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**THE CORPORATION OF THE TOWN OF OAKVILLE
BY-LAW 1994-134**

A by-law to designate an area of the Town of Oakville as a Heritage Conservation District (being the Trafalgar Road Heritage Conservation District) under Section 41(1) of the Ontario Heritage Act, RSO 1990, c.O.18

WHEREAS Part V of the Ontario Heritage Act, RSO 1990, c.O. 18 as amended, contains provisions relating to heritage conservation districts;

AND WHEREAS Council under Section 40 of Part V of the said Ontario Heritage Act has by by-law defined a part of the Town of Oakville as an area to be examined for future designation as a heritage conservation district;

AND WHEREAS the examination of that part of the Town of Oakville so defined has now been completed;

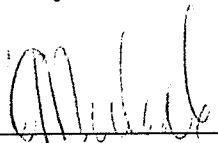
AND WHEREAS under Section 41 of the said Ontario Heritage Act where there is in effect in a municipality an official plan that contains provisions relating to the establishment of heritage conservation districts, Council may by by-law designate any defined area as a heritage conservation district;

AND WHEREAS there is in effect in the Town of Oakville an official plan that contains provisions relating to the establishment of heritage conservation districts;

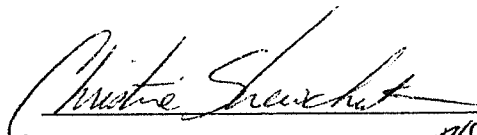
THE COUNCIL ENACTS AS FOLLOWS:

1. The area shown on Schedule "A" attached hereto is hereby designated as a Heritage Conservation District, being the Trafalgar Road Heritage Conservation District, except those properties shown in hatchmarks on Schedule "A" which have previously been designated under Part IV of the Ontario Heritage Act.
2. This by-law does not come into force until approved by the Ontario Municipal Board.

PASSED by Council this 21st day of November, 1994.



MAYOR

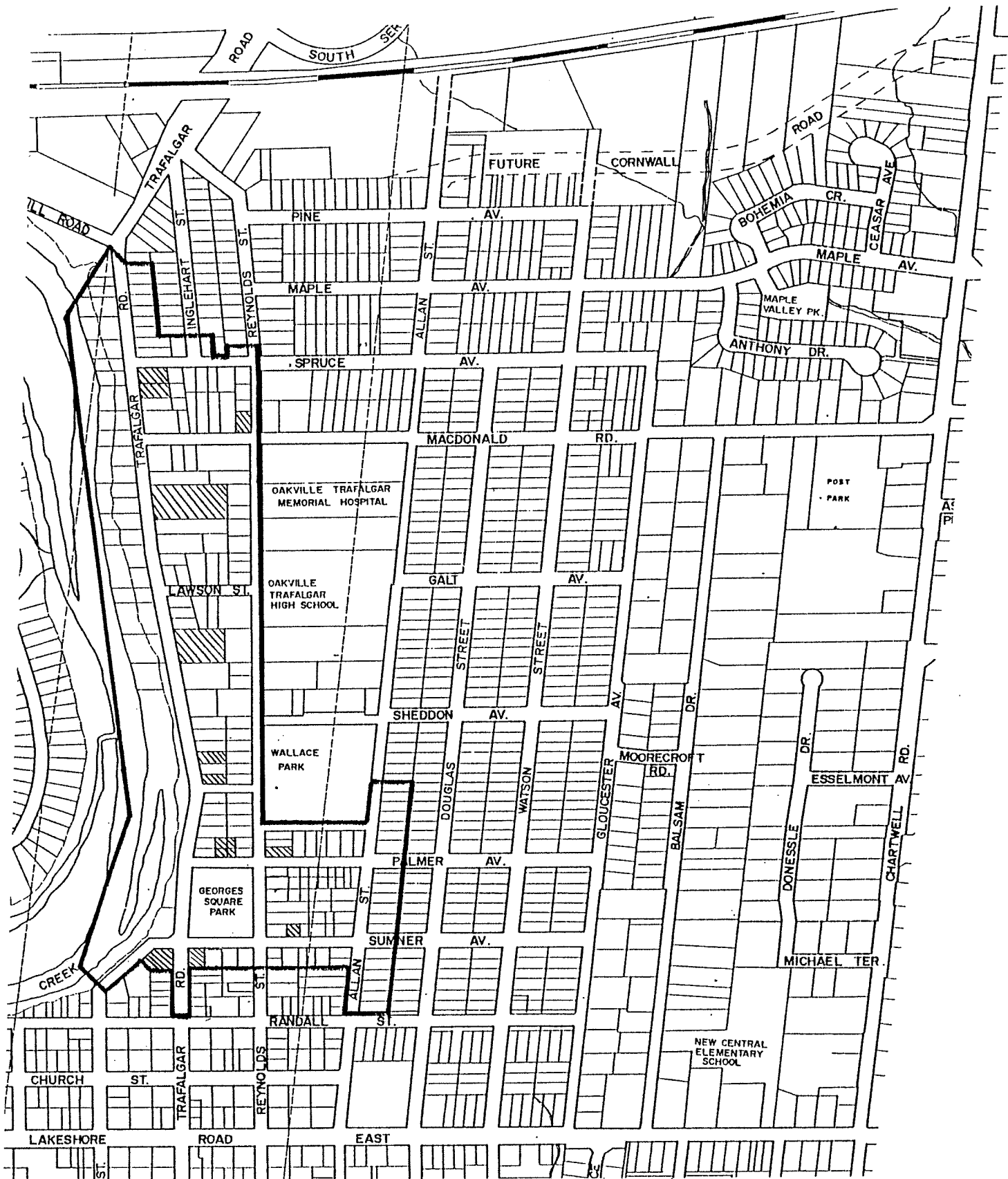


CLERK

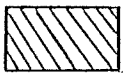
s/amidata/by-law1994-134

Approved by OMB order
Date <u>July 14 1995</u>
PL # <u>M940110</u>

SCHEDULE "A"
To By-law 1994-134

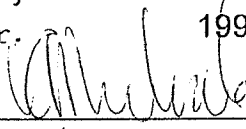


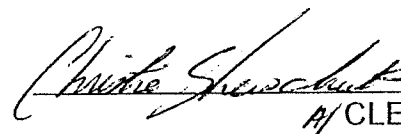
TRAFALGAR ROAD HERITAGE CONSERVATION
DISTRICT BOUNDARY



AREAS TO BE EXCLUDED FROM TRAFALGAR ROAD
HERITAGE CONSERVATION DISTRICT

This is Schedule "A" to By-law 1994-134
passed by the Council this 21st day of
November, 1994.


MAYOR


CLERK

DB #	107	FOLIO #	375
ORDER ISSUE DATE			
JUL 14 1995			
DB #	1995-4	FOLIO #	305



Ontario

M940110

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

The Town of Oakville has applied to the Ontario Municipal Board under Section 41 of the Ontario Heritage Act, R.S.O. 1990, c.O. 18, for approval of By-law 1994-134 to designate the Trafalgar Road Heritage Conservation District as a Heritage Conservation District

COUNSEL:

D. Gates

for Town of Oakville

DECISION delivered by R. W. RODMAN AND ORDER OF THE BOARD

On November 21, 1994, Council for the Town of Oakville passed By-law 1994-134 (the subject), which by-law would establish a third Heritage Conservation District in the Town of Oakville. The other two heritage districts are located along the north side of Lake Ontario as depicted on Exhibit #3.

The first district was approved in 1980 and is known as the Old Oakville Heritage Conservation District. The second was approved in 1988 and is known as the "First and Second Street Heritage Conservation District". The proposed "Trafalgar Road Heritage Conservation District" also is depicted on Exhibit #3 and is located north of the previously mentioned two conservation districts. It is bounded, generally speaking, on the west by Sixteen Mile Creek; on the south by Randall Street, on the east mostly by Reynolds Street (but also including an area to the east of Allan Street); and on the north by residential properties including the only appellant who testified at this hearing, Mr. Robert E. Livesey, who resides at 426 Trafalgar Road, all as depicted on Exhibit #3. All three conservation districts are located between Lake Ontario and the Canadian National Railway line which railway line is south of the Queen Elizabeth Way. All three districts are in the old part of the Town of Oakville.

The impetus for initiating the study for a possible third Heritage Conservation District was the Trafalgar Chartwell Ratepayer's Association, hereinafter referred to as TCRA. TCRA, in the summer of 1989, approached L.A.C.A.C. about the possibility of creating a third Heritage Conservation District for the Trafalgar Road - Chartwell Road area. This request was processed through Council, resulting in the subject by-law. The Board is satisfied that the procedures used throughout the process from 1989 to 1994 involved considerable public input and public meetings, including participation by a steering committee.

Funding was based on a \$20,000 matching grant from the Ontario Heritage Foundation, with the remaining \$20,000 coming from the \$9,500 participation by Council and the \$10,500 raised privately by the area ratepayers through a home and garden tour. The funding resulted in two reports to Council filed as Exhibits #9 and 10 (the Heritage Assessment Report and the Third Heritage Conservation District Study) which reports were prepared by a consulting firm expert in heritage planning.

Evidence in support of the by-law was given by Mr. B. Bellows, a town planner and Mr. David Cumming, part of the consulting team. As noted, Mr. Robert E. Livesey who lives at 426 Trafalgar Road and whose property is the north limit of the subject on the west side of Trafalgar Road testified in opposition. Two other persons, who had written letters of objection, did not appear. In addition, Ms Janet Rodger, president of TCRA testified. Ms Rodger resides at 408 Trafalgar Road, which property is located three lots south of Mr. Livesey's property.

As stated, the proposed Trafalgar Road Heritage Conservation District is depicted on Exhibit #3. Included within the proposed area are a number of properties that have been excluded from the area designation since they have already been designated under Part IV of the Ontario Heritage Act and therefore cannot be included in the subject by-law. They, therefore are shown as being excluded from the district designation all as depicted on Schedule "A" of the proposed by-law. Counsel for the Town advised the Board that the schedule would require some revision, in that Schedule "A", in fact, includes a small area

to the north of Mr. Livesey's property, which was not the intention of the by-law. Exhibit #3 more clearly reflects the squaring off the area at the north limit of Mr. Livesey's property.

Originally the study area encompassed a far greater acreage than is presently before the Board. The original study area is depicted on Exhibit #4 and had the CNR Railway as its northerly limit, Chartwell Road as its easterly limit, Lakeshore Road as its south limit and the Sixteen Mile Creek as its westerly limit, with the westerly limit extending northerly from Sixteen Mile Creek along the Trafalgar Road to its intersection with the CNR. The study process involved a preliminary report (taking about six months) to rationalize the study area boundaries. This resulted in a smaller area, with Randall Street basically being its south boundary. The Heritage Assessment Report took approximately six months to prepare and entailed a much more thorough examination of each structure within the proposed area. The District Plan was the third phase of the study process resulting in Exhibit #10, the Third Heritage Conservation District Study.

As stated the public process was very extensive and the Board is satisfied that it was done in a fair and impartial manner. The process involved a number of requests for exclusion which were considered by Council. Mr. Livesey apparently was unaware of the process until late in 1994 at which time he initiated his objection to his property being included in the district area particularly as its north limit on the west side of Trafalgar Road.

Exhibit #6 is an outline of Mr. Bellows' evidence which exhibit was most useful in the Board's consideration of this matter. The last public meeting on this matter was on November 21, 1994, when Council considered the remaining requested exclusions and the issue of passing the by-law. Five formal requests for exclusion were received, which exclusions did not include Mr. Livesey's property. Two of the requests actually involved a total of six properties and staff therefore reported or addressed the potential exclusion for 9 properties. The criteria used by staff to assess the various exclusions were:

- a) architectural merit or significance
- b) historical association and significance to the area

- c) the existing condition of the structures
- d) streetscape attributes of the proposed excluded areas
- e) the use of the proposed exclusions as district anchors and in fact are the properties district anchors
- f) is the proposed excluded property consistent with other properties in the area
- g) the effect on peripheral property and the effect of peripheral property on the proposed excluded areas.

Using the criteria, staff recommended deletion of a number of properties near the south end of the proposed Schedule "A" all as set forth in Exhibit #6. The Board notes that most of the exclusions are related to the south part of the proposed Schedule "A" limits. The Board also notes, that reasons given, among others, included the fact that the deletion would be offset by other anchor properties which ultimately ended up as borders for the Schedule "A" boundaries. As an example, comments were given such as "deletion should not detract from the residential preservation to the north"; "on periphery, deletions should not detract from streetscape"; "well maintained, not likely to undergo any detrimental changes"; "no detrimental effect to streetscape if deleted". The staff report ended up in recommending 8 properties be deleted or excluded from the Heritage Conservation District Schedule "A", with the Brantwood School being retained. As stated, Council then approved By-law 1994-134 to designate the Trafalgar Road Heritage Conservation District, with the Schedule "A" including possible changes at the north-west corner.

As stated, the only objection heard by this Board relates to the exclusion of Mr. Livesey's property as the north-west property limit for the proposed Schedule "A". The evidence is that Mr. Livesey's property is an "altered property" (i.e. changed from original construction through additional construction), the property is well maintained and it is approximately 65 years old (for the oldest part of the building constructions). The property has little historical significance, although it is of historical interest according to both planners. As noted, the property is at the north periphery of the proposed Schedule "A"

and is located on the west side of Trafalgar Road. It is the planners' opinion that the subject is an anchor property for the district; definitely contributes to the streetscape on Trafalgar Road which is the main spine through the proposed district; has a visual significance as an entrance/exit; and is a logical boundary to the district.

In general, it is the planners' opinion that the property has limited development potential in that it has a large frontage (approximately 114 feet) with an average lot depth of 225 feet, with only 110 feet from the top of the bank leading to the Sixteen Mile Creek. The evidence is that the slope on the bank is very steep. In addition, there are environmental constraints in that no development is possible within 7.5 metres from the top of the bank, therefore, the developable lot depth is approximately only 85 feet. This results in approximately 9,000 square feet of developable land. Traffic concerns and parking also were expressed by the planners' who both indicated that the maximum potential use would be for two single family lots in a low density zone.

The Town's Official Plan was approved in 1964 and designates the subject lands (residential) as low density, for the Livesey property and high density for lands immediately to the north of Livesey which high density lands abut his north and/or west property limits. The high density proposed use of the lands abutting Mr. Livesey's property is presently being pursued. The evidence is that a request has been made to the Ontario Municipal Board for consideration of the required rezoning.

Mr. Livesey has no objection to the designation of the Heritage Conservation District - his only concern is for an exclusion of his property which, as noted, is proposed as the north-west corner of the area to be included in the Heritage Conservation District. It will in fact be the entrance/exit at the north end of the proposed district. Mr. Livesey presented his argument with the assistance of Exhibit #12, a brief submitted to this Board and dated June 2, 1995. The brief is a very detailed and fair presentation of his argument, which argument does not place any blame on the municipality for its public notification. He stresses, however, that he was completely unaware of the process because of, generally speaking, business reasons.

He states that his home has no real historic significance, association or attributes. He has radically altered the original building and architectural detail. He says that the original building was built in about 1932, with an addition, about one third to one quarter the size of the original, being placed on the south side at or around 1950. He purchased the property in 1967 and built an addition on the north side which addition is about the size of the original structure. He states that neither addition followed any design guidelines as stated and set forth on page 11-58 of the Heritage Conservation District Study. He designed the new addition and has maintained it well.

He feels that the moving of the Schedule "A" line to the south side of his property will not seriously affect the Town's plan to maintain a heritage area. He wishes some means of having more control of his own lands if and when the higher development lands proceed immediately to the north of him. In essence, it is the Board's view that Mr. Livesey feels he is caught between a "rock and a hard place". He feels that other natural dividing lines would have been more appropriate and that the moving of the line to the south limit of his property would provide no real effect to the appearance of the area, the streetscape, the historical significance, or the entrance/exit impression of his property. He is very concerned that the proposed high density development to the north of him, including "Grace House" (20 to 30 years older than his building) is not included in the Conservation District Study. It is his view that he should have control of his own property to ensure as much protection as possible, without the need for going through more bureaucratic bodies to receive approval for any changes he might feel desirable, such as fences to protect himself against any development to the north.

He also feels that properties near the south end, or just south of the proposed Schedule "A" boundary, were excluded and his property related to the same type of reasons given, for excluding those properties. He feels that any traffic concerns for his property are minimal, particularly when one considers only two lots are potentially possible on his property. One additional lot, he says, would add little to the traffic in this area, particularly when one considers the development which may proceed immediately to the north of him.

He feels that much of the development considerations for the property immediately to the north of him have not been by way of public debate and he really has no protection against what might be developed to the north of him. As such, it is his firm belief that he should be allowed to be excluded from the Heritage Conservation District, so he will have as many means available to him as possible to protect himself against high density development, without the need for additional approval processes for any changes he might deem appropriate. He feels, generally speaking, that inclusion of his property is not appropriate, that he could be a buffer between the two types of development (i.e. high density and low density to the south of him), he is on the periphery, and his exclusion will little change the essence and use of the Heritage Conservation District since his property is not of historical significance. It is merely, at best, of historical interest.

The Board was impressed by the evidence given by all who testified at this hearing. In the Board's opinion, perhaps the most relevant observation was given by Ms Janet Rodger, the president of TCRA. She obviously is in support of a Heritage Conservation District. She however, agrees and supports Mr. Livesey's contention that he should not be the north limit and more appropriately be the buffer between the potential high density development to the north of him and the Heritage Conservation District being proposed. In the original consideration of this matter, there was little knowledge or potential for the high density development which is now being considered immediately abutting Mr. Livesey's north-west boundary limits. As such, she would support the exclusion of Mr. Livesey's property from the Heritage District.

The Board accepts the argument and logic, particularly of an independent person such as Ms Janet Rodger, who supports the exclusion of Mr. Livesey's property from the subject Conservation District. She agrees that his property is unique as it relates to potential high density development to the north. The Board agrees with the reasons given by Mr. Livesey for exclusion and also notes the criteria for exclusion given for a number of properties, particularly those to the south of the proposed south limit as set forth earlier in this decision. It seems clear to the Board that moving the boundary one property south on the west side of Trefaigar Road will not detrimentally affect the Heritage Conservation

District and will, in fact, provide some comfort for Mr. Livesey to live as a buffer between potentially high density development to the north and west of him and the residential heritage area to the south of him. No evidence was given in opposition to the Heritage District.

As such, the Board finds that a Heritage District in this area is appropriate. In addition, the Board finds that Mr. Livesey's property should be excluded and that the north limit of the Trafalgar Road Heritage Conservation District should be moved to the south limit of his property.

In view of the above, the Board orders that By-law 1994-134 be approved subject to Schedule "A" being amended to place part of the north limit of the Trafalgar Road Heritage Conservation District, as depicted on Schedule "A", at the south limit of Mr. Livesey's property.

DATED at TORONTO this 14th day of July, 1995

"R. W. Rodman"

R. W. R. RODMAN
MEMBER

SCHEDULE "A"
To By-law 1994-134



TRAFALGAR ROAD HERITAGE CONSERVATION
DISTRICT BOUNDARY



AREAS TO BE EXCLUDED FROM TRAFALGAR ROAD
HERITAGE CONSERVATION DISTRICT