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A. 108/12  
Alanna Riley

<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE</b>
<b>FROM:</b>	<b>GEORGE KOTSIFAS P.ENG. MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES &amp; CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>OMB APPEAL 65 HEATHER PLACE MEETING ON JANUARY 22, 2013</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Development & Compliance Services & Chief Building Official in response to the letter of appeal to the Ontario Municipal Board, dated November 13, 2012, and submitted by Lisa O'Brien relating to the minor variance application concerning 65 Heather Place, 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 Managing Director, Development & Compliance Services & Chief Building Official **BE DIRECTED** to provide legal and planning representation at the Ontario Municipal Board Hearing to support the Committee of Adjustment's decision.

<b>BACKGROUND</b>
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The Secretary of the Committee of Adjustment circulated notice of application on October 12, 2012 for permission to:

***Maintain an accessory structure with:***

1. a north interior side yard of 0.0m (0.0') whereas 0.6m (1.9') is required.

A neighbourhood complaint was received by By-law Enforcement that an accessory structure was constructed too close to the lot line. An order to comply was issued for the accessory structure and required a minor variance and building permit to maintain it in the existing location.

On October 29, 2012 the City of London Committee of Adjustment refused the minor variance application by Lisa O'Brien.

Planning and Development Services Staff provided comments to the Committee of Adjustment on October 29, 2012. The staff comments are attached to this report (attached Appendix A).

On November 13, 2012 Lisa O'Brien, the applicant submitted an appeal (attached Appendix B) to the Ontario Municipal Board opposing the Committee of Adjustments decision refusing the variance (attached Appendix C).





The basis of the appeal are:

1. *The structure is located on the applicant's side of the lot line.*
2. *To relocate the garage would involve pouring new concrete footings which would cause hardship and be very expensive.*
3. *The garage is in keeping to the lot line as many more on the street.*

The hearing date for this appeal has not been scheduled to date. Development Services maintains its position on the minor variance application.

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<b>PREPARED AND RECOMMENDED BY:</b>	<b>REVIEWED BY:</b>
	
<b>ALANNA RILEY, MCIP, RPP SENIOR PLANNER DEVELOPMENT SERVICES</b>	<b>BRUCE HENRY MANAGER DEVELOPMENT PLANNING</b>
<b>REVIEWED BY:</b>	<b>SUBMITTED BY:</b>
	
<b>TERRY GRAWEY, MCIP, RPP MANAGER DEVELOPMENT SERVICES AND PLANNING LIAISON</b>	<b>GEORGE KOSTIFAS P.ENG. MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES &amp; CHIEF BUILDING OFFICIAL</b>



AR/ar  
"Attach"

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**Appendix "A"**  
**Planning Comments**

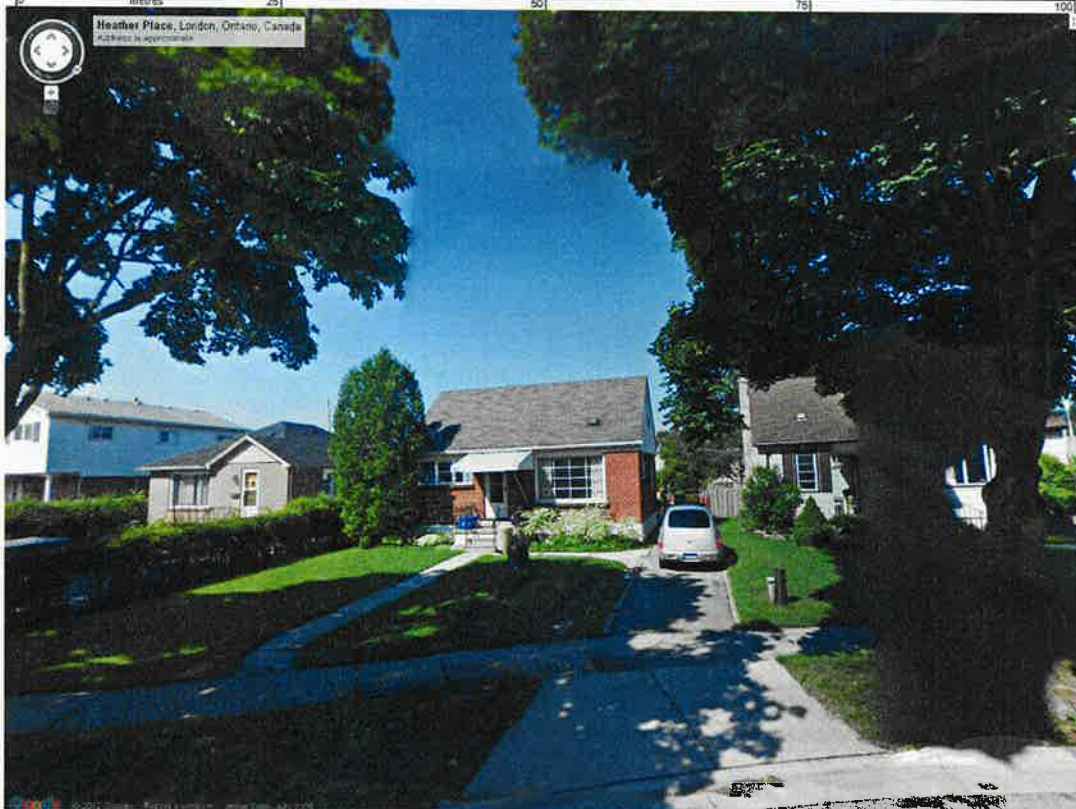
<b>FROM:</b>	<b>DEVELOPMENT SERVICES</b>
<b>SUBJECT:</b>	<b>APPLICATION BY: LISA O'BRIEN 65 HEATHER PLACE PUBLIC PARTICIPATION MEETING ON OCTOBER 29, 2012 @ 1:30 PM</b>

**REQUESTED VARIANCE**

- To permit a north interior side yard of 0.0m (0.0') whereas 0.6m (1.9') is required.

**PURPOSE OF VARIANCE**

To maintain an existing detached accessory structure.



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**Appendix "A" (Continued)**

**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:

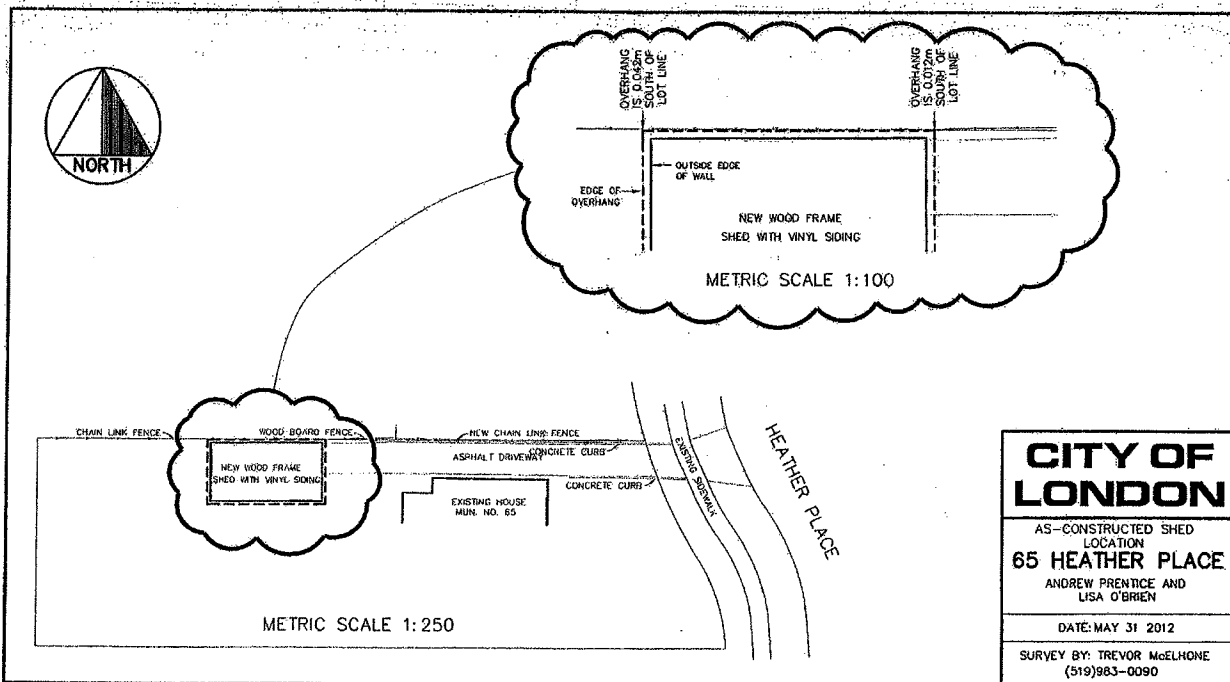
- 1) Is the general intent and purpose of the Official Plan maintained?
- 2) Is the general intent and purpose of the Zoning By-law maintained?
- 3) Is the variance minor in nature? and
- 4) Is the variance desirable for the appropriate development or use of the land, building or structure?

**Official Plan**

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

**Zoning**

The lands are zoned Residential (R1-5).



A neighbourhood complaint has been received by By-law Enforcement that an accessory structure is constructed too close to the lot line. An order to comply has been issued for this accessory structure and requires a minor variance to maintain it in the existing location.

Section 4.1 of the Zoning By-law states: when such accessory building or structure is located in an interior side yard or a rear yard, it shall be no closer than 0.6 metres (2.0 feet) to the side lot line and rear lot line. This minimum setback is intended to maintain all footings, eaves and gutters completely on the subject property and to provide access without encroachment onto neighbouring properties. The existing accessory structure is located 0.0 metres from the lot line and does not comply with the intent of the Z-1 Zoning By-law. The proposed accessory structure is not compatible with the surrounding residential use as it could cause impacts such as storm water runoff on the neighbouring property. Therefore Planning and Development do not support this application.

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### Appendix "B" Appeal



Environment and Land Tribunals Ontario  
**Ontario Municipal Board**  
855 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*

*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)
	<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	
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: 65 HEATHER PLACE

Municipality/Upper tier: LONDON

**RECEIVED**

NOV 16 2012

Development Services

**Appendix "B" (Continued)**

**Part 3: Appellant Information**

First Name: LISA Last Name: O'BRIEN

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

Professional Title (if applicable): \_\_\_\_\_

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

Daytime Telephone #: 519-226-377-1805 Alternate Telephone #: 519-455-1539

Fax #: \_\_\_\_\_

Mailing Address: 65 HEATHER PLACE LONDON  
Street Address Apt/Suite/Unit# City/Town

ONT. NSW 4L6  
Province Country (if not Canada) Postal Code

Signature of Appellant: *Lisa O'Brien* Date: 200.13/12  
(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: ANDREW Last Name: PRENTICE

Company Name: \_\_\_\_\_

Professional Title: \_\_\_\_\_

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

Daytime Telephone #: 519-494-6981 Alternate Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Mailing Address: 65 HEATHER PLACE LONDON  
Street Address Apt/Suite/Unit# City/Town

ONT NSW 4L6  
Province Country (if not Canada) Postal Code

Signature of Appellant: *Lisa O'Brien* Date: 200.13/12

**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.**

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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**Appendix "B" (Continued)**

**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)

NOTICE OF DECISION  
LONDON COMMITTEE OF ADJUSTMENT  
SUBMISSION NO.: A.108/12

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)

I APPEAL THAT I SHOULD BE PERMITTED A VARIANCE. THE STRUCTURE IS ON MY SIDE OF THE LOT LINE. TO RELOCATE THIS GARAGE WOULD INVOLVE REQUIRING FOR CONCRETE FOOTINGS AND WOULD CAUSE HARDSHIP AND BE VERY EXPENSIVE. THE GARAGE IS IN KEEPING TO THE LOT LINE AS MANY MORE ON MY STREET.

**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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**Appendix "B" (Continued)**

**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?  
NONE

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):  
 \_\_\_\_\_

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.**

AT THE MUNICIPAL HEARING, ONE OF THE COMMITTEE MEMBERS WITHDREW FROM THE HEARING CITING A CONFLICT OF INTEREST. THEREFORE THERE WAS ONE LESS MEMBER VOTING ON THE MOTION. I DONT FEEL I WAS AFFORDED DUE PROCESS.

**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

**London**  
CANADA

**City of London**

Note: The last day for appealing this Decision is at 4:30 p.m. on November 19, 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: **Lisa O'Brien – A.108/12**

**ADDRESS: 65 Heather Place, Lot 30 Plan 711, on the west side of Heather Place, north of Heather Crescent. PURPOSE: To maintain pool equipment in its existing location.**

**PURPOSE: To maintain an existing detached accessory structure.**

**VARIANCES REQUESTED:**

**1. To permit a north interior side yard of 0.0m (0.0') whereas 0.6m (1.9') 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 **October 29, 2012.**

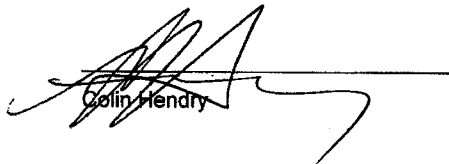
**DECISION:** GRANTED  DENIED  APPROVED WITH CONDITIONS

**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**