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:
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.
Appendix “A”
Development Services Recommendations
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.
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 Northwest 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 1.0 metres (3 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.
The current location of the pool is within the Open Space OSS(4) Zone wherein no structures are removed. 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 OSS(4) Zone. The dimensions of the structure are 3.5m (10') by 7m (23') for a total of 24.5m² (230sf). The Open Space OSS(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 OSS(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 OSS(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 OSS(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 OSS(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.
# Appendix “B”

## Appeal

### OBJECT OF APPEAL

<table>
<thead>
<tr>
<th>SUBJECT OF APPEAL</th>
<th>TYPE OF APPEAL</th>
<th>PLANNING ACT REFERENCE (SECTION)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor Variance</td>
<td>Appeal a decision</td>
<td>46(12)</td>
</tr>
<tr>
<td>Consent/Severance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zoning By-law or Zoning By-law Amendment</td>
<td>Appeal the passing of a Zoning By-law</td>
<td>34(10)</td>
</tr>
<tr>
<td>Interim Control By-law</td>
<td>Appeal the passing of an Interim Control By-law</td>
<td>29(4)</td>
</tr>
<tr>
<td>Official Plan or Official Plan Amendment</td>
<td>Appeal a decision</td>
<td>17(21) or 17(36)</td>
</tr>
<tr>
<td>Plan of Subdivision</td>
<td>Appeal a decision</td>
<td>51(39)</td>
</tr>
</tbody>
</table>

### 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

**Development:** Survey

A1 Revised April 2016  Page 2 of 5
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: __________________________________________

Daytime Telephone #: __________________ Alternate Telephone #: __________________

Fax #: __________________________________________

Mailing Address:

Address: 12-27 Northcrest Drive Unit 12 London, ON, N5Y 4P4

City/Town: London

Province: Ont.

Country (if not Canada): Canada

Postal Code: N5Y 4P4

Signature of Appellant: Ke@h Thompson

Date: 13/14/15

(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: __________________________________________

Daytime Telephone #: __________________ Alternate Telephone #: __________________

Fax #: __________________________________________

Mailing Address:

Street Address: ____________________________

Address: ____________________________

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.

At Revised April 2010  Page 3 of 5
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 OSS4) Zone, Minor Variance by Adjustment Committee, City of London on March 25-2013.
London Committee of Adjustment - Submisson No. 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 petition request would exceed OSS4) on Applicant's property. Despite granting minor variance in 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? (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)
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?

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.**

... Accessory structure essential to complete project was declined. Further reasons to consider granting this minor variance for Accessory Structure as will be outlined with Council. We would kindly request a hearing for such reasons the request is reasonable.

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.
Appendix “C”
Decision
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(6) & (10)

REGARDING AN APPLICATION BY: Keith Thompson & Beverley Mustard – A 032/13

ADDRESS: 12-27 Norwest 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 OS6 (4) zone, whereas no structures are permitted.
2. To maintain a swimming pool in a OS6 (4) zone, whereas no swimming pools are permitted.

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 Paulh, Chair

Maria Mendes, Vice-chair

Gina Barber

Colin Hendy

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
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):