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File No. B.027/11
Planner: T. Grawey

TO:	CHAIR AND MEMBERS BUILT AND NATURAL ENVIRONMENT COMMITTEE MEETING ON MONDAY SEPTEMBER 26, 2011
FROM:	D.N. STANLAKE DIRECTOR OF DEVELOPMENT PLANNING
SUBJECT:	APPEAL TO CONDITION OF PROVISIONAL CONSENT APPLICATION B.027/11 290, 292 AND 294 WHARNCLIFFE ROAD SOUTH

RECOMMENDATION

That, on the recommendation of the Director of Development Planning, in response to the letter of appeal to the Ontario Municipal Board from Marjorie Louise Orr, dated July 22, 2011 relating to the Provisional Decision on Consent Application B.027/11 concerning property located at 290, 292 and 294 Wharncliffe Road South:

- 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.

BACKGROUND

Consent application B.027/11 is for the creation of three former lots, located at 290, 292 and 294 Wharncliffe Rd. South, which have merged on title and can no longer be transferred individually without obtaining a severance under Section 53 of the Planning Act. The Provisional Consent Decision was granted by the City of London Consent Authority on July 4th, 2011. On July 22nd, 2011 the Ontario Municipal Board received an appeal from the owner of the subject property.

A single detached residential dwelling occupies each of the three former lots. The application proposes to sever two lots and retain one lot, with no changes to the existing land use pattern. The subject property is designated Main Street Commercial in the Official Plan and currently Zoned Arterial Commercial Special Provision (AC2(1)), which permits existing dwellings as well as a range of commercial, office and service uses.

The Provisional Consent Decision, granted on July 4th, 2011, included nine (9) conditions which must be satisfied within a period of one year. Most of these conditions address standard administrative matters and standard requirements such as the completion of a reference plan, payment of property taxes and spatial separation analysis for the existing structures. The appeal filed by the property owner specifically objects to Condition No. 7, which requires a road widening dedication along Wharncliffe Road:

- 7. *That the Owner transfer, at no cost to the City, sufficient lands free of encumbrances, save and except the buildings or steps of these dwelling units to widen Wharncliffe Road South to a maximum width of 18.0 metres in*

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perpendicular width from the centreline of Wharncliffe Road South along the entire frontage of the subject lands as determined by the City Engineer. The reference plan describing the widening to be transferred must be pre-approved by the City Engineer.

The appeal from the property owner indicated that Condition No. 7 is unreasonable and unwarranted as the severance is technical in nature and no new development is planned for the subject property. The appeal did not object to, or express concern with any of the other Provisional Consent conditions.

ANALYSIS:

Road widening dedications are standard conditions applied to Consent Decisions for areas of existing development fronting on arterial and collector roads that do not meet current municipal design standards. Section 53(12) of the Planning Act provides the Approval Authority with same powers as are available for plans of subdivision pursuant to subsections 51(25), 51(26) and 51(27) and Section 51.1 of the Act. Conditions that may be imposed under Subsection 51(25) include land dedications for the widening of public highways to such width as the Approval Authority considers necessary.

Road widening dedications are clearly provided for under the policies of the Official Plan. The Road Widening policies in Section 18.2 provide for the establishment of road allowance requirements for different road corridors in the City, and the acquisition of land for road widenings through purchase, expropriation, and dedications as a condition of subdivision, land severance or site plan approval. In addition, Subsection 19.7.1.iv) of the Plan states that in granting a consent, the Consent Authority may attach conditions relating to the dedication of any road widenings and one foot reserves as may be required by the City.

The Wharncliffe Road South corridor, between Main Street (Lambeth) and the Thames River, is identified in Section 4.21 of the Zoning By-law (Road Allowance Requirements) as an Arterial Road with an ultimate design width of 18 metres (59.1 ft) measured from centreline. This design standard is a standard requirement for applications under the Planning Act, including Consents, and has implemented through Condition No. 7 of the Provisional Consent Decision.

The proposed road widening will extend close to the existing building lines and front porches, but will skirt the structures by 0.5 metres to ensure that there are no resulting encroachments. Preliminary plans showing the widening dedication were reviewed and accepted by the City Surveyor and the draft conditions were provided to the applicant's agent prior to issuance of the Provisional Consent Decision.

The Provisional Consent Decision is consistent with the Provincial Policy Statement (PPS). Two sections of the PPS are specifically relevant to the implementation of Condition No. 7, which requires the road widening dedication. Section 1.6.6.1. states that planning authorities shall plan for and protect corridors for rights-of-way, transportation, transit and infrastructure facilities to meet current and projected needs. Section 1.6.6.2. states that planning authorities shall not permit *development* in planned corridors that could preclude or negatively affect the use of the corridor for the purpose(s) for which it was identified. The term development is defined to include the creation of a new lot, a change in land use, or the construction of buildings or structures, requiring approval under the *Planning Act*.

The Provisional Consent Decision issued on July 4th, 2011 is consistent with the policies of the Official Plan, and relevant provisions in the Provincial Policy Statement and Planning Act. No changes are required to the conditions of approval and it is recommended that the decision be supported by Council.

SUMMARY:


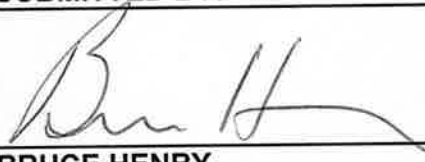

Provisional Consent Decision B.027/11, issued on July 4th, 2011, provides for the creation of three adjoining residential lots that had previously merged on title. The owner has appealed this decision and objects to Condition No. 7, which requires a road widening dedication along the Wharncliffe Road frontage.

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Road widening dedications are implemented through the consent process, where they are determined to be warranted based on current and projected transportation needs. The road widening dedication is warranted based on future needs, and is in conformity with the policies of the City of London Official Plan. The Provisional Consent Decision constitutes good land use planning and should be defended before the Ontario Municipal Board.

The Provisional Consent Decision, letter of appeal and a location map are attached for reference.

PREPARED BY:	SUBMITTED BY:
	
TERRY GRAWAY SENIOR PLANNER – DEVELOPMENT PLANNING	BRUCE HENRY MANAGER OF DEVELOPMENT PLANNING
RECOMMENDED BY:	
	
D.N. STANLAKE DIRECTOR OF DEVELOPMENT PLANNING	

September 15, 2011
tg/

"Attach"

..CONSENTS\2011 Consents\B.027-11 - 290, 292 and 294 Wharnccliffe Road South \OMB








LOCATION MAP

Subject Site: 290/292/294 Wharnccliffe Rd South
 Applicant: Marjorie Louise Mary Orr
 File No: B.027/11

Planner: T. Grawey
 Date: 2011-09-13
 Scale: 1:1000

LEGEND

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



Applicant: Marjorie Louise Mary Orr
File No: B.027/11
Municipality: City of London
Subject Lands: 290, 292 and 294 Wharncliffe Road South

Date of Decision: July 4, 2011
Date of Notice: July 4, 2011
Last Date of Appeal: July 24, 2011
Lapsing Date: July 4, 2012



London
CANADA

NOTICE OF PROVISIONAL CONSENT DECISION

Section 53 of the Planning Act

TAKE NOTICE that the City of London Consent Authority, **GRANTED** applicant, **Marjorie Louise Mary Orr** consent to sever 378.0m² (Parcel A) and 279.1m² (Parcel C) for existing single detached dwellings and retain 310.1m² (Parcel B) for an existing single detached dwelling, file No. B.027/11 on the **4th day of July, 2011**, 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 Planning Division, 300 Dufferin Avenue, London, ON N6A 4L9, **NOT LATER THAN THE 24th day of July, 2011**. 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 for an official plan amendment, an amendment to the zoning by-law or for a minor variance.

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 July 24, 2011 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 the Development Planning Division, 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 4th day of July, 2011

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

JMF/

Applicant: Marjorie Louise Mary Orr
File No: B.027/11
Municipality: City of London
Subject Lands: 290, 292 and 294 Wharncliffe Road South

Date of Decision: July 4, 2011
Date of Notice: July 4, 2011
Last Date of Appeal: July 24, 2011
Lapsing Date: July 4, 2012

OWNER:
Marjorie Louise Mary Orr
292 Wharncliffe Road South
LONDON ON N6J 2L5

AGENT:
McNamara Pizzale LLP
200 Queens Avenue, Suite 220
LONDON ON N6A 1J3

THE CORPORATION OF THE CITY OF LONDON'S CONSENT AUTHORITY PROVISIONAL DECISION FOR CONSENT, FILE NUMBER B.027/11 IS AS FOLLOWS:

The City of London Consent Authority on July 4, 2011 **GRANTED** Provisional Approval to the applicant, **Marjorie Louise Mary Orr** consent to sever 378.0m² (Parcel A) and 279.1m² (Parcel C) for existing single detached dwellings and retain 310.1m² (Parcel B) for an existing single detached dwelling, 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. That a certificate fee shall be paid at the London Consent Authority's office 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 the Consent Authority, 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 the Consent Authority 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. That approval of the draft reference plan shall be obtained from the Consent Authority, 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 applicant shall receive final approval on minor variances application A.049/11. The final reference plan describing the parts to be created shall be consistent with the Minor Variance decision and shall be in full force and effect prior to the issuance of a certificate.
7. That the Owner transfer at no cost to the City, sufficient lands free of encumbrances, save and except the buildings or steps of these dwelling units to widen Wharncliffe Road South to a maximum width of 18.0 meters in perpendicular width from the centerline of Wharncliffe Road South along the entire frontage of the subject lands as determined by the City Engineer. The reference plan describing the widening to be transferred must be pre-approved by the City Engineer.
8. The applicant shall submit a qualified designer's spatial separation analysis confirming that the spatial separation requirements of the 2006 Ontario Building Code have been met for all existing building exposing wall faces onto proposed property lines. The report shall be to the satisfaction of the Manager of Plans Examination
9. The Consent Certificate shall lapse after 6 months of issuance if the transaction has not been completed.

Notes to Provisional Decision:

- The Owner is advised that the sanitary outlet for the subject lands is a private sanitary sewer located in the rear yards of the subject lands and the adjacent lands to the north and south (288, 296 & 298 Wharncliffe Road South) which outlets to the municipal sanitary sewer on Tecumseh Avenue East.



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.eltlo.gov.on.ca

RECEIVED
JUL 22 2011

**APPELLANT FORM (A1)
 PLANNING ACT**

City Clerk

No. 2605

SUBMIT COMPLETED FORM
 TO MUNICIPALITY/APPROVAL AUTHORITY

930-350/
DABU!
 -Consent-
 ASAP please

Subject: Appeal - B.027/11
290-292-294 Wharncliffe

Rec'd
 JUL 22 2011

Receipt Number (OMB Office Use Only)

Ref: NR 08/04
 C.C. Scan - JPB, J Fleming, M Finnis, C Saunders

(Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(10)
	<input checked="" type="checkbox"/> Appeal conditions imposed <u>File B.027/11</u>	53(27)
	<input type="checkbox"/> Appeal changed conditions	53(14)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	34(19)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	
	<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

290-292-294 Wharncliffe Road South
 Address and/or Legal Description of property subject to the appeal.

Municipality/Upper tier: London

AUG 22 2011

A1 Revised April 2010

CITY OF LONDON 4593
 DEVELOPMENT APPROVALS BUSINESS UNIT
 08/19/2011 FRI 9:17 [JOB NO. 6937]

Part 3: Appellant Information

First Name: Marjorie Louise Last Name: Orr

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 #: 519.438.5525 Alternate Telephone #:

Fax #:

Mailing Address: 292 Wharncliffe Road South London
Street Address Apt/Suite/Unit# City/Town
ON N6J2L5
Province Country (if not Canada) Postal Code

Signature of Appellant: M. Orr per McNamara Pizzale Date: July 22/2011
(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: Daniel McNamara Last Name: Orr

Company Name: McNamara Pizzale

Professional Title: Lawyer

E-mail Address: n/a d.mcnamara@exceluink.com
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 519.438.5525 Alternate Telephone #:

Fax #: n/a 519-648-7654

Mailing Address: 200 Queens Ave Suite 220 London
292 Wharncliffe Road South
Street Address Apt/Suite/Unit# City/Town
ON N6J2L5 N6A1K3
Province Country (if not Canada) Postal Code

Signature of Appellant: M. Orr by agent Date: July 22/2011

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.

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)
appealing condition for dedication of land
for road widening

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 print)
the condition is unreasonable and unwarranted as
these severances are technical (merger of title) and no
development is planned for any subject property

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: _____
(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.

[Empty box for explanatory note]

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)
minor variances granted June 2011
Submission No. A049/11

