this decision. The Board does not find this modest dwelling to be a significant building. The evidence in the hearing is that this "Victory Housing" was built in large numbers following World War II. The evidence is that the dwelling at 179 John Street is not a pure style and was referred to, in the hearing, as "Victory Housing" or a "Cape Cod Cottage" or "Georgian Revival" or "Colonial Revival". Based on the evidence, the Board finds this common post-war construction to have limited architectural value. Based on the evidence, the Board finds no cultural, social, political, economic or military history associated with this home as being important to the community. The Town of Markham in its 1986 Thornhill-Markham Heritage Conservation District Plan supports the findings of the Board by not listing 179 John Street under "Architecturally and Historically Significant Buildings" in Section 3.3.

In an amendment to the *Ontario Heritage Act*, in 2002, the term "Historical or Architectural Significance" was replaced with "Cultural Heritage Value or Interest". Ontario Regulation 9/06 sets out the criteria for determining cultural heritage value or interest in applying for designation under Part IV of the *Ontario Heritage Act*. Since this change, the Town of Markham has not made any application for this property to have individual designation under Part IV of the *Ontario Heritage Act*.

Lastly, the Town of Markham in a thorough process over a substantial length of time including a community survey and a community meeting brought forward the Thornhill-Markham Heritage Conservation District Plan (2007). If the subject property had "major importance to the District", the classification would be Class A or Class B. After a thorough process, the subject property was classified as Class C, which is "Other Buildings/Properties in the District".

Based on the evidence, the Board finds that the demolition of this existing 1948 dwelling and garage conforms to the Provincial Policy Statement (2005) and the Growth

Plan for the Greater Golden Horseshoe with respect to conservation of significant heritage resources.

Based on the evidence, the Board finds that 179 John Street is located in a Heritage Conservation District but in itself does not meet the preservation policies of the York Region Official Plan, the Town of Markham Official Plan or the Thornhill Secondary Plan. Based on the evidence, the Board finds that the proposed gothic revival designed building set back from the street is a sympathetically designed building and will maintain the “village-like ambience” referred to in the Thornhill Secondary Plan.

Based on the evidence, the Board finds that the demolition conforms to the York Region Official Plan and the Town of Markham Official Plan and the Thornhill Secondary Plan with respect to encouraging reinvestment in urban areas while maintaining the character of the community and preserving significant heritage resources.

Based on the evidence, the Board finds that the demolition conforms to the Thornhill-Markham Heritage Conservation District Plan (1986) given that the existing dwelling is not listed as a historical or architecturally significant building.

Based on the evidence, the Board finds that there is no policy to refuse a demolition permit of Class C buildings in the Thornhill-Markham Heritage Conservation District Plan (2007) and except that demolition of Class C buildings will be considered on a case-by-case basis.

The evidence in the hearing concerning the Town’s case is that the subject property “helps to define an architectural gateway”. Based on the evidence, the Board finds no policies in the Thornhill-Markham Heritage Conservation District Plan referring to a “gateway” function, except in Section 3.6.3.1 referring to specific signage marking the boundaries of the heritage district.

Based on the evidence, the Board finds that the proposed two-storey dwelling, sympathetically designed in gothic revival brick architecture and set back from John Street, to be complementary to the Thornhill Heritage.

Lastly, the case of the Town is that the house is a well-preserved example of mid-20th century domestic architecture. Based on the evidence of Mr. Schmid, the Board finds the house not to be well preserved, with existing mould and mildew and with

mushrooms growing out of the basement carpet. Based on the evidence, the Board finds the dwelling at 179 John Street to be in a condition of deterioration and without significant renovations and upgrading, will pose significant health concerns for anyone living in the home.

Pursuant to Section 42 (8) of the *Ontario Heritage Act (2005)*, the Board allows the appeal of Irina Gordon and directs the Town of Markham to issue a demolition permit for the dwelling and garage located at 179 John Street.

Based on the planning evidence of Mr. Ferancik, the Board finds Variance 1 related to lot frontage to be an existing condition of the property. The Board finds that Variances 2 and 3 are related to the topography and elevation of the subject property.

Based on the evidence, the Board finds these variances to be minor as the lot is large and well treed and the impacts are acceptable in an urban setting.

Based on the evidence, the Board finds the three variances will permit a complementary dwelling to be constructed on the subject property which is desirable for the appropriate development of the land.

Based on the evidence of Mr. Ferancik, the Board finds the variances maintain the intent and purpose of the Official Plan by replacing a single-family dwelling in an Urban Residential designation with a single-family dwelling.

Based on the evidence, the Board finds that the variances maintain the intent and purpose of the Zoning By-law by allowing the construction of a two-storey dwelling in an R 2 Zone. As such, the requested variances meet the four statutory tests under Section 45(1) of the *Planning Act*.

The Board allows the appeal; and the three variances are authorized.

Lastly, the Board has carefully reviewed the site plan, floor plans and elevations presented in this hearing. Based on the evidence, the Board finds the location of the proposed dwelling, which is set further back from John Street, is appropriate as the existing buffer at the front of the dwelling can be maintained. Based on the evidence and comments provided by Peter Woral, Heritage Planner in correspondence (Exhibit 2 Tab 8), the Board finds the gothic revival brick architecture to be sympathetic and complementary to the Heritage District.

The Board Orders that the site plan prepared by M-Arch Design Group Inc. dated August 2007 is approved and the new dwelling should be substantially in conformity with Exhibits 5B – 5F.

The Board so Orders.

“J. A. Aker”

J.A. AKER
MEMBER

