

MEMORANDUM

DEVELOPMENT SERVICES

JAN 13 2004

RECEIVED

MEMO: Clerks
✓ Renata Keranovic/Michael Seaman, Heritage Planner
Greg Nelson, Zoning Examiner
Sandy Oxley, Assessment Administrator
Joel Lustig, Director of Financial and Client Services
Michelle Perry, Finance
Dale Watterson, Financial Analyst

FROM: Stacy Larkin, Agreements Administration Clerk


DATE: January 12, 2004

RE: 719429 Ontario Inc.
Heritage Easement Agreement
9804 McCowan Road
Legal File No. 01 0619 PA 0101

Please find attached a copy of the above noted agreement for your files. This agreement as registered on January 9, 2004 as Instrument Number YR413283.

Finance is in receipt of funds/security as set out in Paragraph 2.2.

NOTE TO JOEL: Please see Clause 2.2. The required letter of credit is with Michelle.


Stacy Larkin
Agreements Administration Clerk

THIS EASEMENT AGREEMENT made this 8th day of October, 2003.

BETWEEN:

719429 ONTARIO INC.
(hereinafter called the "Owner")

OF THE FIRST PART

- and -

THE CORPORATION OF THE TOWN OF MARKHAM
(hereinafter called the "Town")

OF THE SECOND PART

WHEREAS the Owner is the owner of certain lands and premises situated in the Town of Markham in the Regional Municipality of York and Province of Ontario, and municipally known as 9804 McCowan Road (hereinafter called the "Property"), and more particularly described in Schedule "A" attached hereto and which there is "The Peterson Jarvis House" (hereinafter called the "Building");

AND WHEREAS one of the purposes of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, is to support, encourage and facilitate the conservation, protection and preservation of the heritage of Ontario;

AND WHEREAS by Subsection 37(1) of the *Ontario Heritage Act*, the Town is entitled to enter into easements or covenants with owners of real property, or interests therein, for the conservation of buildings of historic or architectural value or interest;

AND WHEREAS by Subsection 37(3) of the *Ontario Heritage Act*, such covenants and easements entered into by the Town when registered in the proper Land Registry Office against the real property affected by them shall run with the real property and may, whether positive or negative in nature, be enforced by the Town or its assignee against the owners or any subsequent owners of the real property, even where the Town owns no other land which would be accommodated or benefitted by such covenants and easements;

AND WHEREAS the Owner and the Town desire to conserve the present historical, architectural, contextual, aesthetic, scenic and heritage characteristics and conditions of the Building on the Property as set out in the "Reasons for Identification" and as may be depicted in Schedule "B" attached hereto;

AND WHEREAS to this end, the Owner and the Town agree to enter into this Easement Agreement (hereinafter called the "Agreement");

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of TWO DOLLARS (\$2.00) of lawful money of Canada now paid by the Town to the Owner (the receipt of which is hereby acknowledged), and for other valuable consideration, and in further consideration of the granting of the easements herein and in further consideration of the mutual covenants and restrictions hereinafter set forth, the Owner and the Town agree to abide by the following covenants, easements and restrictions which shall run with the Property forever.

1.0 REASONS FOR IDENTIFICATION

1.1 Statement of Reasons

The Owner and the Town agree that for the purposes of this Agreement the following statement (hereinafter called the "Reasons for Identification") sets out the reasons why the Building has been identified by the Town as having historic and architectural significance:

Historical Reasons:

The Peterson-Jarvis House is believed to be a combination of two structures, built c. 1840 and c.1920.

The property was initially part of the original Berczy settlement, and was assumed by the Husing Family. The later dispute over the ability of non-British subjects to hold title to land until they had resided in the country for seven years, meant that the Husing's did not own the land.

The property was granted by the Crown to William Weeks in 1804. Over the next four years the property was sold to William Cooper, Thomas Gough and Thomas Gray. The Gray family owned the property for the next 28 years before the east half was sold by Charles Gray to Philip Peterson in 1836. It is believed that Peterson had actually been farming the property since 1831.

Philip Frederick Peterson was a the eldest son of the Reverend John Dieter Peterson, who served as pastor to the Berczy community for ten years (1819-29) in St. Philip's Lutheran Church. Philip Frederick (1791-1880) was married to Elizabeth Fierheller (1804-1896). Together they built a home on the property at Lot 19, Concession 6 E.

The Census of 1851 lists Frederick on the property with his wife "Betsy", son Ludwig (Louis), and daughters Rebecca and Betsy in a one storey dwelling called a "Slat". The Petersons had two other children, John Dietrich Peterson (1829-1901) and Matilda Peterson (1836-1917).

The Census of 1861 shows the family again on the property, but identifies their dwelling as a frame house. The tail of the existing house is of mid-19th Century construction, but has a brick cladding. It is believed that this is part of the original frame house. It is probable that the "Slat" house identified in the 1851 census, was, like other examples of this short lived building type, unsuitable to cope with the harsh Canadian climate and was soon bricked over.

John Peterson was obviously a citizen of some prominence, as was demonstrated by his inclusion of his biography in the History of York County, 1885, which describes Peterson as follows:

John Peterson, Lot 19, Concession 6 is of German extraction, his father, Philip Frederick Peterson, being a native of Hanover. His grandfather was a minister of the Lutheran Church, who emigrated to America in 1795 with his family. In 1831 Philip Frederick purchased the lot now owned by John Peterson., on which he lived until his death in 1880, at the age of eighty nine years. He left a widow and four children, three daughters and John who was the only son. The latter took possession of the old homestead which he continues to cultivate. He is of a quiet and unassuming disposition, and has never held or sought office in connection with municipal government.

By the time of the 1881 Census, John Peterson was living on the property with his mother and three sisters. It appears that none of the Peterson children ever married or had offspring. By the time of the death of John Dietrich Peterson in 1901, the remaining sisters were approaching their 70s and were unable to farm the property themselves. As a result, in April 1901, the property was leased to George McCarty and his wife Anne, for \$400 per year for seven years.

In 1912, the property was sold by the Peterson sisters to Wesley H. Johnson and his wife Nettie for \$8750. Johnson in turn sold the property in 1919 to Edward Jarvis for \$8750. In view of the style of the main part of the house, it is believed that Jarvis conducted a significant remodeling of the dwelling in the early 1920s, soon after he purchased the property, which resulted in the building attaining its current appearance.

Edward Jarvis sold the property to his son Harold L. Jarvis in 1946. He owned the property until 1967 when it was sold to a group of property owners.

Architectural Reasons:

The house at 9804 McCowan Road is believed to have been created through the joining of two structures c.1840 and c.1920. Evidence for the earlier structure is seen in the stone foundation, which appears to date from the mid-19th Century. It is possible that the main part of the house,

either incorporated the earlier structure or was built on top of the older foundation. Evidence for the latter is seen in the fact that the building is slightly out of alignment with the foundation.

The rear tail of the house, constructed of brick is part of the original c. 1840 structure. Evidence of this is seen in the type and use of brickwork, voussoir treatment above windows and 2/2, double hung window sash.

At about 1920, the main part of the house was constructed along with a second storey addition above the front elevation.

The resulting style of the house is that of a rural variation of Edwardian Classicism.

The front elevation is two storeys in height, with a 3 bay facade and a full veranda. The front part of the house has a high hipped roof, typical of the Edwardian Style. The windows on this part of the house are 1/1 double hung. The siding on the house is a narrow clapboard. The front door is a typical, Edwardian paneled and glazed design.

The rear elevation features a half-veranda, and a typical Edwardian shed roofed dormer with decorative 3/1 windows.

Contextual Reasons:

The Peterson-Jarvis house is an important reminder of the rural, agricultural landscape in the area of the property on Lot 19, Concession 6. The context of the house is enhanced by the presence of a large deciduous Historic Oak Tree, of an age which appears to be approximately 200 years old, located to the east of the front façade, and is believed to have been living at the time of the Berczy settlers arrival. The Historic Oak Tree is to be preserved and maintained.

1.2 Photographs Relevant to Duties of the Owner

The Owner and the Town agree that the photographs, contained in Schedule "B" attached hereto, the originals or facsimiles of which are filed in, and may be examined at, the Town, wherever they may be from time to time located, generally depict certain significant features of the appearance or the construction of the Building. The Reasons for Identification and the aforesaid photographs shall be referred to in determining the duties of the Owner under this Agreement.

The Owner, when alterations are made to the Building, pursuant to paragraph 2.1 and/or 2.2, shall within ninety (90) days of a request by the Town and at the Owner's expense, provide photographs to the Town taken from the same vantage point and identifying the same features of the appearance or construction as the photographs contained in Schedule "B". Such photographs shall be

incorporated immediately in Schedule "B" by way of amendment to this agreement, and shall replace the photographs contained in Schedule "B". After such amendments are made, all references in this agreement to the photographs contained in Schedule "B" shall be taken to be references to such replacement photographs.

2.0 DUTIES OF OWNER

2.1 Normal Repairs and Alterations

The Owner shall not, except as hereinafter set forth, without the prior written approval of the Town, undertake or permit any demolition, construction, alteration, remodelling or any other thing or act which would materially affect the features of the appearance or construction of the Building as set out in the "Reasons for Identification" and as may be depicted in the copies of the photographs, drawings and other documents attached hereto and incorporated herein as Schedule "B", and in the originals or facsimiles thereof which are filed in, and may be examined at the Town wherever they may be from time to time located. The approval required to be obtained from the Town herein shall be deemed to have been given upon the failure of the Town to respond in writing to a written request for it within ninety (90) days of receiving such request as its address as set out in paragraph 7.1 of this Agreement. If the approval of the Town is given or deemed to be given under this paragraph, the Owner, in undertaking or permitting the construction, alteration, remodelling or other thing or act so approved of, shall use materials approved by the Town.

2.2 Insurance

The Owner shall at all times during the currency of this Agreement keep the Building insured against normal perils that are coverable by all risk property insurance in an amount equal to the replacement cost of a similar scaled new building with an exterior design complementary to the existing structure. Upon execution of this agreement, the Owner shall deliver to the Town a letter or certificate, in a form and from an insurance company, agent or broker acceptable to the Town, which letter or certificate shall state as follows:

"This will confirm that (name of insurer) has issued to the Owner a valid insurance policy which insures the Building against normal perils that are coverable by all risk property insurance in an amount equal to the replacement cost of a similar scaled new building with an exterior design complementary to the existing structure".

The Owner further agrees to provide written evidence of the renewal of such policy at least 3 weeks prior to the expiration date of the policy, in a form satisfactory to the Town. If the Owner fails to so insure the Building, or if any such insurance on the Building is cancelled, the Town may effect such insurance as the Town deems necessary and any sum paid in so doing shall forthwith be paid by the

Owner to the Town, or if not shall be a debt due and owing to the Town and recoverable from the Owner by action in a court of law. All proceeds receivable by the Owner under any fire and extended coverage insurance policy or policies on the Building shall, on the written demand and in accordance with the requirements of the Town, be applied to replacement, rebuilding, restoration or repair of the Building to the fullest extent possible having regard to the Reasons for Identification, the particular nature of the Building and the cost of such work.

In lieu of replacement insurance on the building and Historic Oak Tree, the Owner covenants and agrees to provide a Letter of Credit in a form satisfactory to the Town's Treasurer in the amount of \$100,000.00, which may be drawn on by the Town in accordance with the provisions of this Agreement, in the event that the building or Historic Oak Tree is damaged or destroyed. The Letter of Credit will be released by the Town upon provision by the Owner of proof of insurance as required by this Agreement.

2.3 Damage or Destruction

The Owner shall notify the Town of any damage or destruction to the Building within ten (10) clear days of such damage or destruction occurring. In the event that the Building is damaged or destroyed and the replacement, rebuilding, restoration or repair of it is impractical because of the financial costs involved, or because of the particular nature of the Building, the Owner shall, in writing within forty (40) days of the giving by the Owner of notice of such damage or destruction, request written approval by the Town to demolish the Building, pursuant to paragraph 2.1. If the approval of the Town is given or deemed to be given, the Owner shall be entitled to retain any proceeds from the insurance hereinbefore mentioned and to demolish the Building.

2.4 Reconstruction by Owner

If the Owner has not requested the approval to demolish referred to in paragraph 2.3 or if the Town does not give the approval to demolish referred to in paragraph 2.3, the Owner shall replace, rebuild, restore or repair the Building so as to effect the complete restoration of the Building. Before the commencement of such work, the Owner shall submit all plans and specifications for the replacement, rebuilding, restoration or repair of the Building to the Town for its written approval within one hundred and thirty-five (135) days of the damage or destruction occurring to the Building. A refusal by the Town to approve any plans and specifications may be based upon choice of materials, appearance, architectural style or any other ground or grounds including, but not limited to, purely aesthetic grounds, and the determination of the Town shall be final. The Owner shall not commence or cause restorative work to be commenced before receiving the written approval of the Town of the plans and specifications for it, and such restorative work shall be performed upon such terms and conditions as the Town may stipulate. Such approval shall be deemed to have been received upon failure of the Town to respond in writing to a written request

for it within ninety (90) days of the receipt of such request by the Town. The Owner shall cause all replacement, rebuilding, restoration and repair work on the Building to be commenced within thirty (30) days of the approval by the Town of the plans and specifications for it and to be completed within nine (9) months of commencement, or as soon as possible thereafter if factors beyond their control prevent completion within the said nine (9) months, and the Owner shall cause all such work to conform to the plans and specifications approved of and terms and conditions stipulated by the Town.

2.5 Failure of the Owner to Reconstruct

In the event that a request to demolish is not submitted or is refused pursuant to the provision of paragraph 2.3 and the Owner fails to submit plans and specifications pursuant to paragraph 2.4 which are acceptable to the Town within one hundred and thirty-five (135) days of the damage or destruction occurring to the Building, the Town may prepare its own set of plans and specifications. The Owner shall have thirty (30) days from receiving a copy of such plans and specifications to notify the Town in writing that they intend to replace, rebuild, restore or repair the Building in accordance with those plans and specifications.

If the Owner does not so notify the Town within the said thirty (30) days, the Town may prepare its own set of acceptable plans and specifications for the building and may enter onto the property and proceed with replacing, rebuilding, restoring or repairing the building so as to effect the complete restoration of the building. The Owner shall reimburse the Town for all expenses incurred by the Town in carrying out such work and the Town may, but shall not be required to draw on the Letter of Credit to pay all costs and expenses so incurred.

2.6 Maintenance of the Building

The Owner shall at all times maintain the Building in as good and as sound a state of repair as a prudent owner would normally do, so that no deterioration in the Building's condition and appearance shall take place, including, without limiting the generality of the foregoing, taking all reasonable measures to secure and protect the Building from vandalism, fire and damage from inclement weather.

2.7 Signs, Structures, Etc.

The Owner shall not erect or permit the erection on the Property or on the Building of any signs, awnings, television aerials or other objects of a similar nature without the prior written approval of the Town. Such approval may, in the sole discretion of the Town and for any reason which the Town considers necessary, be refused, provided that with respect to signage to identify the occupant(s) of the Building from time to time, the approval of the Town shall not be unreasonably

withheld, having regard to its use of the Building, the Reasons for Identification and the photographs contained in Schedule "B" attached hereto.

2.8 No Act of Waste

The Owner shall not commit or permit any act of waste on the Property. In respect to the subject lands, the Owner shall not, except with the prior written approval of the Town:

- (a) grant any easement or right-of-way which would adversely affect the easement hereby granted;
- (b) erect or remove or permit the erection or removal of any building, sign, fence or other structure of any type whatsoever;
- (c) allow the dumping of soil, rubbish, ashes, garbage, waste or other unsightly, hazardous or offensive materials of any type or description;
- (d) except for the maintenance of existing improvements, allow any changes in the general appearance or topography of the lands, including and without limiting the generality of the foregoing, the construction of drainage ditches, transmission towers and lines, and other similar undertakings as well as the excavation, dredging or removal of loam, gravel, soil, rock, sand or other materials;
- (e) allow the planting of trees, shrubs or other vegetation which would have the effect of (i) reducing the aesthetic value of the Building or the Property or (ii) causing any damage to the Building;
- (f) allow any activities, actions or uses detrimental or adverse to water conservation, erosion control and soil conservation; and
- (g) allow the removal, destruction or cutting of trees, shrubs or vegetation except as may be necessary for (i) the prevention or treatment of disease or (ii) other good husbandry practices.

2.9 Breach of Owner's Obligations

If the Town, in its sole discretion, is of the opinion that the Owner has neglected or refused to perform any of their obligations set out in this Agreement, the Town may, in addition to any of its other legal or equitable remedies, serve on the Owner a notice setting out particulars of the breach and of the Town's estimated maximum costs of remedying the breach. The Owner shall have thirty (30) days from receipt of such notice to remedy the breach or make arrangements satisfactory to the Town for remedying the breach.

If within those thirty (30) days the Owner has not remedied the breach or made arrangements satisfactory to the Municipality for remedying the breach, or if the Owner does not carry out the said arrangements within a reasonable period of time, of which the Municipality shall be the sole

and final judge, the Municipality may enter upon the Property and may carry out the Owner's obligations and the Owner shall reimburse the Municipality for all expenses incurred thereby. Such expenses incurred by the Municipality shall, until paid to it by the Owner, be a debt owed by the Municipality and recoverable by the Municipality by action in a court of law.

2.10 Waiver

The failure of the Town at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time.

2.11 Extension of Time

Time shall be of the essence of this Agreement. Any time limits specified in this Agreement may be extended with the consent in writing of both the Owner and the Town, but no such extension of time shall operate or be deemed to operate as an extension of any other time limit, and time shall be deemed to remain of the essence of this Agreement notwithstanding any extension of any time limit.

2.12 Emergencies

Notwithstanding the provisions of paragraph 2.1, it is understood and agreed that the Owner may undertake such temporary measures in respect of the Building as are:

- (1) in keeping with the intentions of this Agreement;
- (2) consistent with the conservation of the Building, and
- (3) reasonably necessary to deal with an emergency which puts the security or integrity of the Building or occupants of the Building at risk of damage,

provided that the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended, or re-enacted from time to time is complied with and, where time permits, the staff of the Heritage Section, Development Services Commission, is consulted.

3.0 Use of Property

- 3.1 The Owner expressly reserves for itself, its representatives, heirs, successors and assigns the right to continue the use of the Property for all purposes not inconsistent with this Agreement.

4.0 Inspection of the Property

4.1 Inspection by Town at All Reasonable Times

The Town or its representatives shall be permitted at all reasonable times to enter upon and inspect the Property and the Building upon prior written notice to the Owner of at least twenty-four (24) hours.

5.0 Notice of Easement

5.1 Plaque

The Owner agrees to allow the Town to erect a plaque on the Building, in a tasteful manner and at the Town's expense, indicating that the Town holds a conservation easement on the Property.

5.2 Publicity

The Owner agrees to allow the Town to publicize the existence of the easement.

6.0 Severability of Covenants

6.1 Proper Covenants Not to Terminate

The Owner and the Town agree that all covenants, easements and restrictions contained in this Agreement shall be severable, and that should any covenant, easement or restriction in this Agreement be declared invalid or unenforceable, the remaining covenants, easements and restrictions shall not terminate thereby.

7.0 Notice

7.1 Addresses of Parties

Any notices to be given under this Agreement shall be delivered to the parties at their respective addresses. The respective addresses of the parties for such purposes presently are as follows:

The Owner
719429 Ontario Inc.
c/o Markham Trails Limited Partnership
370 King Street West, Suite 600
Toronto, Ontario
M5V 1J9

The Town
 The Corporation of the Town of Markham
 101 Town Centre Boulevard
 Markham, Ontario
 L3R 9W3

The parties agree to notify each other immediately, in writing, of any changes of address from those set out above.

7.2 Service in Person or by Mail Except Where Postal Service is Interrupted

Except in the event of an interruption in the postal service, any notices to be given under this Agreement shall be delivered in person or sent by prepaid registered mail addressed to the parties at their respective addresses as set out in paragraph 7.1. In the event that a notice is delivered in person, the party receiving the notice shall forthwith indicate receipt of the notice by signing a form of acknowledgement of receipt, and in that event, the notice shall be deemed to have been received on the date on which the form of acknowledgement of receipt was signed. In the event that a party refuses to sign an acknowledgement of receipt of the notice, the person delivering the notice may swear an affidavit of service, and the notice shall be presumed to have been received on the date of service as set out in such affidavit. In the event that a notice is sent by prepaid registered mail, it shall be deemed to have been received on the second clear day following the day on which the notice was sent.

7.3 Service Where Postal Service is Interrupted

In the event of any interruption in the postal service, notice may be given to either party at its respective address as set out in paragraph 7.1, either in person or by special courier. The party receiving the notice shall indicate the receipt of it by signing a form of acknowledgement of receipt, and the notice shall be deemed to have been received on the date on which the form of acknowledgement of receipt was signed. In the event that either party refuses to sign an acknowledgement of receipt of the notice, the person delivering the notice may swear an affidavit of service, and the notice shall be presumed to have been received on the date of service as set out in such affidavit.

8.0 Entirety

8.1 No Extraneous Agreements Between the Parties

This written Agreement embodies the entire agreement of the parties with regard to the matters dealt with herein, and no understandings or agreements, verbal or otherwise, exist between the parties except as herein expressly set out.

9.0 Subsequent Instruments

9.1 Subsequent Instruments to Contain These Provisions

Notice of these covenants, easements and restrictions shall be inserted by the Owner in any subsequent deed or other legal instrument by which they divest themselves either of the fee simple title to or of their possessory interest in the Property or the Building.

9.2 Notice to Municipality

The Owner shall immediately notify the Town in the event that they divest themselves of the fee simple title to or of their possessory interest in the Property or the Building.

10.0 Interpretation

10.1 The headings in the body of this Agreement form no part of the Agreement but shall be deemed to be inserted for convenience of reference only.

10.2 This Agreement shall be construed with all changes in number and gender as may be required by the context.

11.0 Enurement

11.1 Covenants to Run With the Property

The covenants, easements and restrictions set out in this Agreement shall run with the Property and shall enure to the benefit of and be binding upon the Owner and upon the Town and their respective heirs, executors, administrators, successors and assigns as the case may be.

12.0 Termination

12.1 Term of Agreement

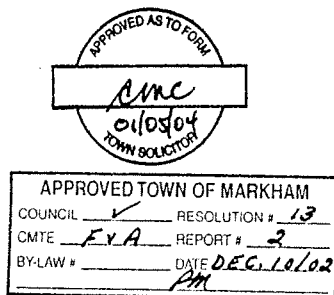
Notwithstanding any other provision of this Agreement, the term of this Agreement shall end on the earliest to occur of the date of receipt of approval to demolish pursuant to paragraph 2.4.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their corporate seals attested by their respective proper signing officers in that behalf duly authorized.

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)
) Frank Scarpitti
) ~~MAYER-DON COUSINS~~
) Deputy Clerk - ~~Frank Scarpitti~~
)
)

) ~~CLERK SHEILA BIRZELL~~
) Deputy Clerk- Patricia Miller



SCHEDULE "A"

ALL AND SINGULAR THAT certain parcel or tract of land and premises situate, lying and being in the Town of Markham, in the Regional Municipality of York, and being composed of Part of Lot 19, Concession 6, designated as Part 1 on Plan 65R-26391.

SCHEDULE "B"

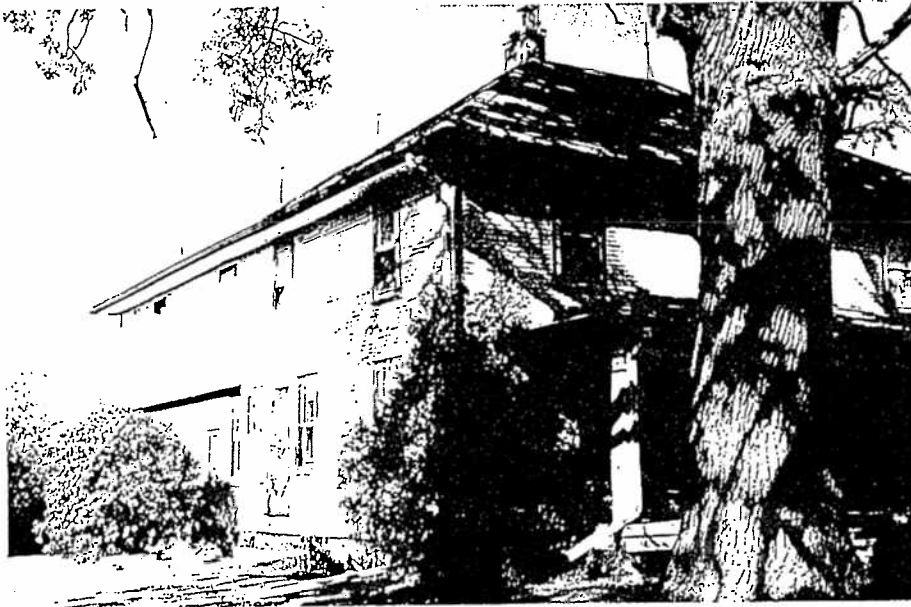


EAST AND NORTH ELEVATIONS AND HISTORIC
BUR OAK TREE



FRONT ELEVATION

SCHEDULE "B"



SOUTH AND SIDE ELEVATION AND HISTORIC
BUC OAK TREE



REAR AND NORTH SIDE ELEVATIONS