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FROM:	G. KOTSIFAS, P.ENG MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL
SUBJECT:	APPLICATION BY: KEITH THOMPSON & BEVERLEY MUSTARD LEVEL 1 UNIT 12 MVLCP 534 12-27 NORTHCREST DRIVE MEETING ON JUNE 18, 2013

RECOMMENDATION

That, on the recommendation of the Manager, Development Services and Planning Liaison, in response to the letter of appeal to the Ontario Municipal Board, dated April 15, 2013, and submitted by Keith Thompson relating to the minor variance application concerning 12-27 Northcrest Drive, the Ontario Municipal Board **BE ADVISED** that the Municipal Council supports the decision of the Committee of Adjustment to grant the minor variance and that 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 March 25, 2013 for permission to:

Request to permit a single detached dwelling on a newly created lot with:

1. To permit a detached accessory structure in an environmental buffer area whereas no structures are permitted.
2. To maintain a swimming pool in an environmental buffer area whereas no structures are permitted.
3. To maintain a swimming pool with a rear yard setback of 0.0m whereas 1.5m (4.9') is required.

On March 25, 2013 the City of London Committee of Adjustment granted the minor variance requests (numbered 2 & 3) and declined to approve the variance to facilitate a structure in an environmental buffer by removing number 1; consistent with staff recommendation.

Development Services Staff provided comments to the Committee of Adjustment on March 15, 2013 supporting the proposed variances (numbered 2&3) and objecting to the variance for the accessory structure to be located within the Open Space OS5(4) Zone (number 1). The staff comments are attached to this report (attached Appendix A).

On April 15, 2013, Keith Thompson submitted a letter of appeal (attached Appendix B) to the Ontario Municipal Board opposing the Committee of Adjustments decision granting the variance for the location of the pool but not the proposed accessory structure (attached Appendix C).

The basis of the appeal as described by the applicant are as follows:

1. The original request for a swimming pool fence permit was granted by City of London and the requested location was not identified as encroaching into the Open Space OS5(4) Zone.
2. The accessory structure is essential to complete the project.

The hearing date for this appeal has been scheduled for one day on June 27, 2013.

A letter from Dr George Athanassakos was received by the Minor Variance Co-ordinator on March 25, 2013 which opposed the construction of the accessory structure due to:

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- The local topography, as unit 12's land is elevated higher than unit 13
- It would impair unit 13's visual amenity and property value
- The Owner of unit 13 does not support the construction of the building next to the common property boundary between units 12 and 13.

There were no members of the public that attended the Committee of Adjustment meeting.

The hearing date for this appeal has been scheduled for June 27, 2013 (PL130406). Development Services maintains its position on the minor variance application. Staff are 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 BY:	REVIEWED BY:
SONIA WISE PLANNER II, DEVELOPMENT SERVICES	BRUCE HENRY MANAGER, DEVELOPMENT PLANNING
RECOMMENDED BY:	SUBMITTED BY:
TERRY GRAWAY MCIP RPP MANAGER, DEVELOPMENT SERVICES & PLANNING LIAISON	G. KOTSIFAS, P.ENG MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL

SW/sw
"Attach"

Y:\Shared\VARIANCE\2013\7Mar 25\A.032-13 12-27 Northcrest Drive St OMB.doc

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Appendix "A"
Development Services Recommendations

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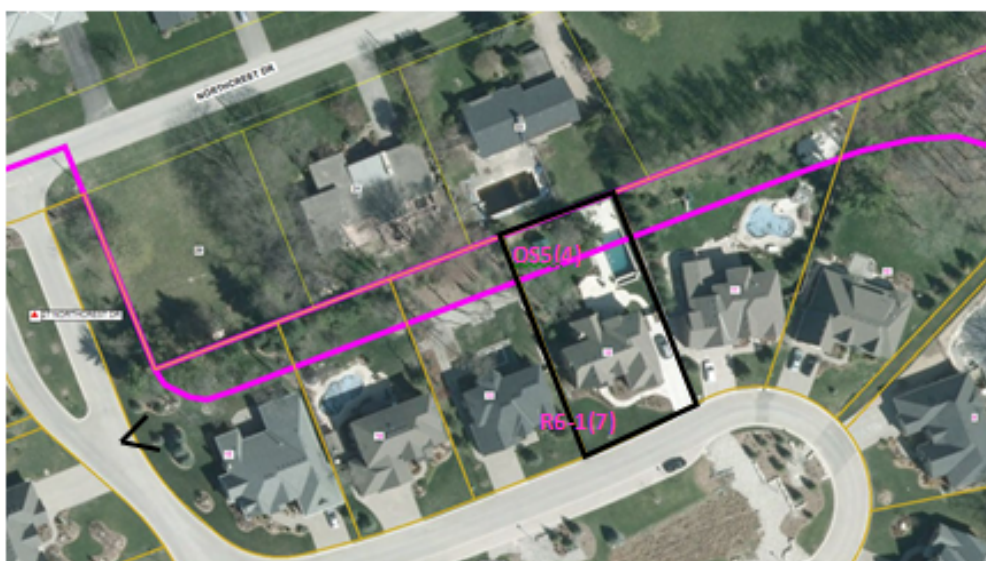
FROM:	DEVELOPMENT SERVICES
SUBJECT:	APPLICATION BY: KEITH THOMPSON & BEVERLEY MUSTARD 12-27 NORTHCREST DRIVE PUBLIC PARTICIPATION MEETING ON MARCH 25, 2013 @ 2:10 PM

REQUESTED VARIANCES

1. To permit a detached accessory structure in an environmental buffer area whereas no structures are permitted.
2. To maintain a swimming pool in an environmental buffer area whereas no structures are permitted.
3. To maintain a swimming pool with a rear yard setback of 0.0m whereas 1.5m (4.9') is required.

PURPOSE OF VARIANCES

To construct a detached accessory structure and maintain a swimming pool in its existing location.



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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 is applied to lands that are primarily developed for low-rise, low density housing forms including detached, semi-detached and duplex dwellings.

Zoning

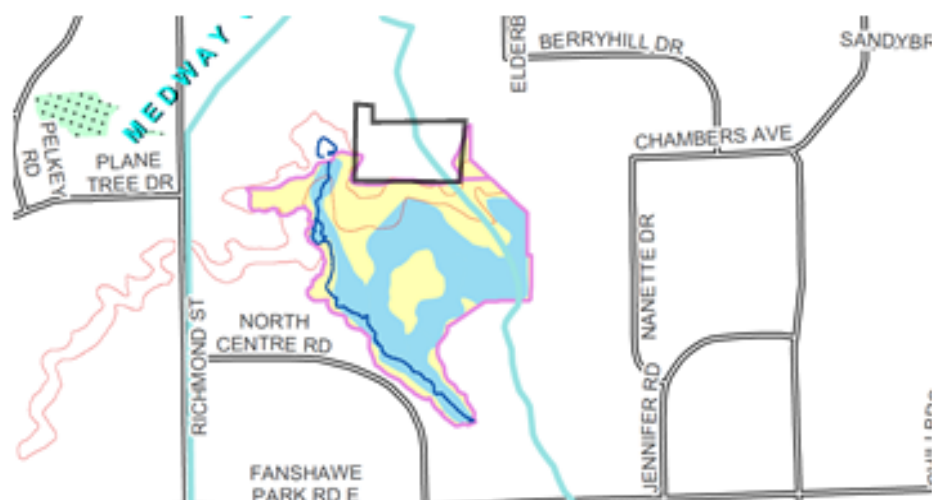
The lands are zoned Residential Special Provision R6 (R6-1(7)) and Open Space Special Provision (OS5(4)) Zone.

Analysis

The land was divided into two separate zones to accommodate a residential component while also applying an additional safeguard for tree retention within the Open Space Special Provision OS5(4) Zone. The OS5(4) environmental buffer was applied along the entire perimeter of the site, to protect the existing mature trees in this area and to recognize the presence of sensitive lands in the most southerly, easterly and westerly portions of this site. It is intended to protect all the vegetated lands located on the remnant valley slope plus areas occupied by a significant community of trees located at the eastern and western limit of the property. The OS5(4) Zone was also extended to the northern limits of the condominium property to provide a buffer to the lands on the southern portion of Northcrest Drive and to retain the existing mature trees.

The OS4 and OS5 Zone variations are the most restrictive open space zones and are applied to lands which have physical or environmental constraints to development. The OS5 Zone variation applies to important natural features and functions that have been recognized by Council as being of City-wide or regional significance and identified as components of the Natural Heritage System on Schedule "B" of the Official Plan. The uses permitted in the Open Space OS5(4) Zone include conservation lands, conservation works, passive recreation uses and managed woodlots to reinforce the intention of the environmental buffer.

The Residential R6 Special Provision (R6-1(7)) Zone provides for minimum interior side yard and/or rear yard setbacks of 1.8 metres (6 feet) from any property or zone boundary, whichever is greater. The rear lot line is deemed to be the lot line that abuts the OS5(4) Zone variation.



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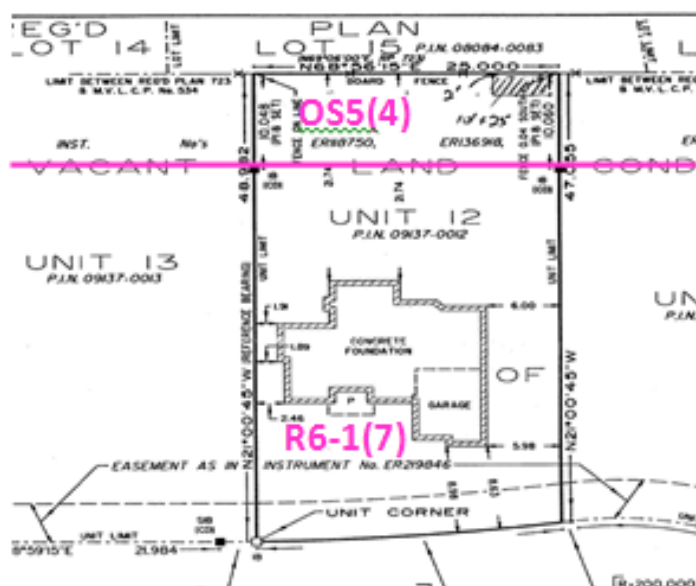
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The current location of the pool is within the Open Space OS5(4) Zone where no structures are permitted. Recognizing that the pool is an existing structure, and that no trees were removed to construct the pool, Development Services, and specifically parks planning staff, do not object to the continuation of the pool in its current location.

The proposed ancillary structure as hand drawn (see below) is proposed to be located at the rear of the property on the concrete pad associated with the pool within the Open Space OS5(4) Zone. The dimensions of the structure are 3.5m (10') by 7m (23') for a total of 24.5m² (230ft²). The Open Space OS5(4) Zone does not permit structures and there is adequate land to accommodate the structure on the residentially zoned portion of the property.

Development Services does not support the construction of the ancillary structure within the Open Space OS5(4) Zone and recommends the construction or erection of any ancillary structures to be completely contained within the Residential Special Provision R6 (R6-1(7)) Zone to maintain the integrity and intention of the Open Space OS5(4) Zone.



Conclusion

The requested variances to maintain the pool in the existing location are minor in nature and consistent with the intent of the Official Plan and Zoning By-law. The requested variances should not have any significant impacts on the character and amenity of the adjacent properties and is a matter of local consideration. Development Services does not object to the minor variance to maintain the pool in the existing location.

The requested variance to construct a detached accessory structure within the Open Space OS5(4) Zone is not considered minor in nature and is inconsistent with the intent of the Official Plan and Zoning By-law. The requested variance is a matter of local consideration and Development Services does not support the request for an ancillary structure to be constructed and located within the Open Space OS5(4) Zone

Note

The owner is encouraged to plant additional trees to offset the encroachment of the pool and concrete pad into the Open Space Environmental Buffer.

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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) 326-6370
www.eltto.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)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

Part 2: Location Information

12-27 NORTHCREST DR. Level-1 unit 12
Address and/or Legal Description of property subject to the appeal:
Municipality/Upper tier: LONDON, ontario Ward 5

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MPLCP 534
APR 15 2013
Development Services

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Part 3: Appellant Information

First Name: Keith Last Name: Thompson

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 #: _____ Alternate Telephone #: _____

Fax #: _____

Mailing Address: 12-27 NORTHCREST DRIVE Unit 12 LONDON
Street Address Apt/Suite/Unit# City/Town
Ontario NSX 4P4
Province Country (if not Canada) Postal Code

Signature of Appellant: Keith Thompson Date: 13/4/14
(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.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

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Part 5: Language and Accessibility

Please choose preferred language: English French

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

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print) To construct an Accessory Structure on personal property within a designated OS5(4) Zone. Minor Variance declined by Adjustment Committee City of London on March 25-2013. London Committee of Adjustment Submission No: A.032/13

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) Original request for swimming pool permit granted by City of London not realizing submitted position request would encroach OS5(4) on Appellant's property. Despite granting minor variance for pool position... -> see sect 9

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

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY: _____
(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 - only*

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

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.

... Accessory structure essential to complete project was declined. Further reasons to consider granting this minor Variance for Accessory structure as will be outlined with counsel. We would kindly request a hearing for OMB to consider this Appeal and such reasons the request is reasonable.

Part 10: Required Fee

Total Fee Submitted: \$ 125⁰⁰

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

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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, March 25, 2013.

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: Keith Thompson & Beverley Mustard – A.032/13

ADDRESS: 12-27 Northcrest Drive

PURPOSE OF APPLICATION: To construct a detached accessory structure and maintain a swimming pool in its existing location.

VARIANCES REQUESTED:

1. To permit a detached accessory structure in a OS5 (4) zone whereas no structures are permitted.
2. To maintain a swimming pool in a OS5 (4) whereas no swimming pools are permitted.
3. To maintain a swimming pool with a rear yard setback of 0.0m (0.0').


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.

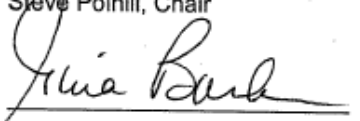
CONCUR in the following Decision and Reasons for the Decision made on **Monday, March 25, 2013.**

DECISION: GRANTED DENIED APPROVED WITH CONDITIONS

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


Steve Polhill, Chair


Maria Mendes, Vice-chair

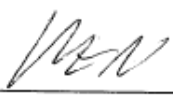

Gina Barber


Colin Hendry

Jeff Preston

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.032/13

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 condition/s: