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File No.:B.031/13
Planner: S. Wise

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	GEORGE KOTSIFAS, P.ENG. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	APPLICATION BY: KIRKNESS CONSULTING INC 103 ELMWOOD AVENUE EAST APPEAL TO PROVISIONAL CONSENT DECISION MEETING ON MARCH 4, 2014

RECOMMENDATION

That, on the recommendation of the Manager Development Services and Planning Liaison, in response to the letter of appeal to the Ontario Municipal Board from Ms Anna Hendrikx, dated November 19, 2013 relating to the Provisional Decision on Consent Application B.031/13 concerning property located at 103 Elmwood Avenue East:

a) the Ontario Municipal Board BE ADVISED that Municipal Council supports the Provisional Consent Decision and all conditions included; and

b) the City Solicitor BE DIRECTED to provide legal and planning representation at the Ontario Municipal Board Hearing in support of the position of Municipal Council.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

None

PURPOSE AND EFFECT OF RECOMMENDED ACTION

The purpose and effect of the recommended action is to uphold the decision of the Approval Authority to conditionally approve the proposed severance, which will result in the creation of a new parcel and single family dwelling.

BACKGROUND

CONSENT APPLICATION

The consent application (B.031/13) is for the creation of a flag-shaped lot in the rear portion of 103 Elmwood Avenue East for an additional single family dwelling. Notice of the application was published in *The Londoner* on August 22, 2013, and circulated to internal and external agencies for comment along with all residents within a 60m radius on August 21, 2013, as the following:

B.031/13 – 103 Elmwood Avenue East *- Request to sever one lot of 1,383.3m² from 103 Elmwood Avenue East for the purpose of future rear-lot residential uses, and retain one lot of 1,373.3m² for existing residential uses.*

PUBLIC RESPONSE

Three written submissions were received from the public in response to the notice of

application. Their letters expressed concerns including:

1. The proposed frontage of 7.0m is inadequate and the variation from the minimum by-law requirements of 9m may result in negative access and aesthetic impacts;
2. The minor variance application associated with this site has not been lodged and the neighbours have not had the chance to comment which makes the consent premature and the public has not been consulted as there was no public meeting;
3. No engagement by the applicant to the property owners along Duchess Street
4. The existing local flooding and drainage issues will be exacerbated with an additional house in the location most prone to stormwater effects;
5. Detrimental to the privacy, property values, existing wildlife and enjoyment of outdoor living space for the property owners along Duchess Street including the removal of mature trees;
6. The proposal does not fit within the neighbourhood and does not maintain the history and character of the community;
7. Negatively affects natural features, features of cultural and historical significance, and the adequate provision of services, orderly development of safe and healthy communities, protection of public health and safety, the appropriate locations for growth and development;
8. The application for heritage conservation district should halt development;
9. The proposal is not positive and environmentally sound development;
10. The safety of the children at the adjacent day care may be negatively impacted
11. The proposed single family dwelling may become more intensive

Internal and external comments were reviewed and used to create draft conditions of the provisional consent decision. Upon the creation of the draft conditions a copy was sent to the applicant on October 16, 2013, and the applicant confirmed the conditions were acceptable on October 24, 2013 prior to the notice of provisional decision being granted.

The staff comments are attached to this report (attached Appendix A).

On October 25, 2013 the City of London Consent Authority conditionally approved the consent application by Kirkness Consulting Inc.

The provisional consent decision is attached to this report (attached Appendix B).

On November 19, 2013, Ms. Anna Hendrikx submitted a letter of appeal (attached Appendix C) to the Ontario Municipal Board opposing the Consent Authority's decision, conditionally approving the consent.

The basis of the appeal as described by the applicant are as follows:

1. The proposed lot and eventual dwelling does not fit the lands and will reduce the privacy and enjoyment on neighboring properties;
2. The subject site is subject to localized flooding and stormwater management issues; and
3. The frontage proposed by the applicant (7.0m) and the frontage staff support (8.0m) is inconsistent with the requirements of the by-law of (9.0m)

The hearing date for this appeal has been scheduled for April 22, 2014.

MINOR VARIANCE

A minor variance application A.005/14 was submitted on December 3, 2013 to request the following:

Retained Lot:

1. To permit 11.8% coverage for all detached accessory structures whereas 10% maximum is allowed;
2. To permit a deck with a west interior side yard setback of 0.4m (1.3') whereas 1.2m (3.9') is required;

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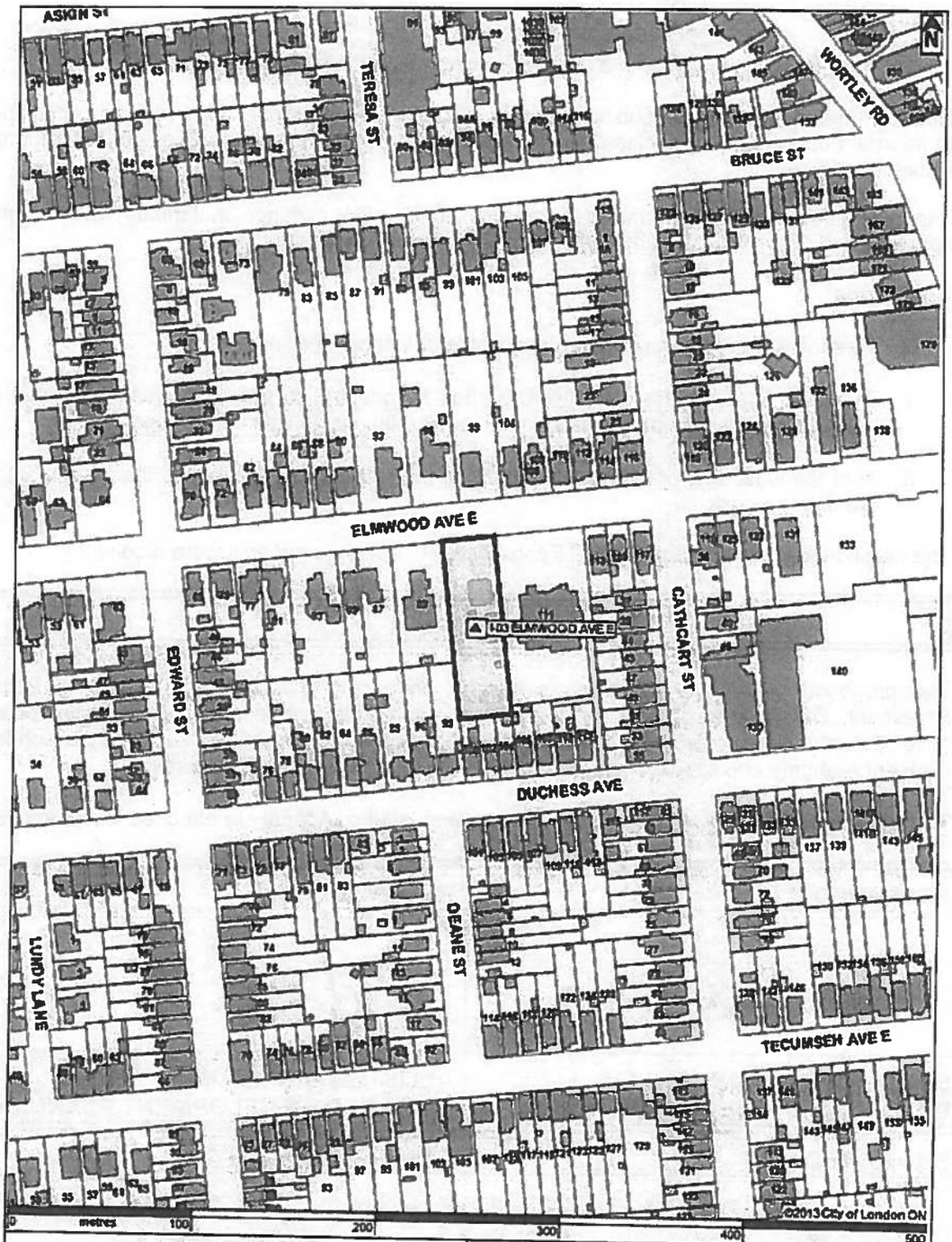

LOCATION MAP

Subject Site: 103 Elmwood Ave E
Applicant: Kirkness Consulting Inc.
File Number: B.031/13
Planner: Sonia Wise
Created By: Barb Mellen
Date: 2013-08-13
Scale: 1:2500

Corporation of the City of London
Prepared By: Planning and Development

N

LEGEND

- Subject Site
- Parks
- Assessment Parcels
- Buildings
- Address Numbers

File No.:B.031/13
Planner: S. Wise

Severed Lot:

1. To permit a lot frontage of 8.0m (26.2') where 9.0m (29.5') is required;

Notice of the application was published in *The Londoner* on December 26, 2013, and circulated to internal and external agencies for comment along with all residents within a 60m radius on December 13, 2013.

The Committee of Adjustment heard the application for minor variance on January 13, 2014 and approved the minor variance application subject to the following conditions:

Conditions

1. That the application is restricted to a single detached dwelling.
2. The front doors of the new dwelling shall be oriented to the east, west, northeast or northwest and shall not create a front to back relationship with the existing dwelling.
3. That the west interior side yard setback of the retained lot be no less than 0.6m (2') to the existing deck.

The decision was open to appeal until February 3, 2014 and no appeals were received.

CONCLUSION

The proposed severance has been evaluated under the Planning Act, Provincial Policy Statement, Official Plan and Zoning By-law and represents sound planning and appropriate development. The provisional consent decision granted on October 25, 2013 by the London Consent Authority and should be upheld at the Ontario Municipal Board Hearing.

The Staff Report, Provisional Consent Decision, and letter of Appeal are attached for reference.

PREPARED BY:	REVIEWED BY:
SONIA WISE, PLANNER II DEVELOPMENT SERVICES	ALLISTER MACLEAN MANAGER, DEVELOPMENT PLANNING
SUBMITTED BY:	**RECOMMENDED BY:**
TERRY GRAWEY, MCIP, RPP MANAGER, DEVELOPMENT SERVICES & PLANNING LIAISON	GEORGE KOTSIFAS, P.ENG MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL

Feb 19, 2014
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Appendix A

THE CORPORATION OF THE CITY OF LONDON

Londor
CANADA

Date: **October 10, 2013**

To: **J. M. Fleming**
London Consent Authority

From: **Development Compliance Division**
Development Services – S. Wise

Subject: **Development Services Comments - Consents**
Deadline Date – September 5, 2013

B. 031/13 **103 Elmwood Avenue East**

The applicant, Kirkness Consulting Inc for 103 Elmwood Avenue East, is requesting to sever 1,383.3m² from 103 Elmwood Avenue East for the purpose of future rear-lot residential uses, and retain 1,373.3m² for the purpose of existing residential uses.

OFFICIAL PLAN DESIGNATION:
LDR
EXISTING ZONING:
R2-2

PUBLIC RESPONSE

Three written responses were received with the following comments:

Kelly White & Doug Smith
100 Duchess Avenue, London ON N6C 1N6

- Concern for the reductions from the by-law for frontage providing 7m where 9m is required and the negative aesthetic impact
- Concern if adequate frontage is provided for emergency vehicles
- The proposed location for the development is subject to flooding and ices over in the winter, and concern for the cascading effects of exacerbating an existing issue
- Concern for the removal of mature trees
- Concern for the reduction in property values of the rear abutting properties
- Concern that the proposal does not fit within the neighbourhood and desire to maintain the history and character of the community

Development Services does not support a 7m frontage, and instead requires at least 8.0m is provided to ensure adequate space is available to provide landscaping, servicing and to minimize the potential for similar forms of development. There is adequate frontage provided to enable emergency service vehicle access. New development shall ensure on-site stormwater is managed appropriately and that there shall be no adverse effects on neighbouring properties. Tree retention is considered through site plan approval which is required prior to development. There is no information to suggest property values will be impacted associated with the proposed development. The proposed rear-lot development is unlikely to have significant impacts on the character of the community as the location of the proposed dwelling is setback from the street and the compatibility shall be reviewed as part of the site plan approval process.

Mark MacKinnon
108 Duchess Ave, London ON N6C 1N6

- Disagreement with the proposal as a positive and environmentally sound development
- Despite the consultation to the Old South London Community Association, there was no contact from the applicant to the property owners along Duchess Avenue
- Proposal is not in the best interest of the neighbours and property owners
- No support for the proposed rear-yard development

File No.:B.031/13
Planner: S. Wise

The engagement the applicant undertook was in addition to the statutory notice issued by the City of London through the advertisement in the Londoner on Thursday August 22, 2013, and mailed notice of application to property owners within 60m of the subject site. In the opinion of Development Services, the proposed severance represents sound planning and additional approval via site plan approval will ensure the orderly development of the parcel.

Anna Hendrix & D'Arcy Balfour
102 Duchess Avenue, London ON N6C 1N6

- Detrimental to the privacy and enjoyment of outdoor living space on their property
- Appreciate the luxury of wildlife available due to the seclusion of the area between the properties
- Concern the proposal negatively affects natural features, features of cultural and historical significance, the adequate provision of services, orderly development of safe and healthy communities, protection of public health and safety, the appropriate locations for growth and development.
- Concern for the consent application that was not accompanied by the application for minor variance
- Concern the public has not been consulted in the process as there has been no public meeting
- Concern the application for consent is premature without the permission for the minor variance having been approved
- The proposal do not fit the lands
- There is an application for a heritage conservation district for this area which should automatically cease development
- Concern for the safety of the children at the adjacent daycare centre
- Concern for the safety of the wooden structure on the property located immediately behind the back fence if EMS were to be called to the proposed dwelling
- Flood control for adjoining properties is an existing concern and may be exacerbated on site and jeopardize the foundation of the proposed dwelling
- Concern the proposal for the single detached dwelling may become a more intensive development

The rear portion of the proposed lot is consistent with the minimum rear yard setback requirements in the R2-2 Zone and the associated use of a residential backyard is not considered to have adverse impacts on neighbouring rear yards. There are no known natural features or ecological systems as per schedule B1 & B2 of the Official plan. Any wildlife that is within the immediate area is within an existing urban footprint that has adapted to the urban setting and is unlikely to be impacted by one additional dwelling. The site is within an area identified with archaeological potential and the owner will be required to undertake a study prior to development. The site is not within a designated heritage district. Adequate services are available for the proposed severance, and the location is considered appropriate for an infill lot. Section 19.7.1 of the Official Plan permits the provisional approval of a consent application subject to a variance submitted and approved within the one year timeframe. The size of the proposed lot is considered adequate, though will require relief from the requirements of the by-law for frontage through a minor variance application. New development shall ensure on-site stormwater is managed appropriately and that there shall be no adverse effects on neighbouring properties, the severed lot is not within an area identified as flood plain land. The R2-2 zone permits single detached dwellings, semi-detached duplex and converted dwellings. Any increase in density or deviation from the permitted uses would require a Zoning By-law amendment which is a public process the community can be involved in.

Comments pertaining to site plan items shall be included in the AMANDA folder of the proposed lot to be included in the consideration at the time of site plan approval.

PLANNING ACT

In considering this application, Development Services staff had regard for the health, safety, convenience, accessibility for persons with disabilities and welfare of present and future inhabitants of the municipality and to Section 51 (24) of the *Planning Act*.

The attached conditions are, in the opinion of Development Services staff, reasonable having regard for the nature of the development proposed and are in accordance with Section 51 (25) of the *Planning Act*.

File No.:B.031/13
Planner: S. Wise

PROVINCIAL POLICY STATEMENT

The consent has been reviewed in conjunction with the 2005 Provincial Policy Statement.

Building Strong Communities: This consent application is within an existing settlement area and will promote an efficient use of land and existing infrastructure.

Wise Use and Management of Resources: This consent application is not within an area of identified cultural heritage though has been identified as an area with potential archaeology significance which shall be addressed through a condition of consent.

Protecting Public Health and Safety: There are no known Natural Hazards or Human-Made Hazards issues associated with, or impacted by this consent application.

In the opinion of the Development Services the proposal is consistent with the PPS.

OFFICIAL PLAN

Designation

The subject land is designated as Low Density Residential (LDR) which primarily permits single detached, semi-detached and duplex dwellings.

3.2.3. Residential Intensification

Residential Intensification refers to the development of a property, site or area at a higher density than currently exists on the site through a variety of means, including infill and lot creation. Development is only considered infill by the Official Plan when it occurs on vacant or underutilized sites within an established residential neighbourhood. Underutilized sites are defined as those sites that can reasonably accommodate more residential development than what currently exists on the site within the context of the surrounding established residential neighbourhood.

3.2.3.2. Within the LDR designation, Residential Intensification will be considered in a range up to 75 units per hectare. Zoning By-law provisions will ensure that infill housing projects recognize the scale of adjacent land uses and reflect the character of the area.

3.2.3.9. Any new lots created through consents will be in keeping with the established lot pattern of the surrounding area in terms of frontage, depth and overall size and configuration.

3.2.3.10 Rear-lot Development

The creation of rear-lot development (flag-shaped lots) shall be discouraged in all Residential Land Use designations unless the criteria listed in policy 3.2.3 are met and the following urban design considerations are addressed:

i) Access to the new project shall be wide enough to provide:

- separate pedestrian/vehicular access;
- sufficient space beside the driveways for landscaping and fencing to buffer the adjacent properties;
- adequate space at the street curb for garbage and blue box pickup; and
- snow storage for the clearing of these driveways.

ii) In laying out a rear-lot development project, care should be taken to avoid creating front to back relationships between existing and proposed dwelling units. To support privacy the front doors of the new units should not face onto the rear yards of existing homes. As well, depending on the scale of the development and the building types proposed internally, front doors should face front doors.

iii) Where existing dwellings fronting onto the street are not incorporated into the infill project, adequate land should be retained in the rear yard of these dwellings to provide:

- Appropriate outdoor amenity space;

- Adequate separation distance between the existing houses and the habitable areas of the infill project;
- Sufficient space for landscaping in the rear yards for visual separation if required; and
- Parking and vehicular access for the existing houses, so as not to introduce parking into the front yards of the existing house.

Chapter 19

Policies of the Official Plan that are directly relevant to the consideration of this consent application include the following consideration that:

19.7.1.i(a) Any lot(s) to be created conforms with the provisions of the Official Plan, Zoning By-law and any applicable area study or guideline document.
19.7.1.i(b) The matters which, according to the *Planning Act*, are to be regarded in the review of a draft plan of subdivision have been taken into account;
19.7.1.i(c) The size and shape of any lots to be created would be appropriate for the intended use, and would generally conform to adjacent development and to any development agreements registered against the title of the subject land.
19.7.1.i(d) The creation of any lot(s) would have the effect of infilling an existing developed area where the pattern of land use has been established, and would not have the effect of extending a developed area;
19.7.1.i(e) The proposed lot(s) would front on, or have access to, an existing public road and would not involve the opening or extension of a public road;
19.7.1.i(f) The proposed lot(s) would not unduly reduce the accessibility of abutting lands suitable for development;
19.7.1.i(g) Access to the proposed lot(s) would not create traffic problems or hazards and that Official Plan policies regarding road access would be complied with.
19.7.i(h) Adequate municipal services and utilities would be available.

EVALUATION

Residential Intensification

Within the immediate area (350m radius) there are two examples of flag-shaped lots that have a residential dwelling on site. Rear-lot developed flag-shaped lots are not common, and the intention is to discourage additional rear-lot development by not establishing a precedence. The characteristics of the subject site and adjacent properties are very large lots that exceed the minimum requirements for lot size in the by-law many times over.

Based on the 7.0m frontage the applicant is proposing, there are a number of properties along Elmwood Avenue East that could potentially create a flag-shaped lot in their rear yards. Permitting numerous rear-lot developments would significantly alter the streetscape and result in a loss of amenity through an increase in hard-surfaced driveways.

In order to ensure there is sufficient lot frontage and to prevent setting a precedence for other lots in the area, staff are of the opinion that the lot frontage should be a minimum of 8.0m. This will eliminate the potential duplication of the adjacent rear-lots developing with 7.0m frontage.

Development Services - Engineering

From an engineering viewpoint the width of the proposed severed lot does not allow municipal services to be located in accordance with City standards. The requirement of 8.0m for frontage is consistent with engineering requirements of at least 8.0m to meet the servicing design standards for the site.

Rear-lot Development

Access to the proposed rear-lot development is capable of providing a separate pedestrian and vehicular access with sufficient space beside the driveway for landscaping and fencing to buffer the adjacent properties. There is adequate space provided for temporary garbage and recycling storage as well as the removal of snow storage from the driveway.

The proposed development is capable of avoiding front to back relationships with adjacent properties as the front of the proposed dwelling can be oriented to the east interior side yard, west interior side yard, the northeast or northwest.

Given the large size of the existing parcel, there is the ability to provide for appropriate outdoor amenity space. A 7.0m rear and west interior side yard setback is proposed which facilitates

outdoor amenity space, separation distance, landscaping, parking and vehicular access. The north and east interior side yards are proposed to have between 1.2-2m setbacks which are consistent with the requirements of an interior side yard. The covered parking area is proposed towards the north of the site which potentially provides a privacy buffer between the outdoor amenity space in the rear of the existing property and the proposed property's north front yard.

The existing dwelling accesses parking from the east of the site and uses the interior side yard to access a garage at the rear of the property. The creation of the rear lot will not result in a front-yard parking situation.

The proposed severed and retained lands conform with the uses permitted in the Low Density Residential designation and the Zoning By-Law. Minor Variances to the Z.-1 Zoning By-law are required to address deficiencies associated with the lot frontage of the severed lot and accessory building coverage with the retained lot. The proposed severance has had regard to the matters outlines in section 51.24 & 51.25 associated with the subdivision of land such as provincial interests, appropriate timing, conformity with the Official Plan etc. The proposed severed and retained lots are appropriate for residential uses. Though the lot pattern is not common in the neighbourhood, the parcels are generally similar in size to the adjacent lots. The proposed severance is within an existing established area and is considered infill development without extending the developed area. The proposed lot will have frontage on Elmwood Avenue East and it is not anticipated that the severance will result in any traffic problems or negatively impact the accessibility of abutting lands. The proposed lot has access to municipal services and utilities. Any servicing challenges due to the location of the proposed dwelling will be address in greater detail through the Site Plan Approval Process.

ZONING

The proposed uses of the severed and retained lots are consistent with the permitted uses under the Residential R2 (R2-2) Zone which includes single detached, semi-detached, duplex and converted dwellings. Relief is required through minor variances to address reduced lot frontage for the severed lot and accessory structure coverage for the retained lot.

CONDITIONS

Based on the above, Development Services has **no objection** to the proposed consent application provided that the following conditions are satisfied prior to the certification of any documents:

1. Pursuant to Section 53(41) of the Planning Act, if the applicant has not within a period of one year after notice was given of a decision to grant a provisional consent fulfilled all of the following conditions, the application shall be deemed to be refused.

2. A certificate fee shall be paid at Development Services (6th floor, City Hall) in the amount current at the time of the issuance of the Consent Authority's Certificate.

3. For the purposes of satisfying any of the conditions of provisional approval herein contained, the Owner shall file with Development Services (6th floor, City Hall), at a minimum of 3 working days in advance of final consent approval, a complete submission consisting of all required clearances, fees, and final plans, and to advise in writing how each of the conditions of provisional approval has been, or will be, satisfied. The Owner acknowledges that, in the event that the final approval package does not include the complete information required by the Consent Authority, such submission will be returned to the Owner without detailed review by the City.

4. The Owner shall submit 2 white prints of a reference plan of survey, showing the subject land which conforms with the application submitted and which shows the dimensions and areas of each part shown on the plan and which shows the location of all buildings and structures on the severed and retained lands. Approval of the draft reference plan shall be obtained from the Development Services Staff, and; 2 prints of the resultant deposited reference plan shall be received.

5. Prior to issuance of certificate of consent, the Owner shall pay in full all financial obligations/encumbrances owing to the City on the said lands, including property taxes and local improvement charges.

6. The proposed residential property will require a new sanitary private drain connection to the municipal sanitary sewer on Elmwood Avenue with a gravity connection from the new parcel to the municipal sanitary sewer, to the satisfaction of Development Services.

7. That the width of the proposed severed lot shall be no less than 8.0m (26.2') to allow municipal servicing in accordance with City of London Drawing SW-7.0.

8. That the Owner's professional engineer prepare a Lot Grading & Servicing Plan of the subject lands lots showing among other, the proposed hard surfaced driveway and snow storage area, municipal services (storm, sanitary & water) in accordance with City standard SW-7.0, lot grading and storm water management, overland flow route etc. all to the specifications, review and acceptance of Development Services.

9. Upon acceptance by Development Services of the above noted Lot Grading & Servicing Plan, the Owner may be required to enter into a Consent Agreement with the City, to be registered on title of the subject lands, for the construction and maintenance of the required works all to the specifications and satisfaction of the City Engineer. The agreement shall also include provision of sufficient security and insurance to be paid on signing to ensure the proper completion of the accepted works and services to be constructed therein.

10. The Owner shall request approval from Forestry Operations for the consensual removal of trees to facilitate servicing and driveway access. It shall be completed as per a consensual removal program in the Boulevard Tree Protection By-law P-69, Schedule B, including the removal, replacement or offset costs at no expense to the City, to the satisfaction of Forestry Operations.

11. The Owner shall request that a municipal address be assigned to the severed lands to the satisfaction of Development Services.

12. The Owner shall provide cash-in-lieu of parkland dedication for the proposed lots pursuant to By-law CP-9. The amount owing is based on the lot frontages for all lots (retained and severed) and is payable to the "City Treasurer" and delivered to the Secretary, London Consent Authority. If the applicant can provide evidence that a parkland fee or land dedication has been previously given for the original parcel, the City will waive the dedication for the "retained" lot.

13. The Owner shall obtain a minor variance, to address the deficiencies on the severed and retained lands. The final reference plan describing the parts to be created shall be consistent with the Minor Variance decision which shall be in full force and effect prior to the issuance of a certificate.

14. The Owner shall remove the fence, fish pond, accessory structure and all other obstructions on the proposed severed lot to the satisfaction of Development Services.

15. The subject property is located within an area identified as having archaeological resource potential. If an archaeological review has not been conducted for the severed parcel, then the Owner shall carry out an archaeological survey and rescue excavation of any significant archaeological remains found on the severed parcel to the satisfaction of the Southwestern Regional Archaeologist of the Ministry of Culture.

16. The Consent Certificate shall lapse after 6 months of issuance if the transaction has not been completed.

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NOTES

i. Site plan approval will be required prior to development for the proposed severed lot.

ii. Union Gas has service lines within the area. The Owner is required to seek approval from Union Gas prior to construction to ensure there is no impact on the services, or that they are relocated to the satisfaction of Union Gas.

PREPARED BY:	REVIEWED BY:
SONIA WISE, PLANNER II DEVELOPMENT SERVICES	ALANNA RILEY MCIP RPP SENIOR PLANNER, DEVELOPMENT SERVICES
REVIEWED BY:	**SUBMITTED BY:**
ALLISTER MACLEAN MANAGER DEVELOPMENT PLANNING	TERRY GRAWEY MCIP RPP MANAGER, DEVELOPMENT SERVICES & PLANNING LIAISON

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File No.:B.031/13
Planner: S. Wise

Appendix B

Applicant: Kirkness Consulting Inc.
File No: B.031/13
Municipality: City of London
Subject Lands: 103 Elmwood Avenue East

Date of Decision: October 25, 2013
Date of Notice: October 29, 2013
Last Date of Appeal: November 19, 2013
Lapsing Date: October 25, 2014

London
CANADA

NOTICE OF PROVISIONAL CONSENT DECISION

Section 53 of the Planning Act

TAKE NOTICE that the City of London Consent Authority, **GRANTED** Kirkness Consulting Inc. for 103 Elmwood Avenue East, consent to sever 1,383.3m² from 103 Elmwood Avenue East for the purpose of future rear-lot residential uses, and retain 1,373.3m² for the purpose of existing residential uses, file No. B.031/13 on the **25th day of October, 2013**, under Section 53 of the Planning Act, R.S.O., 1990, c.P.13, as amended, subject to **CONDITIONS** which must be satisfied before any certificates of consent are issued. A copy of the Provisional Decision is attached.

AND TAKE NOTICE that any person or public body may appeal this decision or any of the conditions imposed by the Consent Authority to the Ontario Municipal Board by filing a notice of appeal with the City of London Consent Approval Authority, Development Services, 300 Dufferin Avenue, London, ON N6A 4L9, **NOT LATER THAN THE 19th day of November, 2013.** The notice of appeal must set out the reasons for the appeal and must be accompanied by the $125.00 fee prescribed by the Ontario Municipal Board Act, in the form of a **certified cheque or money** order made payable to the Minister of Finance and must be accompanied by an **Appellant Form (A1)** found on **http://www.omb.gov.on.ca?hearing/forms/appealforms.htm** or from the office of the London Consent Authority. If you have any questions regarding the OMB process, please contact the OMB Citizen Liaison Office at (416) 326-6800 or toll free 1-866-887-8820 or in person at 655 Bay Street, Suite 1500, Toronto, ON.

The land to which this application applies is not the subject of an application under the Planning Act.

Only individuals, corporations or public bodies may appeal decisions in respect for consent to the Ontario Municipal Board. A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or group on its behalf.

You will be entitled to receive notice of any changes to the conditions of the Provisional Consent if you have either made a written request to be notified of the decision of the London Consent Authority or you made a written request to the London Consent Authority to be notified of changes to the conditions for the provisional consent.

Please note that all conditions of the Provisional Consent must be fulfilled within one year from **October 25th, 2013** prior to the issuance of any Certificate by the London Consent Authority failing which this consent shall be deemed to be refused. It is the responsibility of the applicant to satisfy all the conditions. **PLEASE ALLOW THREE WORKING DAYS FOR THE CERTIFICATE TO BE ISSUED.** There is an issuance of certification charge of $100.00 for the first certificate and $200.00 for each additional lot/document.

Additional information on this consent decision is available from Development Services, 6th floor, City Hall or by telephoning 519-930-3500 during business hours/weekdays from 8:30 a.m. to 4:30 p.m.

Dated at the City of London this 25th day of October, 2013

J. M. Fleming
City Planner
City of London Consent Authority
300 Dufferin Avenue, London, ON N6A 4L9

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File No.:B.031/13
Planner: S. Wise

Applicant: Kirkness Consulting Inc.
File No: B.031/13
Municipality: City of London
Subject Lands: 103 Elmwood Avenue East

Date of Decision: October 25, 2013
Date of Notice: October 29, 2013
Last Date of Appeal: November 19, 2013
Lapsing Date: October 25, 2014

OWNER:
Robert and C.E. Chapman
103 Elmwood Avenue East
London ON N6C 1J4

AGENT:
Kirkness Consulting Inc.
1647 Cedarcreek Crescent
London ON N5X 0C8

THE CORPORATION OF THE CITY OF LONDON'S CONSENT AUTHORITY PROVISIONAL DECISION FOR CONSENT, FILE NUMBER B.031/13 IS AS FOLLOWS:

The City of London Consent Authority on October 25th, 2013 **GRANTED** Provisional Approval to the applicant, Kirkness Consulting Inc. consent to sever 1,383.3m² from 103 Elmwood Avenue East for the purpose of future rear-lot residential uses, and retain 1,373.3m² for the purpose of existing residential uses, subject to **CONDITIONS** which must be satisfied before any Certificates of Official are issued.

NO. **CONDITIONS**

1. Pursuant to Section 53(41) of the Planning Act, if the applicant has not within a period of one year after notice was given of a decision to grant a provisional consent fulfilled all of the following conditions, the application shall be deemed to be refused.

2. A certificate fee shall be paid at Development Services (6th floor, City Hall) in the amount current at the time of the issuance of the Consent Authority's Certificate.

3. For the purposes of satisfying any of the conditions of provisional approval herein contained, the Owner shall file with Development Services (6th floor, City Hall), at a minimum of 3 working days in advance of final consent approval, a complete submission consisting of all required clearances, fees, and final plans, and to advise in writing how each of the conditions of provisional approval has been, or will be, satisfied. The Owner acknowledges that, in the event that the final approval package does not include the complete information required by the Consent Authority, such submission will be returned to the Owner without detailed review by the City.

4. The Owner shall submit 2 white prints of a reference plan of survey, showing the subject land which conforms with the application submitted and which shows the dimensions and areas of each part shown on the plan and which shows the location of all buildings and structures on the severed and retained lands. Approval of the draft reference plan shall be obtained from the Development Services Staff, and; 2 prints of the resultant deposited reference plan shall be received.

5. Prior to issuance of certificate of consent, the Owner shall pay in full all financial obligations/encumbrances owing to the City on the said lands, including property taxes and local improvement charges.

6. The proposed residential property will require a new sanitary private drain connection to the municipal sanitary sewer on Elmwood Avenue with a gravity connection from the new parcel to the municipal sanitary sewer, to the satisfaction of Development Services.

7. That the width of the proposed severed lot shall be no less than 8.0m (26.2') to allow municipal servicing in accordance with City of London Drawing SW-7.0.

8. That the Owner's professional engineer prepare a Lot Grading & Servicing Plan of the subject lands lots showing among other, the proposed hard surfaced driveway and snow storage area, municipal services (storm, sanitary & water) in accordance with City standard SW-7.0, lot grading and storm water management, overland flow route etc. all to the specifications, review and acceptance of Development Services.

9. Upon acceptance by Development Services of the above noted Lot Grading & Servicing Plan, the Owner may be required to enter into a Consent Agreement with the City, to be registered on title of the subject lands, for the construction and maintenance of the required works all to the specifications and satisfaction of the City Engineer. The agreement shall also include provision of sufficient security and insurance to be paid on signing to ensure the proper completion of the accepted works and services to be constructed therein.

10. The Owner shall request approval from Forestry Operations for the consensual removal of trees to facilitate servicing and driveway access. It shall be completed as per a consensual removal program in the Boulevard Tree Protection By-law P-69, Schedule B, including the removal, replacement or offset costs at no expense to the City, to the satisfaction of Forestry Operations.

File No.:B.031/13
Planner: S. Wise

Applicant: Kirkness Consulting Inc.
File No: B.031/13
Municipality: City of London
Subject Lands: 103 Elmwood Avenue East

Date of Decision: October 25, 2013
Date of Notice: October 29, 2013
Last Date of Appeal: November 19, 2013
Lapsing Date: October 25, 2014

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11. The Owner shall request that a municipal address be assigned to the severed lands to the satisfaction of Development Services.

12. The Owner shall provide cash-in-lieu of parkland dedication for the proposed lots pursuant to By-law CP-9. The amount owing is based on the lot frontages for all lots (retained and severed) and is payable to the "City Treasurer" and delivered to the Secretary, London Consent Authority. If the applicant can provide evidence that a parkland fee or land dedication has been previously given for the original parcel, the City will waive the dedication for the "retained" lot.

13. The Owner shall obtain a minor variance, to address the deficiencies on the severed and retained lands. The final reference plan describing the parts to be created shall be consistent with the Minor Variance decision which shall be in full force and effect prior to the issuance of a certificate.

14. The Owner shall remove the fence, fish pond, accessory str ucture and all other obstructions on the proposed severed lot to the satisfaction of Development Services.

15. The subject property is located within an area identified as having archaeological resource potential. If an archaeological review has not been conducted for the severed parcel, then the Owner shall carry out an archaeological survey and rescue excavation of any significant archaeological remains found on the severed parcel to the satisfaction of the Southwestern Regional Archaeologist of the Ministry of Culture.

16. The Consent Certificate shall lapse after 6 months of issuance if the transaction has not been completed.

NOTES

i. Site plan approval will be required prior to development for the proposed severed lot.

ii. Union Gas has service lines within the area. The Owner is required to seek approval from Union Gas prior to construction to ensure there is no impact on the services, or that they are relocated to the satisfaction of Union Gas.

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File No.:B.031/13
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APPEALS TO THE ONTARIO MUNICIPAL BOARD CONSENTS SECTION 53 PLANNING ACT R.S.O 1990, c.P.13 (as amended)

The following extracts from Section 53 of the Planning Act outline the appeal process for appealing consents:

Appeal
53 (19) Any person or public body may, not later than 20 days after the giving of notice under subsection (17) is completed, appeal the decision or any condition imposed by the council or the Minister or appeal both the decision and any condition to the Municipal Board by filing with the clerk of the municipality or the Minister a notice of appeal setting out the reasons for the appeal, accompanied by the fee prescribed under the Ontario Municipal Board Act. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (6)

Note: The fee for an appeal is $125.00 and $25.00 for a related appeal and should be in the form of a ***certified cheque or money order*** made payable to the Minister of Finance of Ontario.

Appeal
53 (27) Any person or public body may, not later than 20 days after the giving of notice under subsection (24) is completed, appeal any of the changed conditions imposed by the Council or the Minister by filing with the clerk of the municipality or the Minister a notice of appeal setting out the reasons for the appeal, accompanied by the fee prescribed under the Ontario Municipal Board Act. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (10)

Record
53 (28) If the clerk or the Minister, as the case may be, receives a notice of appeal under subsection (19) or (27), the clerk or the Minister shall ensure that:
(a) a record is compiled which includes the information and material prescribed; and
(b) the record, the notice of appeal and the fee are forwarded to the Municipal Board within 15 days after the last day for filing a notice of appeal under subsection (19) or (27). 1994, c. 23, s. 32

Hearing
53 (30) On an appeal, the Municipal Board shall hold a hearing, of which notice shall be given to such persons or public bodies and in such manner as the Board may determine. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (11)

Dismissal without hearing
53 (31) Despite the Statutory Powers Procedure Act and subsection (30), the Municipal Board may dismiss an appeal without holding a hearing, on its own motion or on the motion of any party, if,
(a) it is of the opinion that,
(i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could give or refuse to give the provisional consent or could determine the question as to the condition appealed to it;
(ii) the appeal is not made in good faith or is frivolous or vexatious; or
(iii) the appeal is made only for the purpose of delay;
(b) the appellant did not make oral submissions at a public meeting or did not make written submissions to the council or the Minister before a provisional consent was given or refused and, in the opinion of the Board, the appellant does not provide a reasonable explanation for having failed to make a submission;
(c) the appellant has not provided written reasons for the appeal;
(d) the appellant has not paid the fee prescribed under the Ontario Municipal Board Act; or
(e) the appellant has not responded to a request by the Municipal Board for further information within the time specified by the Board. 1994, c. 23, s. 32; 1996, c. 4, s. 29 (12)

Representation
53 (32) Before dismissing an appeal, the Municipal Board shall notify the appellant and give the appellant the opportunity to make representation on the proposed dismissal but this subsection does not apply if the appellant has not complied with a request made under clause (31) (e). 2000, c. 26, Sched. K, s. 5 (7)

Dismissal
53 (32.1) The Municipal Board may dismiss an appeal after holding a hearing or without holding a hearing on the motion under subsection (31), as it considers appropriate. 2000, c. 26, Sched. K, s. 5 (7)

Decision final
53 (33) If all appeals under subsection (19) or (27) are dismissed or withdrawn, the Municipal Board shall notify the council or the Minister and, subject to subsection (23), the decision of the council or the Minister to give or refuse to give a provisional consent is final. 1994, c. 23, s. 32

Powers
53 (34) On an appeal under subsection (14) or (19), the Municipal Board may make any decision that the council or the Minister, as the case may be, could have made on the original application and on an appeal of the conditions under subsection (27), the Board shall determine the question as to the condition or conditions appealed to it. 1994, c. 23, s. 32

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File No.:B.031/13
Planner: S. Wise

Appendix C

Ontario Municipal Board
Commission des affaires municipales de l'Ontario
655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
TEL: (416) 326-6800 or Toll Free: 1-866-887-8820
FAX: (416) 326-5370
www.omb.gov.on.ca

APPELLANT FORM (A1)

PLANNING ACT

(SUBMIT TO MUNICIPALITY/APPROVAL AUTHORITY)

Receipt Number (OMB Office Use Only):

Date Stamp - Appeal Received by Municipality

RECEIVED BY
9230
NOV 19 2013
CITY OF LONDON
DEVELOPMENT SERVICES
12:10pm

Instructions:

- Complete one form for each type of appeal you are filing.
- A filing fee of $125 is required for each type of appeal you are filing. To view the Fee Schedule, visit the Board's website.
- The filing fee must be paid by certified cheque or money order, in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- Submit your completed appeal form(s) and filing fee(s) to either the Approval Authority or Municipality, as applicable, by the required filing deadline. The Approval Authority/Municipality will forward your appeal(s) and fee(s) to the Ontario Municipal Board.
- Please print clearly throughout the appeal form.
- The *Planning Act* and the *Ontario Municipal Board Act* are available at www.omb.gov.on.ca.

Part 1: Appeal Type (Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	*PLANNING ACT* REFERENCE (SECTION)
Minor Variance	☐ Appeal a decision	*45(12)*
Consent	☒ Appeal a decision	*53(19)*
	☐ Appeal changed conditions	*53(27)*
	☐ Failed to make a decision on the application within 90 days	*53(14)*
Zoning By-law	☐ Appeal the passing of a Zoning By-law	*34(19)*
Interim Control By-law	☐ Appeal the passing of an Interim Control By-law	*38(4)*
Official Plan or Official Plan Amendment	☐ Appeal a decision	*17(24) or 17(36)*
	☐ Failed to make a decision on the application within 180 days	*17(40)*
	☐ Application for an amendment to the Official Plan – refused by the municipality	*22(7)*
	☐ Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	*22(7)*
Subdivision	☐ Appeal a decision	*51(39)*
	☐ Appeal conditions imposed	*51(43) or 51(48)*
	☐ Failed to make a decision on the application within 180 days	*51(34)*

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File No.:B.031/13
Planner: S. Wise

Part 2: Location Information

103 Elmwood Avenue East
Address and/or Legal Description of property subject to the appeal:

Municipality: London

Part 3: Appellant Information

First Name: Anna Last Name: Hendrikx

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable):

E-mail Address:
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: Alternate Telephone #:

Fax #:

Mailing Address: 73 Cathcart Street London
Street Address Apt/Suite/Unit# City/Town

Ontario N6 C 3L9
Province Country (if not Canada) Postal Code

Signature of Appellant: Date: November 18. 2013

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: Last Name:

Company Name:

Professional Title:

E-mail Address:
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: Alternate Telephone #:

Fax #:

Mailing Address:
Street Address Apt/Suite/Unit# City/Town

Province Country (if not Canada) Postal Code

Signature of Appellant: Date:
(see over)

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File No.:B.031/13
Planner: S. Wise

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

☐ I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

Part 5: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please Print) Consent to sever for file No. B031/13

[redacted]

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required please continue in Part 8 or attach a separate page.

(Please Print)
1. Consent was provided without addressing several concerns linked to the consent requirements and considerations as posted by the City of London
2. Condition for consent #7 is not in line with posted requirements in Official Plan for Zone R2-2

Part 6: Related Matters (if known)

Are there other appeals not yet filed with the Municipality? YES ☐ NO ☒

Are there other planning matters related to this appeal? YES ☐ NO ☒

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please Print)

Part 7: Scheduling Information

How many days do you estimate are needed for hearing this appeal? ☒ half day ☐ 1 day ☐ 2 days ☐ 3 days ☐ 4 days ☐ 1 week ☐ More than 1 week – please specify number of days: _____

How many witnesses do you expect to have at the hearing? 3

Describe witness(es)' area of expertise: Owners of adjacent properties

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File No.:B.031/13
Planner: S. Wise

Do you believe this matter would benefit from mediation? YES ☒ NO ☐

Do you believe this matter would benefit from a Prehearing Conference? YES ☒ NO ☐

If yes, why?

Part 8: Other Applicable Information **Attach a separate page if more space is required.

1. Concerns not addressed with complainants or conditions:
* privacy and enjoyment of living on adjacent properties
* proposal does not fit the lands
* although the city does not recognize this area as flood plains, we as residents/owners can testify to this. A stream used to divide the properties between Duchess and Elmwood and every fall/spring the area on both sides of the fence (7-10 metres) is flooded.
* disclosure of negative environmental impact by applicant's study.

2. Condition for Consent indicates that the width of the proposed lot shall be no less than 8.0 metres to allow municipal servicing while table 6.3 residential R-2 Zone indicates 9.0 metres

Part 9: Required Fee

Total Fee Submitted: $ 125

Payment Method: ☐ Certified cheque * ☒ Money Order

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.

*Or Solicitor's general or trust account cheque.

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