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A.009/15
M. Pease

TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE MEETING ON APRIL 20, 2015
FROM:	G. KOTSIFAS, P.ENG MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL
SUBJECT:	APPLICATION BY: TARA AND JOHN WINSPEAR 878 HELLMUTH AVENUE COMMITTEE OF ADJUSTMENT DECISION ON MINOR VARIANCE APPLICATION A.009/15

RECOMMENDATION

That, on the recommendation of the Planner II, Development and Compliance Services, in response to the letter of appeal to the Ontario Municipal Board, dated February 9, 2015, and submitted by Peter Dillon relating to the minor variance application concerning 878 Hellmuth Avenue, the Ontario Municipal Board **BE ADVISED** that:

- a) The Municipal Council supports the decision of the Committee of Adjustment to grant the minor variance; and
- b) The City Solicitor and Managing Director, Development and Compliance Services and Chief Building Official **BE DIRECTED** to provide legal and planning representation at the Ontario Municipal Board Hearing to support the decision of the Committee of Adjustment.

BACKGROUND

The Secretary of the Committee of Adjustment circulated notice of application on December 19, 2014 for permission to:

Request to construct a detached accessory structure with the following variances:

- 1. To permit an accessory structure lot coverage of 14.3% whereas 10% maximum is permitted.
- 2. To permit a north interior side yard setback of 2.7m (8.8') whereas 3.1 m (10.1') is required.
- 3. To permit a south interior side yard setback of 0.6m (1.9') whereas 3.1 m (10.1') is required.
- 4. To permit a rear yard setback of 1.2m (3.9') whereas 3.1m (10.1') is required.
- 5. To permit a building height of 6.5m (21.3') whereas 6.0m (19.6') is the maximum permitted.

Development Services Staff provided comment on this request at the January 19, 2015 meeting of the Committee of Adjustment. The position of Development Services was to partially support the requested variances. Development Services did not support the request to permit a building height of 6.5 metres. With the applicant's concurrence the Committee of Adjustment amended the application to remove variances relating to building height. With a maximum permitted height of 6.0 metres, amendments to interior side yard and rear yard setback requirements (from 3.1 metres, to 2.6 metres) were necessary. The resulting variances, as amended, were as follows:

- 1. To permit an accessory structure lot coverage of 14.3% whereas 10% maximum is permitted.
- 2. To permit a south interior side yard setback of 0.6m (1.9') whereas 2.6m (8.5') is required.
- 3. To permit a rear yard setback of 1.2m (3.9') whereas 2.6m (8.5') is required.

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Based on the amendments to the application, Development Services were able to support the request to construct the accessory structure (attached Appendix A). The Committee of Adjustment granted the requested variances, as amended.

On February 9, 2015, Peter Dillon, a neighbouring property owner at 876 Hellmuth Avenue, submitted a letter of appeal (attached Appendix B) to the Ontario Municipal Board opposing the Committee of Adjustments decision granting the amended variances (attached Appendix C).

The basis of the appeal, as described by the appellant, is that the application does not meet two tests in the consideration of a minor variance. Specifically, the appellant feels that the variances are not minor in nature and that they do not conform to the general intent and purpose of the Zoning By-law. The appellant specifically has issue with the variance which granted a 0.6 metre interior side yard setback. The appellant feels that such a setback could have negative impacts on adjacent structures during construction of the accessory structure, including an existing fence shared by the applicant and appellant, an abutting slab for an existing accessory structure on the appellant's land, and a pool deck on the appellant's lands.

A representative of the appellant also provided written submission to the Secretary of the Committee of Adjustment on January 16, 2015, and it was read at the meeting by the Chair of the Committee on January 19, 2015.

No other members of the public made statement or attended the Committee of Adjustment meeting.

The hearing date for this appeal has been scheduled for June 3, 2015 (PL150124). Development Services maintains its position that the application, as amended, meets the four (4) tests under the Planning Act (subject to the conditions required by the Committee). Staff is requesting direction from the Planning and Environment Committee and Council to provide legal and planning representation to support the decision of the Committee of Adjustment.

PREPARED AND RECOMMENDED BY:	REVIEWED BY:
MICHAEL PEASE, MCIP RPP PLANNER II, DEVELOPMENT SERVICES	ALLISTER MACLEAN MANAGER, DEVELOPMENT PLANNING
CONCURRED BY:	SUBMITTED BY:
TERRY GRAWAY, MCIP RPP MANAGER, DEVELOPMENT SERVICES & PLANNING LIAISON	G. KOTSIFAS, P.ENG MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL

April 1, 2015
MP/mp
"Attach"

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Appendix "A"

Development Services Recommendations

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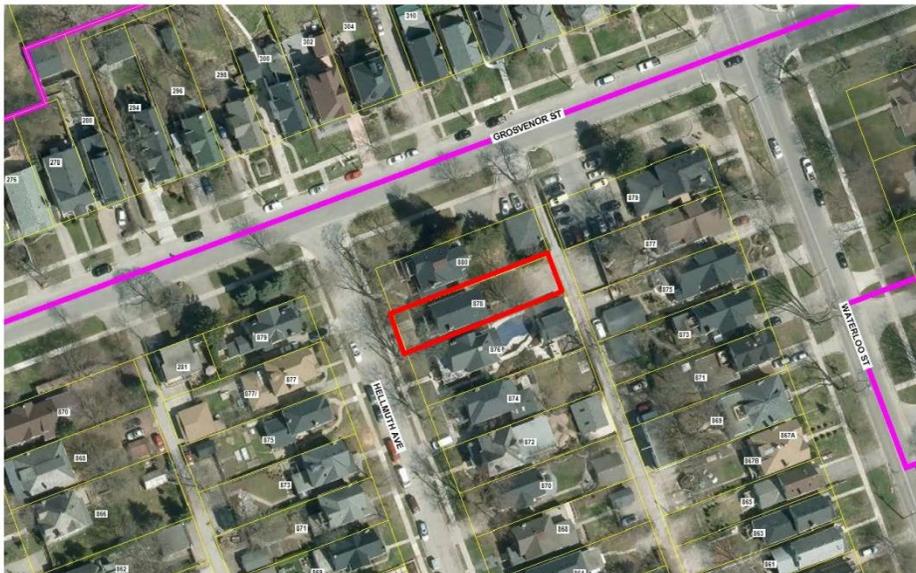
FROM:	DEVELOPMENT SERVICES
SUBJECT:	APPLICATION BY: DOM DININO 878 HELLMUTH AVENUE PUBLIC PARTICIPATION MEETING ON JANUARY 19, 2015 @ 1:50 PM

PURPOSE OF APPLICATION

To construct a detached accessory structure.

VARIANCES(S) REQUESTED

1. To permit an accessory structure lot coverage of 14.3% whereas 10% maximum is permitted.
2. To permit a north interior side yard setback of 2.7m (8.8') whereas 3.1 m (10.1') is required.
3. To permit a south interior side yard setback of 0.6m (1.9') whereas 3.1 m (10.1') is required.
4. To permit a rear yard setback of 1.2m (3.9') whereas 3.1m (10.1') is required.
5. To permit a building height of 6.5m (21.3') whereas 6.0m (19.6') is the maximum permitted.



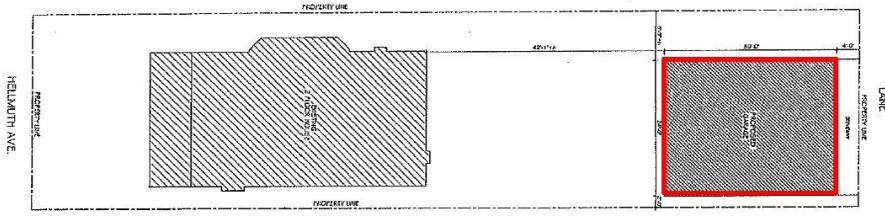
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INTRODUCTION

The applicant is proposing to construct an accessory structure at the rear of the property, abutting a municipal laneway.



EVALUATIVE FRAMEWORK

In order for this application to be acceptable as a minor variance under the provisions of Section 45(1) 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?

ANALYSIS

The subject lands are designated Low Density Residential (LDR) and permits low rise forms of residential development including single detached dwellings. Accessory buildings are also permitted. The subject lands are located within the Bishop Hellmuth Heritage District. Section 6.1 of the Bishop Hellmuth Heritage Conservation District Plan states that any new buildings require a Heritage Alterative Permit approved from City Council through recommendations made by the London Advisory Committee on Heritage. As such, a condition of the variance would include this requirement. On this basis, the intent and purpose of Official Plan is maintained.

The subject site is zoned Residential R2 (R2-2) which permits low-rise forms of residential uses including single detached dwellings as well as accessory structures subject to regulations.

The Z-1 By-law states: *notwithstanding the definition of height, the height of an accessory building shall be measured from the average finished grade to the upper most point of the building or structure and shall not exceed the following overall height of 4.0 metres (13.1 feet) except as provided in 4.1.4(b) where the height may be increased to 6.0 metres (19.7 feet);*

Section 4.1.4 (b) clearly allows accessory structures to a maximum of 6.0m (19.6') if provision is made to increase the side yard setbacks to accommodate the increased height. The By-law states that *in no case an accessory structure shall be greater than 6.0m (19.6')*. Permitting a height greater than 6.0 metres promotes opportunities for habitable space within second storeys of accessory buildings.

The variance to construct an accessory structure with an increased height is not minor in nature and does not meet the intent of the Zoning By-law.

Section 4.1 (4) (b) of the Z.-1 Zoning By-law requires accessory structures to be 3.1 metres from interior lot lines and rear lot lines, based on a proposed height of 6.5 metres. However, based on the foregoing section, Development Services does not support a height of 6.5 metres. Should the applicant wish to construct an accessory structure 6.0 metres in height, the required setback would be reduced from 3.1 metres, to 2.6 metres based on the regulations and measurements for setback in the Zoning By-law. Based on height of 6.5 metres, Development Services would not be able to support the requested variances for reduced interior and rear yard setbacks. However, the application may be amended to remove the requested variance relating to height, where an accessory structure at 6.0 metres in height would be permitted as of right. In

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such a circumstance, the amended setback requirements of 2.6 metres may be supportive based upon the following evaluation.

The applicant has requested setback variances of 2.7 metres from the north interior side yard, 0.6 metres from the south side yard, and 1.2 metres from the rear lot line. One purpose of limiting side yard setbacks for accessory structures is to ensure no storm water runoff adversely affect the adjacent property and no structural overhangs and footings encroach into that adjacent property. Development Services generally requests a minimum 0.6 metre (1.9') setback from property lines to ensure that such impacts do not occur. Additionally, such setbacks ensure that privacy on adjacent properties are not infringed. A municipal laneway abuts the rear property line and as such a setback of 1.2 metres from the rear property line is not expected to negatively impact the abutting use and is considered a matter of local consideration. Additionally, similar forms of accessory structures are located on the adjacent residential lots to the north and south. Where accessory structures have a reduced setback, Building Division requires a building permit and where exterior walls less than 1.2 metres from the property line, the walls are to have a 45 minute fire resistance rating. No unprotected openings (windows or doors) are permitted. The above shall be submitted to the satisfaction of the Manager, Plans Examinations- 7th floor City Hall.

The regulations of the Z.-1 Zoning By-law permit a maximum lot coverage of 10% for accessory structures. The intent is to ensure that the availability of amenity space is not infringed. Based on the current proposal the subject lands would exceed the minimum requirement of 25% landscape open space ensuring that availability of amenity space and open space are maintained.

Based on the foregoing, the requested variances to increase lot coverage, and reduce the rear yard and interior side yard setbacks for an accessory structure are minor in nature and consistent with the intent and purpose of the Zoning By-law.

Accessory structures are common in the neighbourhood. Development Services – Engineering notes the similarity of this application with an adjacent property at 876 Hellmuth Avenue which is adjacent to the property under consideration. At that time Engineering had concerns that the stormwater runoff from the proposed accessory structure would adversely affect the adjacent properties and City lane as there were existing ponding and drainage problems in that area. That application was supported by the Committee conditions addressing stormwater runoff and construction of eaves and downspouts on the proposed structure. Should the proposed accessory structure meet the conditions of Development Services – Engineering, it may be deemed as a desirable use of the subject lands.

SUMMARY

In the opinion of Development Services the requested variance to support a height of 6.5 metres for an accessory structure is not minor in nature and not consistent with the intent and purpose of the Zoning By-law. The variance is not a desirable use of the lands. Based on the foregoing, Development Services does not support the variance as requested.

However, based on a height 6.0 metres, the requested variances may be deemed as consistent with the intent and purpose of the Official Plan and Zoning By-law. The requested variances for increase lot coverage of an accessory structure and reduced side yard and rear yard setbacks for an accessory structure are minor in nature and may be deemed as a desirable use of the lands and are a matter of local consideration. Based on the foregoing, Development Services supports the variance as amended.

CONDITIONS

1. That the applicant is to obtain a Heritage Alteration Permit and/or approval from the City of London's Heritage Planner prior to the issuance of a building permit.
2. A building permit is required. For exterior walls less than 1.2 metres from the property line, the walls are to have a 45 minute fire resistance rating. No unprotected openings (windows or doors) are permitted. The above shall be submitted to the satisfaction of the Manager, Plans Examinations- 7th floor City Hall.
3. That the roof storm water runoff from the proposed detached structure be contained on the subject site ensuring there is no additional stormwater directed to the adjacent laneway and adjacent properties.

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4. That eaves troughs and downspouts be constructed on the proposed detached structure directing the stormwater runoff to the applicant's rear yard, to the satisfaction of the City Engineer.
5. To support this proposed development the applicant's Professional Engineer should also provide a grading plan, documentation and calculations confirming the above noted conditions for review and approval of the Development Services Engineering Unit.

REFERENCE DOCUMENTS

Ontario. Ministry of Municipal Affairs and Housing. Planning Act, R.S.O. 1990, as amended.

Ontario. Ministry of Municipal Affairs and Housing. Provincial Policy Statement, May 1, 2014.

City of London. Official Plan, June 19, 1989, as amended.

City of London. Zoning By-law No. Z.-1, July 1, 1993, as amended.

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Appendix "B"
Appeal



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

Date Stamp - Appeal Received by Municipality

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12:45 pm TO MUNICIPALITY/APPROVAL AUTHORITY

RECEIVED	
FEB 09 2015	Receipt Number (OMB Office Use Only)
LEVEL OF INT. & COMPLIANCE DIVISION	

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)
	<input type="checkbox"/> Appeal a decision	
Consent/Severance	<input type="checkbox"/> Appeal conditions imposed	53(19)
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
Zoning By-law or Zoning By-law Amendment	<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	
	<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	
	<input type="checkbox"/> Appeal a decision	51(39)
Plan of Subdivision	<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

Ward 6, Location: 878 Hellmuth Avenue, Pt Lot 38 Reg Plan 242, on the east side of Hellmuth Avenue, south of Grosvenor Street
Address and/or Legal Description of property subject to the appeal: 2560299.1
A1 Revised April 2010

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Municipality/Upper tier: London

Part 3: Appellant Information

First Name: Peter

Last Name: Dillon

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

Professional Title (if applicable):

E-mail Address: peter.dillon@siskinds.com

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

Daytime Telephone #: (519) 660-7818

Alternate Telephone #:

Fax #: (519) 660-7819

Mailing Address: 876 Hellmuth Avenue
Street Address

Apt/Suite/Unit#

London
City/Town

Ontario
Province

Country (if not Canada)

N6A 3T8
Postal Code

Signature of Appellant:

Date: Feb 9, 201

(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: 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:

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.

2560299.1

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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: Language and Accessibility

Please choose preferred language: XX 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):

Ward :6
 Location: 878 Hellmuth Avenue, Pt Lot 38 Reg Plan 242, on the east side of Hellmuth Avenue, south of Grovesnor Street
 London Committee of Adjustment Submission No. A.009/15

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.

Please see attached.

(Please print)

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Part 9: Reasons for the Appeal

We are the owners of the property located at 876 Hellmuth Avenue and submit this appeal to the Ontario Municipal Board of the Committee of Adjustment's decision of January 19, 2015 granting a minor variance to permit construction of a garage at 878 Hellmuth Avenue.

We retained the services of a professional engineer to determine what, if any, impact the proposed garage at 878 Hellmuth Avenue would have on the existing buildings and structures located at 876 Hellmuth Avenue.

In the attached report, the engineer concludes that: *"The proposed garage at the location indicated in the minor variance is likely to cause damage...to the north property line at 876 Hellmuth Avenue"*. We are submitting this letter to appeal the minor variance being requested for 876 Hellmuth Avenue for the reasons set out below.

Section 45(1) of the *Planning Act* establishes the four tests that a minor variance must meet:

1. Is the application minor?
2. Is the application desirable for the appropriate development of the lands in question?
3. Does the application conform to the general intent of the Zoning By-law?
4. Does the application conform to the general intent of the Official Plan?

The minor variance for 876 Hellmuth Avenue does not meet the test set out in the *Planning Act* and therefore must be refused.

1. Is the application minor?

The City's zoning by-law requires a south interior side yard set back of 3.1 m (or 10.1'), the applicant is seeking a variance to reduce the interior side yard setback, adjacent to our property line at 878 Hellmuth Avenue, to 0.6 m (or 1.9'). This is a variance of over 80% from the required setback and is not properly considered a minor variance. The Board has stated in prior decisions that the word "minor" must be given effect. For this reason the variance should be denied.

2. Does the application conform to the general intent of the Zoning By-Law?

The purpose of the setback requirements as set out in the City's zoning by-law is to protect neighbouring properties from damage not only after the structure is built, but also during the process of construction. Without the minor variance, construction of a garage

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is permitted at 878 Hellmuth Ave. approximately 3.1 m (or 10') from the property line. The attached engineer's report, Drawing S-3, demonstrates that construction of a 4'-0" deep foundation adjacent to the property line with 1:1 side slopes, undermines the existing slab on grade and fence post foundation.

After the construction of the foundation wall is completed insufficient compaction of excavated materials adjacent to the fence posts, sidewalks and pool deck may lead to long-term settlement of these soils resulting in settlement and cracking of the adjacent slabs and leaning of the fence posts at 876 Hellmuth Avenue.

The engineer's report identifies several conditions that should be imposed in the event the minor variance is granted. These conditions include: shoring designed by a professional structural engineer; backfill materials and compaction; and fence protection measures.

Granting the minor variance has profound implications for the integrity and relevance of the zoning by-law and its application. We are concerned that Committee has justified non-compliance construction on the basis of poor design, and failure to implement necessary mitigation and protective measures for neighbouring properties. This application offends the City's established development review and approval procedures and is unfair to those who comply. We are concerned that the approval of this application would set an unwelcome precedent that weakens the application of the City's zoning by-law.

It is our understanding that the City has imposed numerous conditions on the variance application, which we have not had an opportunity to review. We are concerned that the conditions are only in favour of the city and do not protect our existing buildings and structures. During the construction of our garage, we were required by the city to sign an Undertaking to prevent damage to city property (attached). We requested, on the advice of a lawyer, an undertaking from our neighbour to repair damage, which the Applicant refused to sign (please see attached). We also requested that they reverse the design to provide a greater buffer between the two properties, but the Applicant also refused this request.

We have been tolerant neighbours during ongoing construction at 878 Hellmuth Avenue. This past summer we suffered property damage in the course of brick repointing when workers entered onto our property and red clay dust was ground out and deposited on our patio furniture and outdoor seating area without proper precautions for preventing damage to adjoining property.

The zoning bylaw is in place to prevent this very conflict between neighbours, property damage, diminution of access and the inability to maintain one's property.

As a further factor, the City imposed, as a condition of the variance, that walls of the proposed structure within 1.2 m or less of the property line be composed of materials with a 45-minute fire resistance rating. Our pre-existing structure built in compliance with city by-laws, because of a legal non-forming use, was built with a set back of 0.61m. However, we were not required to build it with an increased fire rating; therefore

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our structure is at an increased risk of damage or destruction by fire by the proposed adjacent structure. In addition, maintenance, including the cleaning of eavestroughs, roof repair, painting, etc. is hindered by the close proximity of the two structures. There is an aesthetic issue as well, in terms of the unnecessary overcrowding and the jamming together of structures that results from the variance granted by the Committee.

For all of the reasons set out above the present application cannot meet the tests set out in the *Planning Act*.

Granting the appeal would be detrimental to the local community and set an unwelcomed precedent. The variance being requested is not “minor” in its nature and therefore should be refused.

Alternatively, we ask that the hearing be adjourned until such time as we have the opportunity to review, with our Engineer, the conditions being proposed by the City.

Included:

Exhibit A—Engineering Report of the Appellant

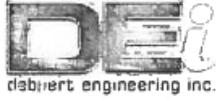
Exhibit B—Letter of Appellant to the Committee of Adjustment

Exhibit C—Appellant’s Undertaking to the City

Exhibit D—Refusal of Applicant to sign request for an Undertaking

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27 Bultermere Road
 London, Ontario N6G 4L1
 Telephone: (519) 668-2022
 Facsimile: (519) 668-2067
 www.debberteng.com

Project: 15-003

February 5, 2015

Jennifer Dillon
 876 Hellmuth Avenue
 London, ON
 N6A 3T8

**Structural Implications of the Minor Variance at
 878 Hellmuth Avenue, London, Ontario**

On February 3, 2015 we visited your residence at 876 Hellmuth Avenue to review the buildings and other structures adjacent to your northerly neighbor at 878 Hellmuth Avenue. You explained that they intend on constructing a new garage at the rear (east side) of the property and have applied for, and obtained a minor variance to construct the building immediately adjacent to your north property line. As you also have a building and other structures near the property line, you are seeking a professional opinion regarding the potential structural damage that may occur if the construction work were to proceed. Our role is to provide you with such an opinion and to recommend potential additional conditions that may be added to the minor variance in order to mitigate the potential for damage to your property. Our site review was limited to a visual review, taking of photographs and selected measurement and reviewing selected drawings of your property and the minor variance application information you had available.

Existing Conditions

Approximately two years ago, you constructed a carriage house style garage and ancillary building approximately 0.6m south of your north property line (Photograph 1). We understand this was done in conformance with the City of London and Ontario Building Code requirements through the building permit process. At that time, the property to the north had no structures in this area and there were no structural implications for the property at 878 Hellmuth Avenue. In addition to the carriage house, a new board on board style fence plus a concrete slab on grade was built adjacent to the carriage house (Photograph 2). West of that location, you have extensive landscaping including a flagstone walkway, swimming pool and stone gravity retaining wall (Photographs 3 and 4).

The new garage at 878 Hellmuth Avenue is proposed to be constructed as close as 0.6 m north of your north property line, which is approximately 4'-0" from the north wall of your existing carriage house, and 0.6 m from the fence-line, concrete slab on grade, retaining wall and pool deck. We have appended a copy of the proposed building location to this report and labelled it Drawing S-1. The foundation for the proposed building appeared to be a cast-in-place concrete foundation wall with the requisite 4'-0" depth for frost protection. For non-cohesive soils such as those in this area of London, typically a 4' deep excavation requires side slopes at a 1:1 ratio (Horizontal to Vertical) to place the footing and foundation wall.

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Construction Process and Finished Building

Given the size and occupancy of the garage, we anticipate that it will be built through the building permit process under Part 9 of the Ontario Building Code, which does not require General Site Review by an architect, engineer or designer.

As we understand it, one of the purposes of setback requirements is to protect neighbouring properties from damage not only after the structure is built, but also during the process of construction. Without the minor variance, construction of a garage is permitted at 878 Hellmuth Ave. approximately 10' from the property line. As demonstrated on our Drawing S-2, Section 1 (attached), an excavation for the foundation wall and construction of the garage in this location does not create structural hazards to the existing structures and property at 876 Hellmuth Ave. However, our Drawing S-3 demonstrates that construction of a 4'-0" deep foundation adjacent to the property line with 1:1 side slopes, undermines the existing slab on grade and fence post foundation, if shoring or other measures are not provided. In addition, after the construction of the foundation wall is complete, insufficient compaction of excavated materials adjacent to the fence posts, sidewalks and pool deck could lead to long-term settlement of these soils resulting in settlement and cracking of the adjacent slabs and leaning of the fence posts.

The preliminary drawings submitted for the purpose of the minor variance did not contain any requirements for shoring, backfilling, compaction or other considerations when building immediately adjacent to existing structures. The minor variance, also did not contain any conditions related to the proximity of the new building to existing structures on the adjacent property.

Based on our site observations and foregoing review, we offer the following opinions and recommendations:

- 1) The proposed garage at the location indicated in the minor variance is likely to cause damage to the slab-on-grade and fence adjacent to the north property line at 876 Hellmuth Avenue, unless additional measures are prescribed and taken during the construction process. Refusal of the minor variance and maintaining the required setbacks will eliminate the need for these additional requirements.
- 2) Should the minor variance be granted, we recommend that the following conditions be included in order to mitigate the potential for damage to the slab on grade, fence and building at 876 Hellmuth Avenue:
 - A) Shoring designed by a Professional Engineer (structural) licensed in the Province of Ontario should be used and maintained during excavation at the south property line of 878 Hellmuth Avenue.
 - B) Backfill materials for the foundation in this same area should be free-draining granular and should be placed in shallow lifts of 8" or less and

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Structural Implications of the Minor Variance at 878 Hellmuth Avenue, London, ON

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- compacted to 98% of their standard proctor density in order to maintain the lateral soil resistance for the fence post foundations.
- 3) Protection of the fence during construction from concrete splatter, dirt and debris should be provided and maintained.
 - 4) Costs associated with the foregoing should be borne by the Constructor (i.e. 878 Hellmuth Avenue).

We trust that the foregoing meets your needs at this time. Should you have questions, please do not hesitate to contact the undersigned at your convenience. Thank you for the opportunity to be of assistance.

Yours Truly,
Debbert Engineering Inc.



Gordon W. Debbert, P. Eng.
President



Empty boxes for Agenda Item # and Page #

A.009/15
M. Pease

Appendix "C"
Decision



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

London
CANADA

City of London

Note: The last day for appealing this Decision is at **4:30 p.m. on Monday, February 9, 2014.**

DECISION

THE COMMITTEE OF ADJUSTMENT FOR THE CITY OF LONDON
WITH REASONS REGARDING APPLICATION FOR MINOR VARIANCE
The Planning Act R.S.O. 1990, Section 45(8) & (10)

REGARDING AN APPLICATION BY: John & Tara Winspear – **A.009/15**

ADDRESS: 878 Hellmuth Avenue

PURPOSE OF APPLICATION: To construct a detached accessory structure.

VARIANCES REQUESTED:

1. To permit an accessory structure lot coverage of 14.3% whereas 10% maximum is permitted.
- ~~2. To permit a north interior side yard setback of 2.7m (8.8') whereas 3.1m (10.1') is required.~~ *2.6m (8.5') AJ*
- ~~3. To permit a south interior side yard setback of 0.6m (1.9') whereas 3.1m (10.1') is required.~~ *2.6m (8.5') AJ*
- ~~4. To permit a rear yard setback of 1.2m (3.9') whereas 3.1m (10.1') is required.~~ *2.6m (8.5') AJ*
- ~~5. To permit a building height of 6.5m (21.3') whereas 6.0m (19.6') is the maximum permitted.~~ *6.0m (19.6') AJ*

WE, the undersigned, in making the Decision regarding this Application, have considered whether or not the Variance requested was minor and desirable for the appropriate development and use of the land, and that the general intent and purpose of Zoning By-Law Z- and the Official Plan will be maintained, or in the case of a change, in a use of property which is lawfully non-conforming under the By-Law as to whether or not this Application has met the requirements of Section 45 (2) of The Planning Act R.S.O. 1990.

CONCUR in the following Decision and Reasons for the Decision made on **Monday, January 19, 2015.**

DECISION: GRANTED DENIED APPROVED WITH CONDITIONS

For Reasons & Conditions see Schedule "A" on reverse.

Gina Barber

Gina Barber, Chair

Jeff Preston, Vice Chair

Maria Mendes

Maria Mendes

Shawn Lewis

Shawn Lewis

John Fyfe-Millar

John Fyfe-Millar

CERTIFICATION

THE PLANNING ACT, R.S.O. 1990, SECTION 45 (10)

I, **PETER SIKIC**, Secretary/Treasurer of the Committee of Adjustment for the City of London, County of Middlesex, certify that the above is a true copy of the Decision of the Committee with respect to the Application recorded therein.

Peter Sikic

PETER SIKIC, Secretary Treasurer

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A.009/15
M. Pease

City of London Schedule "A"

Minor Variance Application No. **A.009/15**

Reasons for Decision:

- The requested minor variance meets the general intent and purpose of the Zoning By-law;
- The requested minor variance meets the general intent and purpose of the Official Plan;
- The requested minor variance is minor in nature; and
- The requested minor variance is desirable for the appropriate developments or use of the land, building or structure.

Subject to the following conditions:

CONDITIONS

1. That the applicant is to obtain a Heritage Alteration Permit and/or approval from the City of London's Heritage Planner prior to the issuance of a building permit.
2. A building permit is required. For exterior walls less than 1.2 metres from the property line, the walls are to have a 45 minute fire resistance rating. No unprotected openings (windows or doors) are permitted. The above shall be submitted to the satisfaction of the Manager, Plans Examinations- 7th floor City Hall.
3. That the roof storm water runoff from the proposed detached structure be contained on the subject site ensuring there is no additional stormwater directed to the adjacent laneway and adjacent properties.
4. That eaves troughs and downspouts be constructed on the proposed detached structure directing the stormwater runoff to the applicant's rear yard, to the satisfaction of the City Engineer.
5. To support this proposed development the applicant's Professional Engineer should also provide a grading plan, documentation and calculations confirming the above noted conditions for review and approval of the Development Services Engineering Unit.
6. *That no habitable space shall be permitted in the proposed detached accessory structure.*