

PC.11

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

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A. 071/12
Alanna Riley

TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: MIDDLESEX VACANT LAND CONDOMINIUM PLAN NO. 677 181 SKYLINE AVENUE MEETING ON NOVEMBER 5, 2012

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner in response to the letter of appeal to the Ontario Municipal Board, dated August 16, 2012, 2012 and submitted by Middlesex Vacant Land Condominium Plan No. 677 relating to the rezoning application concerning 181 Skyline Avenue, the Ontario Municipal Board **BE ADVISED** that the Municipal Council supports the Committee of Adjustment decision to grant the minor variance and that the City Solicitor and Managing Director, 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

The Secretary of the Committee of Adjustment circulated notice of application on June 29, 2012 for permission to:

Construct a single detached cluster dwelling with:

- *A west interior side yard setback of 7.0m (22.9') whereas 10.0m(32.8') is required.*

On July 30, 2012 the City of London Committee of Adjustment granted the minor variance application by 1488533 Ontario Inc.

Planning Staff provided comments to the Committee of Adjustment on July 16, 2012. The staff comments are attached to this report (attached Appendix A).

On August 16, 2012 Lauren McKeen from Cohen Highly LLP submitted a letter of appeal (attached Appendix B) on behalf of Middlesex Vacant Land Condominium Plan No. 677 to the Ontario Municipal Board opposing the Committee of Adjustments decision granting the variance (attached Appendix C).

The bases of the appeal are:

1. The variance is not minor in nature.
2. The variance does not meet the intent and purpose of the By-law and Official Plan.
3. The variance does not represent an appropriate use and development of the property.
4. The variance granted conflicts with the Description and Declaration and the Committee of Adjustment failed to take this into account and failed to consider the relevance of the Condominium Act.

The hearing date for this appeal is scheduled for January 10, 2013.

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PREPARED BY:	SUBMITTED BY:
ALANNA RILEY, MCIP, RPP PLANNER II, COMMUNITY PLANNING AND URBAN DESIGN	JIM YANCHULA, MCIP, RPP MANAGER OF COMMUNITY PLANNING AND URBAN DESIGN SECTION
RECOMMENDED BY:	
JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER	

AR/ar
"Attach"

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Appendix "A"
Planning Comments

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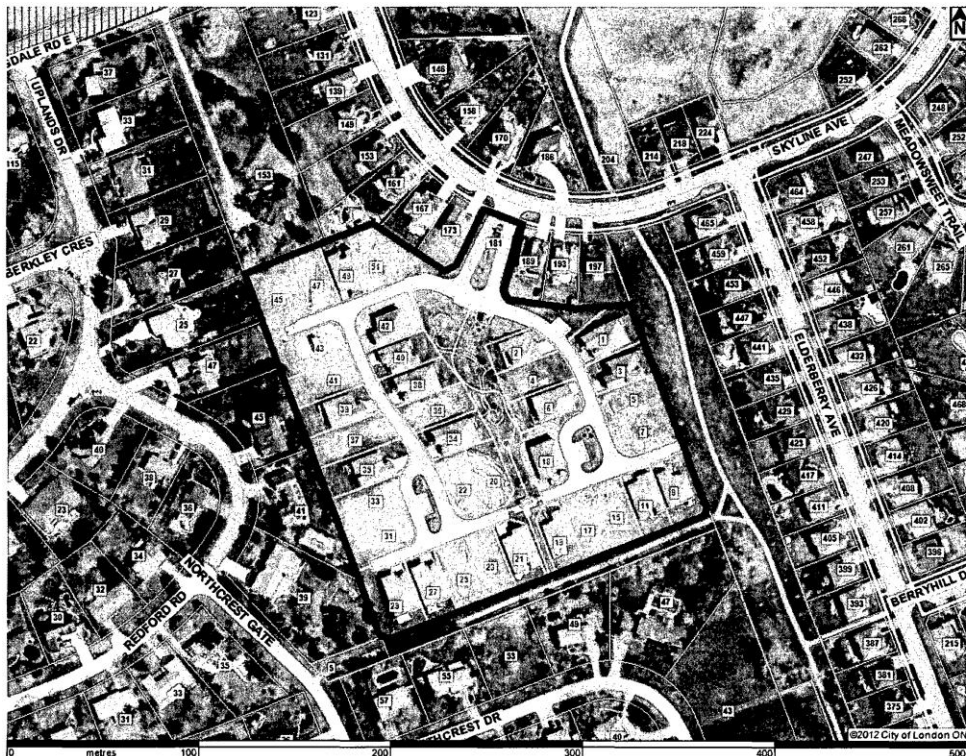
B FROM:	DEPARTMENT OF PLANNING AND DEVELOPMENT
SUBJECT:	APPLICATION BY: 1488533 ONTARIO LIMITED 181 SKYLINE AVENUE PUBLIC PARTICIPATION MEETING ON JULY 16 2012 @ 2:00 PM

REQUESTED VARIANCE

1. To permit a west side interior yard setback of 7.0m (22.9') whereas 10.0m (32.8') is required.

PURPOSE OF VARIANCE

To construct a single detached dwelling (cluster housing).



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.

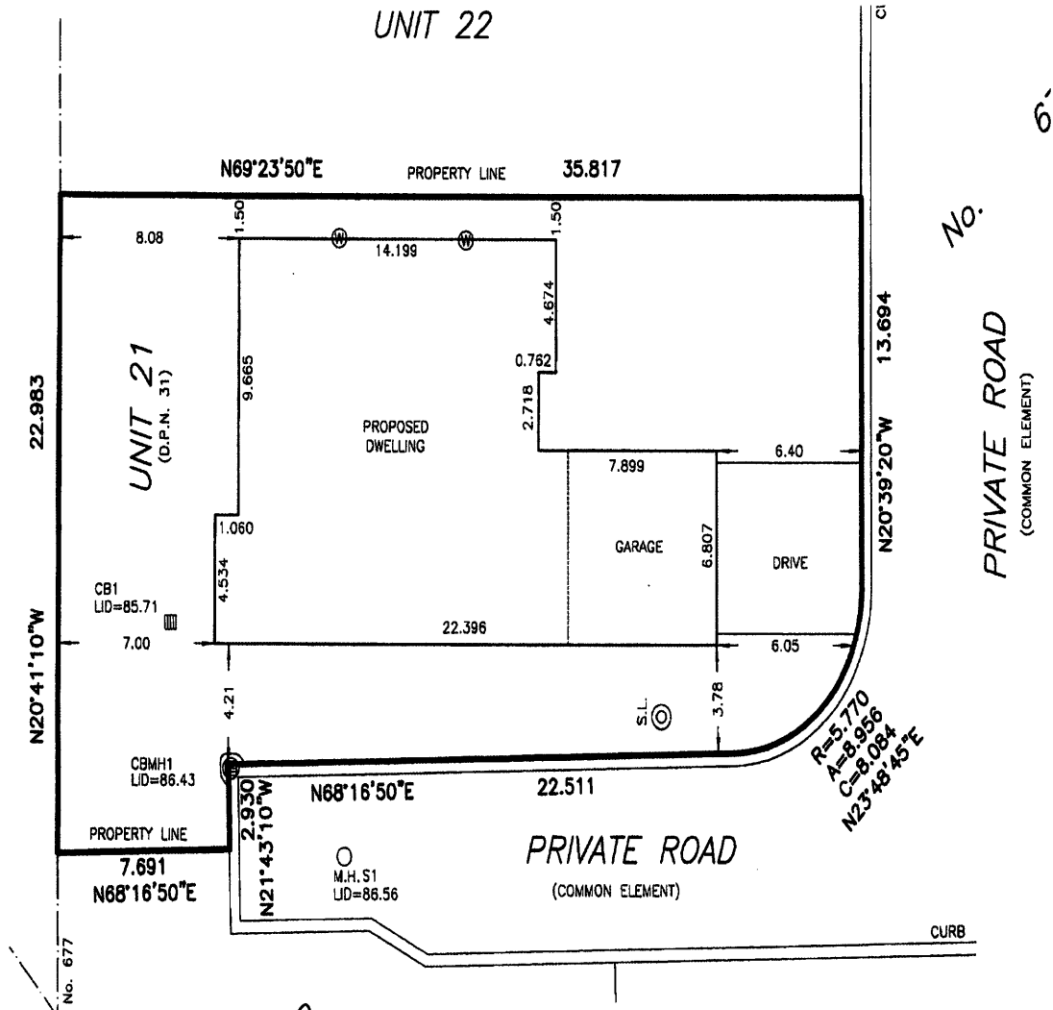
Zoning

The lands are zoned Residential R6 Special Provision (R6-2(5)) which permits the use.

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The applicants have obtained a Zoning By-law Amendment, a plan of Vacant Land Condominium and Site Plan Approval to construct the proposed cluster single detached dwelling development.

The spacing of the proposed cluster single detached dwellings is consistent with the existing development in the area. The variance will permit the proposed single detached cluster dwelling to develop as per Council's intent.

Due to the requirements of the Residential R6 Special Provision (R6-2 (5)) Zone, and that the proposed dwelling has windows on the north interior side yard, a minimum interior side yard setback of 10.0m is required.

The variance should not cause substantial detriment, hazard or annoyance nor detract from the character of nearby properties. The requested application should not have any significant impacts on adjacent properties and is a matter of local consideration.

The proposed minor variance meets the intent to the City of London Official Plan and Z.-1 Zoning By-law; the minor variance is desirable and minor in nature. The Planning and Development Department recommends this application be approved.

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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.elto.gov.on.ca

MUNICIPAL SUBMISSION FORM (R3)
PLANNING ACT
MINOR VARIANCE

Reference Number (OMB Office Use Only):

Material and information is to be forwarded to the Ontario Municipal Board by the Secretary-Treasurer under the following subsection of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended. Please print clearly throughout the submission form.

Part 1: Appeal Type

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal against a decision of the Committee of Adjustment to approve or refuse the application	45(12)

Municipality: City of London Municipal File Number: A- 071/12
Upper Tier: N/A

Part 2: Municipal Contact Information

First Name: Peter Last Name: Sikic
Professional Title: Minor Variance Co-ordinator
E-mail Address: psikic@london.ca
By providing an e-mail address you agree to receive communications from the OMB by e-mail.
Telephone #: 519 661-2500 ext. 4988 Fax #: 519 661-5397
Mailing Address: 206 Dundas St. P.O. Box 5035 London
Street Address City/Town
ON N6A 4L9
Province Postal Code

Part 3: Location Information

Address and/or Legal Description of property subject to the appeal:

Part 4: Related Matters

- (a) Is this variance appeal connected with a consent application? YES NO
If yes, has a decision on the consent application been appealed to the Board? YES NO
Consent submission: B- _____ O.M.B. File No.: _____
If the decision on the consent application has **not** been appealed to the Board, please enter the date on which the consent approval lapses: _____
- (b) Other matters at municipality or Board or required to be filed?: N/A

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Part 5: Minor Variance Information

1. Variance from Zoning By-law Number: Z-1
2. Does the by-law seeking to be varied have conditions? YES NO
3. DATE APPLICATION SUBMITTED TO MUNICIPALITY: June 19, 2012
4. Give a brief outline of the purpose of the minor variance and the nature of the issues raised in the appeal(s):

See attached.

Part 6: Scheduling Information

How many days do you estimate are needed for hearing this appeal? 1/2 Number of days
 How many witnesses do you expect to have at the hearing? 1 Number of witnesses
 Describe witness(es)' area of expertise. Planner

- Do you believe this matter would benefit from mediation? YES NO
- If yes, do you believe all parties would consent to participating in 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? _____

Part 7: Municipal Representative Information (Legal or Planning) *Person attending OMB hearing

First Name: James Last Name: Yanchuk
 Company Name: City of London
 Professional Title: Manager, Community Planning & Urban Design
 E-mail Address: jyanchuk@london.ca
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 519 661-2500 ext. 7544 Alternate Telephone #: _____
 Fax #: 519 661-5397
 Mailing Address: 206 Bunting Street P.O. Box 5035 London
 Street Address Apt/Suite/Unit# City/Town
ON N6A 4L9
 Province Country (if not Canada) Postal Code

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Part 8: Required Documentation (Please check boxes to indicate document included in filing)

I confirm that I have attached the following items to this form.

Signature of Secretary-Treasurer: *Alanna Riley* Date: August 29, 2012

The following material must be attached to this form where applicable, in the order which it is listed:

- Original or true copy of each notice of appeal received and reasons for appeal **with indication of the date on which each notice was filed**. Attach a typed list of the names, addresses and telephone numbers of all appellants.
- Board fee paid by each appellant made payable to the Minister of Finance. The appeal will not be processed without this fee being paid by each appellant. Ensure that cheque/fee payment is affixed to each appeal.
- Original or certified copy of the application for Minor Variance.
- Decision of the Committee of Adjustment with reasons and the date the decision was made.
- Last date for filing notice of appeal to Secretary-Treasurer.
- Authorization, if application made by other than the owner.
- Minutes of Committee of Adjustment hearing (in written/printed format).
- Name and addresses of all legal counsel and all persons, officials and agencies who were sent a copy of the Committee's decision and of those who requested to receive notice from the Board.
- All plans and sketches considered by the Committee.
- A copy of any planning report considered by the Committee, if applicable.
- Original or a copy of all written submissions and comments received by the Committee from any persons, officials and agencies.
- Sworn declaration by the Secretary-Treasurer of compliance with the requirements for giving notice of the Committee's decision under subsection 45(10) of the *Planning Act*.
- Copy of relevant extracts from the Official Plan.
- Copy of relevant extracts from the Zoning By-law.

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Part 3: Appellant Information

First Name: _____ Last Name: _____

Middlesex Vacant Land Condominium Plan No. 677. (MVL 677)
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) 455-6080 ext. 237 Alternate Telephone #: (519) 455-6080 ext. 241

Fax #: (519) 455-1380

Mailing Address: 924 Oxford Street East London
Street Address Apt/Suite/Unit# City/Town
Ontario N5Y 3J9
Province Country (if not Canada) Postal Code

Signature of Appellant: _____ Date: _____
(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:

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

First Name: Laura Last Name: McKeen

Company Name: Cohen Highley LLP

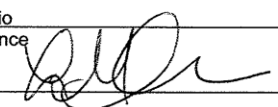
Professional Title: Lawyer

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

Daytime Telephone #: (519) 672-9330 Alternate Telephone #: _____

Fax #: (519) 672-5960

Mailing Address: 255 Queens Avenue 11th Floor London
Street Address Apt/Suite/Unit# City/Town
Ontario N6A 5R8
Province Country (if not Canada) Postal Code

Signature of Appellant:  Date: Aug 16/12

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.

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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: 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):

We are appealing the London Committee of Adjustment's decision on July 16, 2012 to grant a minor variance permitting a west interior side yard setback of 7.0m (22.9') whereas 10.0m (32.8') is required.

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.

We appeal the granting of this minor variance for the following reasons:

- The variance is not minor in nature.
- The variance does not meet the intent and purpose of the By-law and Official Plan.
- The variance does not represent an appropriate use and development of the property.
- The variance granted conflicts with the Description and Declaration and the Committee of Adjustment failed to take this into account and failed to consider the relevance of the Condominium Act

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.

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)

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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?
 1-2 _____

Describe expert witness(es)' area of expertise (*For example: land use planner, architect, engineer, etc.*):
 The expert witness(es) will be a land use planner. _____

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? _____

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

Please see the attached documents of the Middlesex Vacant Land Condominium Corporation No. 677:

Tab A: Notice of Decision

Tab B: Declaration

Tab C: By-Laws 2 and 3

Tab D: Condominium Plan

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.

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Appendix "C"
Decision



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

City of London

Note: The last day for appealing this Decision is at **4:30 p.m. on August 20, 2012.**

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: **1488533 ONTARIO INC. – A.071/12**


ADDRESS: **181 SKYLINE AVENUE (DPN 31)**
DESCRIPTION: **LEVEL 1 UNIT 21 MVLCP 677**
PURPOSE OF APPLICATION: **TO CONSTRUCT A SINGLE DETACHED DWELLING (CLUSTER HOUSING).**
VARIANCES REQUESTED:
1. **TO PERMIT A WEST INTERIOR SIDE YARD SETBACK OF 7.0M (22.9') WHEREAS 10.0M (32.8') IS REQUIRED.**

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.

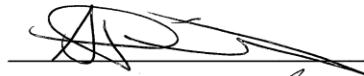
CONCUR in the following Decision and Reasons for the Decision made on the **July 16, 2012.**

DECISION: GRANTED DENIED APPROVED WITH CONDITIONS


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



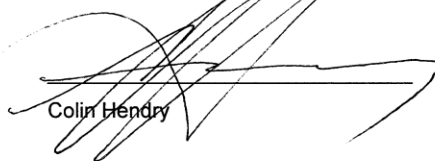
Jeff Preston, Chair



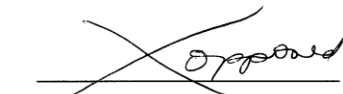
Steve Polhill, Vice-chair



Gina Barber



Colin Hendry

~~

Maria Mendes~~

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, Secretary Treasurer

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City of London Schedule "A"

Minor Variance Application No. **A.071/12**

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;
- The requested minor variance is desirable for the appropriate developments or use of the land, building or structure.

Subject to the following condition/s: