

PC.11

Shell Type = use for Advice to OMB re OPA referrals/ZBL appeals

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Alanna Riley

TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING DIRECTOR OF LAND USE PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: ERIKA SIMPSON 10 CUMMINGS AVENUE MEETING ON JANUARY 16, 2012

RECOMMENDATION

That, on the recommendation of the Director of Land Use Planning and City Planner, in response to the letter of appeal to the Ontario Municipal Board, submitted by Erika Simpson, relating to the minor variance application A.117/11 concerning 10 Cummings Ave, the Ontario Municipal Board **BE ADVISED** that the Municipal Council supports the Committee of Adjustment decision to refuse the minor variance and that the City Solicitor and Director of Land Use Planning and City Planner **BE DIRECTED** to provide legal and planning representation at the Ontario Municipal Board Hearing to support the Committee of Adjustment's decision.

BACKGROUND

On October 11, 2011, the City of London Committee of Adjustment refused the minor variance application by Erika Simpson to construct a carport with a west interior side yard setback of 0.2m (0.6') whereas 1.2m (3.9') is required, and to maintain a single detached dwelling with an east interior side yard setback of 1.0m (3.2') whereas 1.2m (3.9') is required. (See Appendix A)

Planning Staff provided the following comments to the Committee of Adjustment on October 11, 2011.

EVALUATION

In order for this application to be acceptable as a minor variance under the provisions of Section 45 of the Planning Act, the following requirements must be met:

- 1) *Is the general intent and purpose of the Official Plan maintained?*
- 2) *Is the general intent and purpose of the Zoning By-law maintained?*
- 3) *Is the variance minor in nature? and*
- 4) *Is the variance desirable for the appropriate development or use of the land, building or structure?*

Official Plan

The Official Plan designation is Low Density Residential which permits the use.

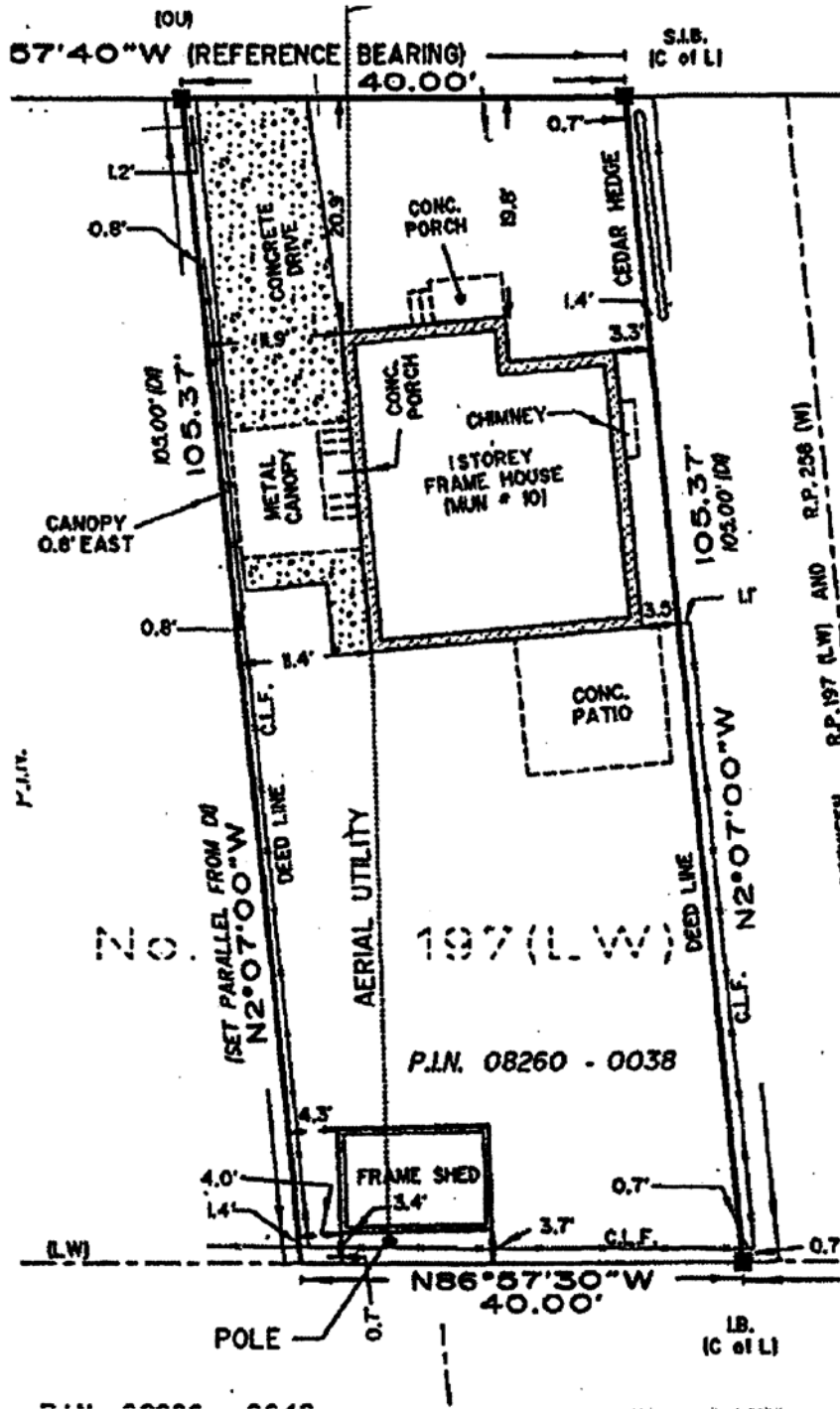
Zoning

The lands are zoned Residential (R2-3) which permits the use.

The applicant installed a carport too close to the lot line.

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A complaint was received in 2011 regarding the construction of a carport on this property without a building permit. The applicant is proposing obtain a building permit to maintain the existing attached carport.

The City of London By-law Z-1 states a "CARPORT" means a covered structure used for the storage of vehicles. The roof of the said structure shall be supported by piers or columns so that 60 percent (60%) of its wall area closest to the side lot line is unenclosed.

The proposed east interior side yard is 0.2m (0.6'). Sufficient setbacks need to be provided to address footings, eaves, gutters or other non structural architectural features. This intent cannot be met in this circumstance.

The Planning and Development Department recommends the variances be refused.

The applicant appealed the refusal of the minor variance. (Appendix B)

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Planning Staff maintains its position that the proposed minor variance be refused.

The hearing date for this appeal has been scheduled for February 7, 2012.

PREPARED BY:	SUBMITTED BY:
ALANNA RILEY, MCIP, RPP PLANNER – COMMUNITY PLANNING AND URBAN DESIGN	J. YANCHULA, MCIP, RPP MANAGER OF COMMUNITY PLANNING AND URBAN DESIGN
RECOMMENDED BY:	
J. FLEMING, MCIP, RPP DIRECTOR OF LAND USE PLANNING AND CITY PLANNER	

December 21, 2011
AR/ar
"Attach"

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'Appendix A'



300 Dufferin Avenue
P.O. Box 5035
London, ON
N6A 4L9

London
CANADA

**NOTICE OF DECISION
LONDON COMMITTEE OF ADJUSTMENT SUBMISSION NO. A.117/11**

October 11, 2011

OWNER:
Erika Simpson
10 Cummings Ave
London, ON N6H 1J7

AGENT:
John Toller
40 Empress Ave, Unit #1
London, ON N6H 1M5

WARD 13

LOCATION:
10 Cummings Avenue, Pt Lot 2 S/S Blackfriars Plan 197, on the south side of Cummings Avenue, east of Wilson Avenue.

At its meeting on October 11, 2011 the London Committee of Adjustment **REFUSED** the minor variance to Zoning By-law Z.

PURPOSE: To construct a carport.
VARIANCES REQUESTED:

1. A west interior side yard setback of 0.2m (0.6') whereas 1.2m (3.9') is required;
2. Maintain a single detached dwelling with an east interior side yard setback of 1.0m (3.2') whereas 1.2m (3.9') is required.

REASONS:

1. The requested minor variance does not meet the general intent and purpose of the Zoning By-law;
2. The requested minor variance does not meet the general intent and purpose of the Official Plan;
3. The requested minor variance is not minor in nature;
4. The requested minor variance is not desirable for the appropriate developments or use of the land, building or structure.

APPEAL PERIOD

This refusal is not final until the expiration of a statutory appeal period of twenty (20) days from the decision date **or until 4:30 p.m. on October 31, 2011**, during which appeal period any objector may file with the Secretary-Treasurer an appeal against this decision of the London Committee of Adjustment.

Any 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 omb.gov.on.ca or from the Office of the Secretary Treasurer of the Committee of Adjustment. A copy of the regulations governing appeals is enclosed. 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.

Note: The Planning Act provides for appeals to be filed by "persons". As groups or associations, such as residents or ratepayers groups which do not have incorporated status, may not be considered "persons" for purposes of the Act, groups wishing to appeal this decision should do so in the name or names of individual group members, and not in the name of the group.

Peter Sikic, Secretary-Treasurer
London Committee of Adjustment
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The Corporation of the City of London
Phone: 519-661-2500 ext 4980
Fax: 519-661-5397
psikic@london.on.ca
www.london.ca

**PLANNING DIVISION
SCANNED**

Agenda Item # Page #

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'Appendix B'



Environment and Land Tribunals Ontario
Ontario Municipal Board
 655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
 TEL: (416) 212-6349 or Toll Free: 1-866-448-2248
 FAX: (416) 326-5370
 www.elt.o.gov.on.ca

**APPELLANT FORM (A1)
 PLANNING ACT**

**SUBMIT COMPLETED FORM
 TO MUNICIPALITY/APPROVAL AUTHORITY**

Date Stamp - Appeal Received by Municipality

**CITY OF LONDON
 PLANNING DEPARTMENT**

OCT 28 2011

REFUSED TO
 REQUISITE REFERRALS
 ACTION
 INFORMATION

Receipt Number (OMB Office Use Only)

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

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input checked="" type="checkbox"/> Appeal a decision	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

Part 2: Location Information

Address and/or Legal Description of property subject to the appeal: 10 CUMMINGS AVENUE, LONDON, ONTARIO

Municipality/Upper tier: CITY OF LONDON

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Part 3: Appellant Information

First Name: ERIKA Last Name: SIMPSON

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

Professional Title (if applicable):

E-mail Address: "Erika Simpson" simpson@UWO.ca
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 519-438-1938 Alternate Telephone #:

Fax #:

Mailing Address: 10 CUMMINGS AVE LONDON
Street Address Apt/Suite/Unit# City/Town

ONTARIO N6H 1J7
Province Country (if not Canada) Postal Code

Signature of Appellant: Erika Simpson Date: Oct 28/2011
(Signature not required if the appeal is submitted by a law office.)

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: JOHN Last Name: TOLLER

Company Name:

Professional Title:

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

Daytime Telephone #: 519-438-5279 Alternate Telephone #:

Fax #:

Mailing Address: 40 EMPRESS AVE #1 LONDON
Street Address Apt/Suite/Unit# City/Town

ONTARIO N6H 1M5
Province Country (if not Canada) Postal Code

Signature of Appellant: John Toller Date: Oct 28/2011

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.

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Part 5: Language and Accessibility

Please choose preferred language: English French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: 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)

LONDON COMMITTEE OF ADJUSTMENT SUBMISSION
No. A. 117/11

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 9 or attach a separate page.

A legal carport was built approximately 45 years ago that was 0.2m (9.5 inches) within the property line. This metal carport collapsed due to excess snow last February. The homeowner's insurance company (The Cooperators) erected a new carport last spring that was exactly the same distance within the property line, namely 0.2m (9.5"), without obtaining a building permit as everyone assumed it was permissible to replace the old carport with a new one. Then the request for a minor variance failed on

See Part 9

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE PLANNING ACT.

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY: Oct 28, 2011
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
**If more space is required, please continue in Part 9 or attach a separate page.

LOW DENSITY RESIDENTIAL BY-LAW No. Z-1 RESIDENTIAL (R2-2)
A WEST INTERIOR SIDEYARD SETBACK OF 0.2m (9.6") whereas 1.2m (3.9 FEET) IS REQUIRED.

Part 7: 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

(For example: A consent application connected to a variance application)

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

(Please print)

Empty rectangular box for OMB Reference Number(s) and/or Municipal File Number(s).

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Part 8: 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 expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?
OWNER AND HER RENOVATOR

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):
RENOVATOR WITH 30 YEARS EXPERIENCE

Do you believe this matter would benefit from mediation? YES NO
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES NO
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why? _____

CITY OF LONDON
 PLANNING DEPARTMENT
 OCT 28 2011
 MED TO
 CITY OFFICIALS

Part 9: Other Applicable Information ** Attach a separate page if more space is required.

the grounds that a west interior side yard setback requires 1.2m . This means the carport will need to be disassembled and rebuilt one metre closer to the house, which will make it impossible to park any standard-sized car under it. Our appeal is based on the grounds that the new carport continues to be a "legal, non-conforming" carport which means it was legal when it was originally built and it is non-conforming because the City of London changed the law after it was first built.

Other Applicable Information

The requested minor variance was rejected on the grounds that it did not meet the general intent and purpose of the Zoning By-law' and it was 'not desirable for the appropriate developments or use of the land, building or structure'. However, there are many other newer carports in the area that have setbacks less than 1.2m and that might also not meet the general intent and purpose of the Official Plan. The attached **photographs** (12) show various carports and houses in the area that are closer to each other or to property lines, including a building that is currently under construction.

It should also be noted that the new carport is built exactly the same distance (4 feet) away from the neighbour's foundation. Whereas the old carport drained near the neighbour's property, the new carport drains to the street. The new carport will also ensure roof snow does not fall onto the neighbour's property line.

If this appeal is rejected on the grounds that the 'requested minor variance is not minor in nature', we would like to know if a compromise is possible in that the insurance company could reconstruct the carport so that the first 12 feet would be allowed on the former location at 0.2m(9.6") and the remaining 10 feet (southwards) would be at 0.6m (2 feet). This .6m option was mentioned several times by the planning and zoning personnel as a compromise solution previous to preparing the application for a minor variance. **Note: 7 pages attached.**

Part 10: Required Fee

Total Fee Submitted: \$ 125.00

Payment Method: Certified cheque Money Order Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.