

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, October 25, 2022

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

**Appellant(s):** CANTAM GROUP LTD

**Applicant(s):** CANTAM GROUP LTD, CANTAM GROUP LTD

**Property Address/Description:** 2657-2659 MIDLAND AVE

**Committee of Adjustment File Number(s):** 21 222571 ESC 23 CO (B0065/21SC), 21 222601 ESC 23 MV(A0342/21SC), 21 222604 ESC 23 MV(A0341/21SC)

**TLAB Case File Number(s):** 22 163246 S53 23 TLAB, 22 163247 S45 23 TLAB,  
22 163248 S45 23 TLAB

**Hearing date:** Friday, October 21, 2022

**DECISION DELIVERED BY** TLAB Panel Member G. Swinkin

## REGISTERED PARTIES

Appellant	CANTAM GROUP LTD
Appellant's Legal Rep.	MARTIN MAZIERSKI
Applicant / Owner	CANTAM GROUP LTD,

## INTRODUCTION AND CONTEXT

These three appeals before the Toronto Local Appeal Body (the "Tribunal") concern an application for consent and two applications for variance relief applicable to the new lot to be created and to the lot to be retained for the commonly owned properties which have the combined addresses of 2657 and 2659 Midland Avenue (the "Property").

**Decision of Toronto Local Appeal Body Panel Member: Member G. Swinkin  
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The Property is a corner property fronting on Midland Avenue and flanking Montgomery Avenue. It is presently improved with a single family detached dwelling situated westerly on the Property and oriented to Midland Avenue.

There is a history to the Property in the sense that a previous consent was secured in 2018 whereby the Property was authorized for division so as to result in a north parcel and a south parcel, both fronting on Midland Avenue. Other than perfecting this severance, the owner of the Property, Cantam Group Ltd. (the "Owner"), has not elected to proceed with redevelopment of the lands on this basis.

The new proposal, intended to supersede the prior approval, is to divide the Property so as to result in a west parcel and an east parcel, the former fronting on Midland Avenue and continuing for now to accommodate the existing single family dwelling, the latter fronting on Montgomery Avenue and intended to accommodate a new single family dwelling.

The proposed lot structure is to be as follows.

Parts 1 and 2 – Retained Dwelling Lot (Midland Avenue Fronting Dwelling)

Proposed Frontage – 22.86 m

Proposed Depth – 39.2 m

Proposed Lot Area – 886.1 sq.m

Parts 3 and 4 – Proposed Dwelling Lot (Montgomery Avenue Fronting Dwelling)

Proposed Frontage – 22.59 m

Proposed Depth – 22.86 m

Proposed Lot Area – 676.4 sq.m

The relief requested from the Committee of Adjustment (the "Committee") was as follows:

Part 1 and 2 - Retained Lot

1. Chapter 900.3.10.(267) Exception RD 267, By-law 569-2013 and Performance Standard 1 of Schedule "B", Agincourt Community By-law 10076. One Lot per Registered Plan which shows the minimum required (existing) lot area of 1562.49 square metres and the required (existing) minimum lot frontage of 22.86 metres. The proposed lot will have a lot area of 886.15 square metres and a proposed lot frontage of 22.86 metres

2. Chapter 10.20.40.70.(2) B), By-law 569-2013 The required minimum rear yard setback is 9.9 metres. The proposed rear yard setback is 6.0 metres.

3. Chapter 10.5.40.60.(1) (C), By-law 569-2013 A platform without main walls, attached to or less than 0.3 metres from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 metres. The proposed platform encroaches 3.9 metres into the required rear yard setback.

4. Chapter 10.5.40.60.(6) A), By-law 569-2013 A bay window, or other window projection from a main wall of a building, which increases floor area or enclosed space and does not touch the ground, may encroach into a required front yard setback or rear yard setback a maximum of 0.75 metres. The existing window encroaches 0.92 metres from the wall into the required rear setback.

#### Part 3 and 4 – Conveyed Lot

1. Chapter 900.3.10.(267) Exception RD 267 (A), By-law 569-2013 (A) The minimum building setback from a front lot line is 9.0 metres. The proposed building setback from a front lot line is 5.0 metres.

2. Chapter 900.3.10.(267) Exception RD 267, By-law 569-2013 and Performance Standard 1 of Schedule "B", Agincourt Community By-law 10076. One Lot per Registered Plan which shows the minimum required (existing) lot area of 1562.49 square metres and the required (existing) minimum lot frontage of 22.86 metres. The proposed lot will have a lot area of 676.34 square meters, and a lot frontage of 29.59 metres.

3. Chapter 900.3.10.(1462) Exception RD 1462 A), By-law 569-2013 The permitted maximum floor space index is the lesser of 0.5 times the area of the lot or 279 square metres. The proposed floor space index is 52.32 times the area of the lot: 353.86 square metres.

4. Chapter 10.5.80.40.(1), By-law 569-2013 The maximum combined width of all vehicle entrances through the front main wall of the residential building is 6.0 metres. The proposed combined width of all vehicle entrances through the front main wall is 7.32 metres.

The Tribunal has been advised that prior to the Committee hearing, a memo dated January 12, 2022, was submitted by the City's Engineering and Construction Services Division ("ECS") requesting a deferral of the application. The reason for deferral was that the owner shall retain the services of a professional engineer qualified in municipal engineering to submit engineering drawings including plans and profiles showing that the sanitary sewer on Montgomery Ave can be extended along the frontage of the proposed conveyed lot (PART 3 and 4) to service the proposed dwelling. The drawings must show the inverts of all existing and proposed sewers and demonstrate that there will be no conflicts. The plans should also show the location of the proposed services for the lots

The Tribunal was advised that the owner provided a site grading and servicing plan dated February 9, 2022, to ECS for review, which material demonstrated the feasibility of servicing the new lot on Montgomery Avenue.

A subsequent memo dated May 31, 2022, was submitted by ECS recommending standard Consent approval conditions.

The Tribunal was advised that Planning Department staff did not submit a Staff Report.

The City of Toronto Urban Forestry Division submitted a memo on May 25, 2022, recommending that any approval of the variances be subject to standard Forestry Conditions 1, 2 and 3: 1. Submission of a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets. 2. Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection. 3. Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

Letters of objection by area residents were submitted prior to the Committee of Adjustment hearing.

The Consent and Minor Variance Applications were heard and refused on May 5, 2022, following which the Owner filed appeals to the Tribunal.

## **THE LEGISLATIVE AND POLICY FRAMEWORK**

### **Provincial Policy – S. 3**

A decision of the Tribunal must be consistent with the 2020 Provincial Policy Statement ('PPS') and conform to the Growth Plan for the Greater Golden Horseshoe for the subject area ('Growth Plan').

### **Consent – S. 53**

The Tribunal must be satisfied that a plan of subdivision is not necessary for the orderly development of the municipality pursuant to s. 53(1) of the Act and that the application for consent to sever meets the criteria set out in s. 51(24) of the Act. These criteria require that " regard shall be had, among other matters, to the health, safety, convenience, accessibility for persons with disabilities and welfare of the present and future inhabitants of the municipality and to,

- (a) the effect of development of the proposed subdivision on matters of provincial interest as referred to in section 2 of the Planning Act;
- (b) whether the proposed subdivision is premature or in the public interest;
- (c) whether the plan conforms to the official plan and adjacent plans of subdivision, if any;
- (d) the suitability of the land for the purposes for which it is to be subdivided;
  - (d.1) if any affordable housing units are being proposed, the suitability of the proposed units for affordable housing;
- (e) the number, width, location and proposed grades and elevations of highways, and the adequacy of them, and the highways linking the highways in the proposed subdivision with the established highway system in the vicinity and the adequacy of them;
- (f) the dimensions and shapes of the proposed lots;
- (g) the restrictions or proposed restrictions, if any, on the land proposed to be subdivided or the buildings and structures proposed to be erected on it and the restrictions, if any, on adjoining land;
- (h) conservation of natural resources and flood control;
- (i) the adequacy of utilities and municipal services;
- (j) the adequacy of school sites;
- (k) the area of land, if any, within the proposed subdivision that, exclusive of highways, is to be conveyed or dedicated for public purposes;
- (l) the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy; and
- (m) the interrelationship between the design of the proposed plan of subdivision and site plan control matters relating to any development on the land, if the land is also located within a site plan control area designated under subsection 41 (2) of this Act or subsection 114 (2) of the City of Toronto Act, 2006. 1994, c. 23, s. 30; 2001, c. 32, s. 31 (2); 2006, c. 23, s. 22 (3, 4); 2016, c. 25, Sched. 4, s. 8 (2).

## **Variance – S. 45(1)**

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

## **SUMMARY OF EVIDENCE**

Counsel for the Owner called background and land use planning evidence through Jonathan Benczkowski, a Registered Professional Planner. Mr. Benczkowski was qualified to offer opinion evidence on land use planning matters in the proceeding.

The City of Toronto did not appear in the proceeding nor did any other persons,

Mr. Benczkowski advised the Tribunal that he was retained after issuance of the Committee decision. After reviewing the Committee decision and background material, Mr. Benczkowski advised the Owner that he would take on the retainer to appear at this proceeding subject to the Owner agreeing to certain changes to the proposal.

The changes required by Mr. Benczkowski related to moving the garage structure easterly wall further west and to pull the main front wall of the garage further back from the street. His rationale for these changes was to mitigate any potential impact which may be sustained by the adjacent owner to the east at 7 Montgomery Avenue. The Owner agreed to these changes and the plans were revised and filed accordingly,

Accordingly, counsel for the Owner requested the authority of the Tribunal to effect the associated modifications to the requested relief and as they constituted a reduction in relief sought, to waive any further notice. In addition, the Tribunal was advised that the Owner received a revised Zoning Notice and in the course of preparing that the Zoning Examiner identified a further required variance in connection with the front porch encroachment into the front yard, which deficiency had not previously been identified even though there was no change to this feature from the original plans. Counsel requested that this further variance be authorized by the Tribunal, also without further notice, on the basis that there had been no change to this aspect of the building proposal and therefore there was already full notice as to the extent of this feature.

The Tribunal, under the authority of Section 45(18.1.1) of the *Planning Act* permitted modification of the affected heads of variance relief and allowed the inclusion of the further head, all without further notice.

Mr. Benczkowski provided the Tribunal with evidence of the lot fabric within the study area which he had determined in accordance with the requirements of Policy 4.1.5 of the Official Plan ("OP"). The study area contains a mix of lot frontages and areas. The lot frontages and areas fall well within the prevailing lot frontages and areas proposed by these applications.

Interestingly, there was a very recently authorized severance at the northwest corner of Montgomery Avenue and Glen Watford Avenue (Glen Watford Avenue being the cross street just east of the Property) with lot frontage and area characteristics strikingly similar to this proposal.

Mr. Benczkowski produced a diagram identifying the front/side yard depths of properties on the north and south sides of Montgomery Avenue eastward from Midland Avenue and in every instance, the proposed front yard on the severed portion on this application exceeds those values.

It was Mr. Benczkowski's opinion that the proposal would result in lots and built form which was compatible with the character of the neighbourhood and that the new dwelling would fit in with the existing character.

Mr. Benczkowski advised that all of the requested variances, as modified, would satisfy the four tests of Section 45(1) of the *Planning Act*. The Tribunal accepts this opinion.

Mr. Benczkowski also reviewed the criteria in Section 51(24) of the *Planning Act* with respect to the proposed severance. It was his opinion that due regard had been paid to all of the identified criteria and he had conditions which he recommended be imposed on the grant of provisional consent in order to meet the needs of the City departments which had communicated requests for such conditions.

The communication from ECS, in addition to requesting conditions to address the removal of fences on the property and regarding preparation of the reference plan of survey also requested a condition requiring conveyance to the City of a 0.4 metre road widening of Midland Avenue. The evidence revealed that this requirement was also sought in connection with the 2018 severance, there was thus some curiosity as to the request being advanced at this time.

At the request of the Tribunal, counsel for the Owner produced the PIN Parcel Register for PIN 06097-0410 (LT), which deals with Part 3 on Plan 66R-30230, being a 0.4 metre strip of land adjacent to Midland Avenue arising out of the original underlying Owner parcel. The Parcel Register reflects that this strip of land has been conveyed to the City of Toronto, by way of a Transfer registered on February 6, 2019 from Cantam Group Ltd. as Instrument No. AT5071645, presumably as the road widening which is referenced again by ECS. Furthermore, the Parcel Register reflects that notice of By-

law No. 922-2019 was also registered, by which the City has dedicated the lands as public highway. As such, the Tribunal presumes that ECS simply carried this requirement forward without seeking confirmation as to the status of this widening. The Tribunal is satisfied that the requested widening has been conveyed and will thus not be including this requirement on this consent decision, The other requests of ECS will be accommodated by way of appropriate conditions,

Mr. Benczkowski further declared his opinion that the proposed severance and associated variances were consistent with the PPS and conformed with the Growth Plan.

## **CONCLUSION**

Based upon the evidence of Mr. Benczkowski and the submissions of Mr. Mazierski, the Tribunal is satisfied that the proposed severance does not require a plan of subdivision and that it has adequate regard for the criteria in Section 51(24) of the *Planning Act*. As such, the Tribunal will be allowing the appeal and granting provisional consent on the conditions as recommended by the City departments, save for the road widening condition which has already been satisfied.

The Tribunal is also, based on the evidence and submissions, persuaded that the tests set out in Section 45(1) of the *Planning Act* are satisfied with respect to both sets of variance requests, as those requests have been modified in this proceeding.

## **DECISION AND ORDER**

The Tribunal ORDERS THAT:

### Variance Appeals

A. The Owner's appeals with respect to the respective variance applications are allowed and the following variances are approved:

### With respect to Parts 1 & 2, Committee File 'A' 0342/21SC:

1. Chapter 900.3.10.(267) Exception RD 267, By-law 569-2013 and Performance Standard 1 of Schedule "B", Agincourt Community By-law 10076.  
One Lot per Registered Plan which shows the minimum required (existing) lot area of 1562.49 square metres and the required (existing) minimum lot frontage of 22.86 metres. The proposed lot will have a lot area of 886.15 square metres and a proposed lot frontage of 22.86 metres



2. Chapter 10.20.40.70.(2) B), By-law 569-2013

The required minimum rear yard setback is 9.9 metres. The proposed rear yard setback is 6.0 metres.

3. Chapter 10.5.40.60.(1) (C), By-law 569-2013

A platform without main walls, attached to or less than 0.3 metres from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required rear yard setback 2.5 metres.

The proposed platform encroaches 3.9 metres into the required rear yard setback.

4. Chapter 10.5.40.60.(6) A), By-law 569-2013

A bay window, or other window projection from a main wall of a building, which increases floor area or enclosed space and does not touch the ground, may encroach into a required front yard setback or rear yard setback a maximum of 0.75 metres.

The existing window encroaches 0.92 metres from the wall into the required rear setback.

With respect to Parts 3 & 4, Committee File 'A' 0341/21SC:

1. Chapter 900.3.10.(267) Exception RD 267 (A), By-law 569-2013

(A) The minimum building setback from a front lot line is 9.0 metres. The proposed building setback from a front lot line is 5.0 metres.

2. Chapter 900.3.10.(267) Exception RD 267, By-law 569-2013 and Performance Standard 1 of Schedule "B", Agincourt Community By-law 10076.

One Lot per Registered Plan which shows the minimum required (existing) lot area of 1562.49 square metres and the required (existing) minimum lot frontage of 22.86 metres.

The proposed lot will have a lot area of 676.34 square meters, and a lot frontage of 29.59 metres.

3. Chapter 900.3.10.(1462) Exception RD 1462 A), By-law 569-2013

The permitted maximum floor space index is the lesser of 0.5 times the area of the lot or 279 square metres.

The proposed floor space index is 0.4585 times the area of the lot: 310.08 square metres.

4. Chapter 10.5.40.60.(1) (A) (i) Permitted Encroachments - Platforms

A platform without main walls, attached to or less than 0.3 metres from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required front yard setback 2.5 metres if it is no closer to a side lot line than the required side yard setback.

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The proposed front porch platform including front porch canopy encroaches 5.52 metres into the required front yard setback.

**Subject to the following conditions** regarding Parts 3 & 4, Committee File 'A' 0341/21SC:

1. That the building be constructed substantially in accordance with the site plan and elevation drawings prepared by Cantam Group Ltd, dated 2022-September-09 on their face, and filed with the TLAB on 2022-September-12 as Tab 3 to Mr.

Benczkowski's Expert Witness Statement

2. The applicant shall satisfy the following conditions to the satisfaction of Toronto Urban Forestry

a) Submission of a complete application for a permit to injure or remove a City owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article II Trees on City Streets.

b) Submission of a complete application for a permit to injure or remove a privately owned tree(s), as per City of Toronto Municipal Code Chapter 813, Trees Article III Private Tree Protection.

c) Where there is no existing street tree, the owner shall provide payment in lieu of planting of one street tree on the City road allowance abutting each of the sites involved in the application. The current cash-in-lieu payment is \$583/tree.

Consent Appeal

B. The Owner's appeal with respect to the consent application is allowed and provisional consent is granted regarding the parcel of land described in the consent application subject to the following conditions:

1. Eliminate the existing fences located within the municipal boulevards of Montgomery Avenue and Midland Avenue. Alternatively, relocate the fence within private property or enter into an encroachment agreement to maintain the fence on the public right-of-way. Revise the draft Reference Plan of Survey as needed. All or any of the above to be completed to the satisfaction of the General Manager of Transportation Services.

2. Revise the draft Reference Plan of Survey, to the satisfaction of the General Manager of Transportation Services, to correctly display the boundary line of the corner

rounding as a radial curve drawn tangent to the property lines

3. Submit a draft Reference Plan of Survey to the Chief Engineer & Executive Director of Engineering and Construction Services, for review and approval, prior to depositing it in the Land Registry Office. The plan should:

i) be in metric units and integrated with the Ontario Co-ordinate System (3° MTM, Zone 10, NAD 83 CSRS); ii) delineate by separate PARTS the lands to be conveyed to the City, the remainder of the site and any appurtenant rights- of-way and easements;

ii) show the co-ordinate values of the main corners of the subject lands in a schedule on the face of the plan;

4. Pay all costs for the deposit and preparation of the reference plan;

(TLAB Standard Consent Conditions enumerated in Practice Direction # 1)

Before a Certificate of Official is issued, as required by Section 53(42) of the Planning Act, the applicant is to fulfill the following conditions to the satisfaction of the Deputy Secretary- Treasurer of the Committee of Adjustment:

5. Confirmation of payment of outstanding taxes to the satisfaction of the Revenue Services Division, in the form of a statement of tax account current to within 30 days of an applicant's request to the Deputy Secretary-Treasurer of the Committee of Adjustment to issue the Certificate of Official.

6. Municipal numbers for the subject lots, blocks, parts, or otherwise indicated on the applicable deposited reference plan of survey shall be assigned to the satisfaction of the Supervisor, Surveys, Engineering Support Services, Engineering and Construction Services.

7. One electronic copy of the deposited reference plan of survey integrated to NAD 83 CSRS (3 degree Modified Transverse Mercator projection), delineating by separate Parts the lands and their respective areas, shall be filed with, and to the satisfaction of, the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services.

8. One electronic copy of the deposited reference plan of survey satisfying the requirements of the Manager, Land and Property Surveys, Engineering Support Services, Engineering and Construction Services shall be filed with the Deputy

Secretary-Treasurer of the Committee of Adjustment.

9. Prepare and submit a digital draft of the Certificate of Official, Form 2 or 4, O. Reg. 197/96, referencing either subsection 50(3) or (5) of the Planning Act if applicable as it pertains to the conveyed land and/or consent transaction to the satisfaction of the Deputy Secretary-Treasurer of the Committee of Adjustment.

10. Once all of the other conditions have been satisfied, the applicant shall request, in writing, that the Deputy Secretary-Treasurer of the Committee of Adjustment issue the Certificate of Official.

11. Within TWO YEARS of the date of the giving of this notice of decision, the applicant shall comply with the above-noted conditions.



X

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Member G. Swinkin  
Panel Chair, Toronto Local Appeal Body