

Authority: Ontario Land Tribunal Decision issued on April 22, 2022 and Order issued on August 12, 2022 in Tribunal Case OLT-22-002222 (Formerly PL210016)

CITY OF TORONTO

BY-LAW 1180-2022(OLT)

To amend former City of Toronto Zoning By-law 438-86, as amended, respecting to lands municipally known in the year 2021 as 63-91 Montclair Avenue.

Whereas the Ontario Land Tribunal Decision issued on April 22, 2022 and Order issued on August 12, 2022, in File OLT-22-002222 (Formerly PL210016), in hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, deem it advisable to amend By-law 438-86, as amended, with respect to the lands municipally known in the year 2021 as 63-91 Montclair Avenue; and

Whereas the Official Plan for the City of Toronto contains provisions relating to the authorization of increases in height and density of development; and

Whereas pursuant to Section 37 of the Planning Act, a by-law under Section 34 of the Planning Act, may authorize increases in the height and density of development beyond those otherwise permitted by the by-law and that will be permitted in return for the provision of such facilities, services or matters as are set out in the by-law; and

Whereas subsection 37(3) of the Planning Act provides that where an owner of land elects to provide facilities, services and matters in return for an increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

Whereas the owner of the aforesaid lands has elected to provide the facilities, services and matters hereinafter set out; and

Whereas the increase in height and density permitted beyond that otherwise permitted on the aforesaid lands by By-law 438-86 as amended, is permitted in return for the provision of the facilities, services and matters set out in this By-law which is secured by one or more agreements between the owner of the land and the City of Toronto;

By-law 438-86, as amended, of the former City of Toronto is further amended by the Ontario Land Tribunal as follows:

1. None of the provisions of Section 2(1) with respect to the definition of '*height*', '*grade*', '*residential gross floor area*', and '*lot*' and Sections 4(2)(a), 4(4), 4(6), 4(10), 4(12), 4(13), 4(14), 4(17) 6(3) PART I 1, 6(3) PART II (2), (3), (4), (5), (6) and (8), 6(3) PART III (1), 12(1)320 of Zoning By-law 438-86, as amended, being "A By-law to regulate the use of land and the erection, use, bulk, height, spacing of and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto", shall

apply to prevent the erection and use of an *apartment building* and *accessory* uses thereto on the lands shown on Map 1, provided that:

- (a) The *lot* on which the buildings are to be located comprises at least those lands within the heavy lines on Map 1, attached to and forming part of this By-law;
- (b) The total *gross floor area* on the *lot* shall not exceed 33,039 square metres;
- (c) The provision of *dwelling units* is subject to the following:
 - (i) a minimum of 10 percent of the total number of *dwelling units* must contain three or more bedrooms;
 - (ii) a minimum of 20 percent of the total number of *dwelling units* must contain at least two bedrooms;
 - (iii) any *dwelling units* with three or more bedrooms provided to satisfy (ii) above are not included in the provision required by (i) above; and
 - (iv) if the calculation of the number of required *dwelling units* with two or three bedrooms results in a number with a fraction, the number shall be rounded down to the nearest whole number;
- (d) No portion of any building or structure on the *lot* shall have a *height* in metres greater than the *height* limits specified by the numbers following the symbol HT on Map 2 attached to and forming part of this By-law, with the exception of the following:
 - (i) architectural cages, parapets, and elements and *structures* associated with green roof, lightning rods, and window washing equipment, chimneys, vents, and roof access, by a maximum of 3.0 metres;
 - (ii) elevator overrun and elevator shafts, by a maximum of 7.0 metres;
 - (iii) lightning rods, and window washing equipment, by a maximum of 3.0 metres;
 - (iv) trellis, pergolas, and unenclosed *structures* providing safety or wind protection to rooftop *amenity space*, by a maximum of 3.5 metres;
 - (v) planters, landscape features, guardrails, and divider screens, by a maximum of 2.5 metres;
 - (vi) mechanical penthouses, equipment used for the functional operation of the building, such electrical, utility, mechanical and ventilation equipment, enclosed stairwells, building maintenance units, and water supply facilities, and *structures* that enclose, cover or screen these elements, by a maximum of 5.2 metres; and

- (vii) elements listed in (d)(iii) may exceed the maximum height projection of mechanical penthouses stated in (I)(vi), by a maximum of 3.0 metres;
- (e) No portion of such building above *grade* shall be located otherwise than wholly within the area delineated by heavy lines on Map 2 attached to and forming part of this By-law, with the exception of the following:
 - (i) balconies, by a maximum of 2.0 metres;
 - (ii) pillars, by a maximum of 2.3 metres;
 - (iii) architectural, art and landscape features, window sills, cornices, light fixtures, pilasters and eaves, by a maximum of 0.6 metres;
 - (iv) railings, stairs, stair enclosures, doors, wheelchair ramps, fences, screens, site servicing features, awnings and canopies, underground ramps and associated *structures*, by a maximum of 3.0 metres;
 - (v) grade-related patios providing access to a *dwelling unit*; and
 - (vi) an inclined ramped walkway connecting the western ends of the *front lot line* and the *rear lot line*;
- (f) Notwithstanding (e)(i) above, no balcony encroachments into the required building setbacks or projections beyond *main walls*, as delineated by heavy lines on Map 2, are permitted on:
 - (i) the west *main wall* of the *east tower*;
 - (ii) the east *main wall* of the *west tower*;
 - (iii) the west *main wall* of the *west tower* below a height of 25.0 metres;
 - (iv) the west *main wall* of the *west tower* above a height of 25.0 metres, save and except for the middle of the west *main wall*, which may contain a co-joined balcony projection that is no wider than 5.0 metres and no deeper than 2.0 metres;
 - (v) the west and east *main walls* of the *building* below 21.3 metres; and
 - (vi) the south *main wall* of the *east tower*, save and except for the southerly corners of the *east tower*;
- (g) The required minimum setbacks of the mechanical penthouses are as follows:
 - (i) 2.1 metres from the north *main wall* of the *west tower*; and

- (ii) 3.5 metres from the most southernly portion of the north *main wall* of the *east tower*;
- (h) *Residential amenity space* shall be provided on the *lot* at a minimum rate of 3.8 square metres for each *dwelling unit*, of which:
 - (i) at least 2.0 square metres for each *dwelling unit* is indoor *residential amenity space*; and
 - (ii) at least 40.0 square metres is outdoor *residential amenity space* in a location adjoining or directly accessible to the indoor *amenity space*;
- (i) *Parking spaces* shall be provided and maintained on the *lot* in accordance with the following ratios:
 - (i) a minimum of 0.29 resident *parking spaces* per *dwelling unit*;
 - (ii) a minimum of 12 visitor *parking spaces*; and
 - (iii) a minimum of 2 *car-share parking spaces*;
- (j) For each *car-share parking space* provided on the lands, up to a maximum of 8 *car-share parking spaces*, the minimum number of required *parking spaces* for residential uses in (i)(i) may be reduced by four *parking spaces*;
- (k) Notwithstanding Section 4(17)(a), a maximum of 5 percent of the required *parking spaces* may be obstructed as described in Section 4(17)(e) without being required to provide additional width for the obstructed sides of the *parking space*;
- (l) Electric Vehicle Infrastructure, including electrical vehicle supply equipment, does not constitute an obstruction to a *parking space*;
- (m) Accessible *parking spaces* shall be provided and maintained in accordance with the following:
 - (i) An accessible *parking space* must have the following minimum dimensions:
 - i. length of 5.6 metres;
 - ii. width of 3.4 metres;
 - iii. vertical clearance of 2.1 metres; and
 - iv. the entire length of an accessible *parking space* must be adjacent to a 1.5 metre accessible barrier free aisle or path;

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- (ii) An accessible *parking space* must be located within 25 metres of a barrier free entrance to the *building* or passenger elevator that provides access to the first *storey* of the building;
 - (n) *Bicycle parking spaces* shall be provided and maintained on the *lot* in accordance with the following ratios:
 - (i) a minimum of 0.9 *bicycle parking spaces - occupant* for each *dwelling unit* for residential uses; and
 - (ii) a minimum of 0.1 *bicycle parking spaces - visitor* for each *dwelling unit* for visitors of residents;
 - (o) Notwithstanding Section 4(13) and the definitions of *bicycle parking space - occupant* and *bicycle parking space - visitor* in Section 2(1), *bicycle parking spaces* shall be provided in accordance with the following:
 - (i) *both bicycle parking spaces – occupant* and *bicycle parking space - visitor* may be located in a *stacked bicycle parking space* arrangement;
 - (ii) each *stacked bicycle parking space* shall have a minimum width of 0.35 metres, minimum length of 1.8 metres, and a minimum vertical clearance of 1.2 metres;
 - (iii) the minimum width of a *bicycle parking space* if placed in a vertical position on a wall, *structure* or mechanical device is 0.5 metres; and
 - (iv) *bicycle parking spaces - visitor* may be located indoors or outdoors in an enclosed or secured room or enclosure;
 - (p) One *loading space - Type "G"* and one *loading space - Type "C"* shall be provided and maintained on the *lot* having a minimum width of 4.0 metres, length of 13.0 metres; and minimum vertical clearance of 6.1 metres;
2. None of the provisions of By-law 438-86 shall apply to prevent a *sales office* on the *lot*.
 3. For the purposes of this By-law, each word or expression that is italicized in the By-law shall have the same meaning as each such word or expression as defined in By-law 438-86, as amended, with the exception of the following terms:
 - (a) "*car-share*" means the practice whereby a number of people share the use of one or more vehicles that are owned and operated by a profit or non-profit organization, and such car-share vehicles are made available to at least the occupants of the building for short term rental, including hourly rental;
 - (b) "*car-share parking space*" means a *parking space* exclusively reserved and signed for a car used only for car-share purposes;

- (c) "*east tower*" means the portion of the *building* above 21.3 metres, on the east portion of the lands, as indicated on Map 2, attached to and forming part of this By-law;
- (d) "*grade*" means 152.30 metres Canadian Geodetic Datum;
- (e) "*gross floor area*" means the aggregate of the areas of each floor, measured between the exterior faces of the exterior walls of the building or structure at the level of each floor, but excluding:
 - (i) parking, loading and bicycle parking below *grade*;
 - (ii) required loading spaces and required bicycle parking spaces at or above *grade*;
 - (iii) storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in the basement;
 - (iv) shower and change facilities required by this By-law for required bicycle parking spaces;
 - (v) indoor *residential amenity space* required by this By-law;
 - (vi) elevator shafts;
 - (vii) garbage shafts;
 - (viii) mechanical penthouse; and
 - (ix) exit stairwells in the building;
- (f) "*height*" means the vertical distance between *grade* and the highest point of the buildings or structures, excluding permitted projections identified in section 1(c) of this By-law;
- (g) "*lot*" means the parcel of land outlined by heavy lines on Map 1 attached to and forming part of this By-law;
- (h) "*main wall*" means any exterior wall of a *building* or *structure*, including all structural members essential to the support of a roof over a fully or partly enclosed area;
- (i) "*sales office*" means a building, structure, facility or trailer on the *lot* used for the purpose of the leasing of *dwelling units* to be erected on the *lot*;
- (j) "*stacked bicycle parking space*" means a horizontal *bicycle parking space* that is positioned above or below another *bicycle parking space* and equipped with a mechanical device providing floor level access to both *bicycle parking spaces*;

- (k) "*west tower*" means the portion of the *building* above 21.3 metres, on the west portion of the lands, as indicated on Map 2, attached to and forming part of this By-law.
4. Despite any existing or future severance, partition or division of the lot, the provisions of this by-law shall apply to the whole lot as if no severance, partition or division occurred.
5. Section 37 Provisions
- (a) Pursuant to Section 37 of the Planning Act, and subject to compliance with this By-law, the increase in *height* and density of the development is permitted beyond that otherwise permitted on the lands shown on Map 2 in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Schedule A hereof and which are secured by one or more agreements pursuant to Section 37(3) of the Planning Act that are in a form and registered on title to the lands, to the satisfaction of the City Solicitor.
- (b) Where Schedule A of this By-law requires the owner to provide certain facilities, services or matters prior to the issuance of a building permit, the issuance of such permit shall be dependent on satisfaction of the same.
- (c) The owner shall not use, or permit the use of, a *building* or *structure* erected with an increase in *height* and density pursuant to this By-law unless all provisions of Schedule A are satisfied.

Pursuant to Ontario Land Tribunal Decision issued on April 22, 2022 and Order issued on August 12, 2022 in Tribunal Case OLT-22-00222 (Formerly PL210016).

Schedule A
Section 37 Provisions

The facilities, services and matters set out below are required to be provided to the City at the owner's expense in return for the increase in height and density of the proposed development of the lands shown on Map 1 attached to this By-law and in accordance with one or more agreements pursuant to Section 37(3) of the Planning Act, as it read the day before Section 1 of Schedule 17 to the COVID-19 Economic Recovery Act, 2020, S.O. 2020, c.18 came into force, with conditions providing for indexing escalation of both the financial contributions and letters of credit, development charges, indemnity, insurance, GST, HST, termination and unwinding, and registration and priority of agreement.

Community Benefits

1. Prior to issuance of the first above grade building permit for the development:
 - (a) The Owner shall pay to the City a cash contribution in the amount of THREE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$3,400,000.00) (the "Cash Contribution"), to be allocated in the following manner in consultation with the Owner:
 - (i) ONE HUNDRED THOUSAND DOLLARS (\$100,000) of the Cash Contribution shall be allocated towards improvements to the Cedarvale Ravine;
 - (ii) THREE MILLION AND FIFTY THOUSAND DOLLARS (\$3,050,000) of the Cash Contribution shall be allocated towards public realm improvements in the vicinity of the Lands, park land improvements, and/or new community facilities, including community agency spaces in the vicinity of the Lands, at the discretion of the Chief Planner, in consultation with the Ward Councillor; and
 - (iii) TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) of the Cash Contribution shall be allocated towards streetscape improvements along Bantry Avenue, at the discretion of the Chief Planner, in consultation with the Ward Councillor;
 - (b) In the event that the Cash Contribution has not been used for the intended purposes within three (3) years after the Amending By-laws come into full force and effect, the Cash Contribution may be re-directed for other purposes at the discretion of the Chief Planner, in consultation with the Ward Councillor, provided that the purposes are identified in the Official Plan and will benefit the community in the vicinity of the Lands;
 - (c) The Cash Contribution referred above shall be indexed upwardly in accordance with the Statistics Canada Residential or Non-Residential, as the case may be, Building Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes

Table 18-10-0135-01, or its successor, calculated from the date of the Agreement to the date of payment; and

2. Prior to Site Plan Approval for the Development on the Lands, the Owner agrees to do one of the following:
 - (a) The Owner shall provide a cash contribution in the amount of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) to be allocated towards public art improvements along Bantry Avenue, subject to the following:
 - (i) In the event that this contribution has not been used for the intended purposes within three (3) years after the Amending By-laws come into full force and effect, the Cash Contribution may be re-directed for other purposes at the discretion of the Chief Planner, in consultation with the Ward Councillor, provided that the purposes are identified in the Official Plan and will benefit the community in the vicinity of the Lands;
 - (ii) The amount referred to above in 1.4 shall be indexed upwardly in accordance with the Statistics Canada Residential or Non-Residential, as the case may be, Building Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Table 18-10-0135-01, or its successor, calculated from the date of the Agreement to the date of payment; or
 - (b) The Owner shall provide to the City a public art plan detailing the estimated cost, design, and construction of the public art improvements along Bantry Avenue (the "**Public Art Estimate**"), which shall be prepared to be as close to ONE HUNDRED THOUSAND DOLLARS (\$100,000) as possible. The Owner shall provide a Letter of Credit in the amount 120 percent of the value of the Public Art Estimate, which shall be released upon the Owner causing the completion of the improvements set out in the Public Art Estimate, to the satisfaction of the Chief Planner, and on terms secured through the Site Plan Agreement with the City, to the satisfaction of the City Solicitor.

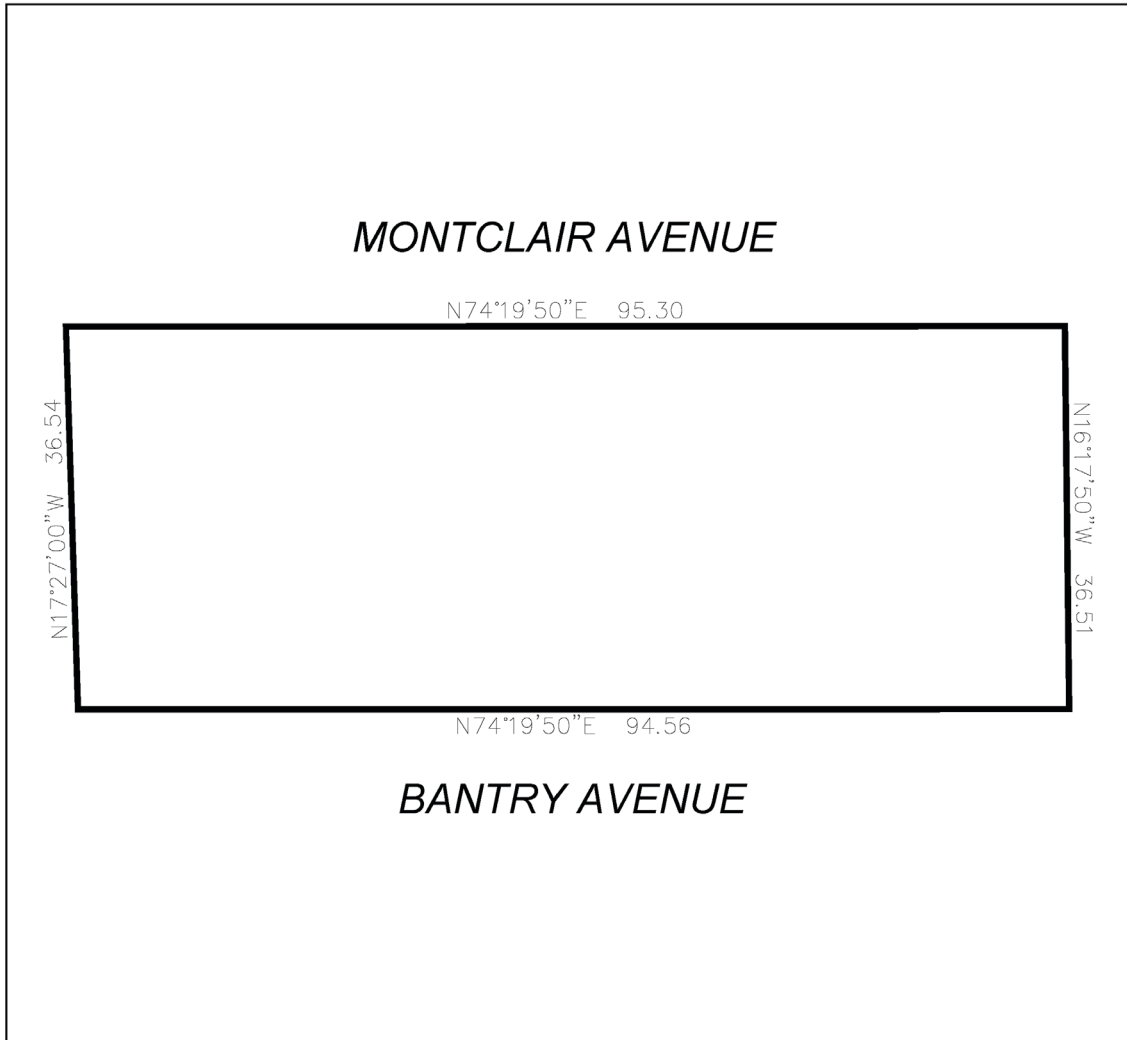
Matters required to support the development

3. The following matters are also recommended to be secured in the Section 37 Agreement as a legal convenience to support development:
 - (a) the construction and maintenance, at its own expense, of the proposed walkway located along the west side of the Property to provide access from Montclair Avenue to the public portion of Lower Village Gate, with final design subject to the site plan approval process, to the satisfaction of the Chief Planner and Executive Directory, City Planning and to be made available for use by the general public as Privately Owned Publicly Accessible Open Space ("POPS");

- (b) the provision of full maintenance, insurance and indemnification for that portion of the walkway for the portions of the walkway constructed on lands owned by the City or as may be acquired by the City;
 - (c) the construction and maintenance, at its own expense, of a POPS in the podium recess along Montclair Avenue and a further POPS as a walkway on the east side of the site;
 - (d) the conveyance of easements in favour of the City in perpetuity, including support rights as applicable, for public use of the three POPS, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor;
 - (e) the conveyance of an easement for public access over the north/south driveway at the western edge of the property;
 - (f) the construction and maintenance of the development in accordance with the Tier 1 performance measures of the Toronto Green Standard, as adopted by City Council at its meeting held on October 26 and 27, 2009 through the adoption of Item PG32.3 of the Planning and Growth Management Committee, and as updated by Toronto City Council at its meeting held on December 5, 6 and 7, 2017 through the adoption of Item PG23.9 of the Planning and Growth Committee, and as may be further amended by Council from time to time;
 - (g) the submission of a Construction Management Plan prior to the commencement of any excavation and shoring work, to the satisfaction of the Chief Building Official and Executive Director, Toronto Building, the Chief Planner and Executive Director, City Planning, the General Manager, Transportation Services, and the Chief Engineer and Executive Director, Engineering and Construction Services and thereafter shall implement the plan during the course of construction; the Construction Management Plan will include, but not be limited to the following construction-related details: noise, dust, size and location of staging areas, location and function of gates, dates of significant concrete pouring, lighting details, vehicular parking and queuing locations, street closures, parking and laneway uses and access, refuse storage, site security, site supervisor contact information, and a communication strategy with the surrounding community, including matters related to the construction of streets or infrastructure, and any other matters requested by the Chief Planner and Executive Director, City Planning, and the City Solicitor.
4. Prior to the issuance of any Building Permit, the owner shall submit a revised Functional Servicing and Stormwater Management Report and associated financial securities, if required, for improvements to the existing municipal infrastructure satisfactory to the Chief Engineer and Executive Director, Engineering and Construction Services, and the General Manager, Toronto Water in order to address outstanding issues in the memo dated June 22, 2022.
5. Prior to the issuance of any Building Permit, the owner shall complete required modelling to the satisfaction of the General Manager, Toronto Water to demonstrate that the

Development will not adversely affect the existing service level of the surrounding area in terms of pressure and flow; and that pipe velocity would meet the City's design criteria.

Map 1



63-91 Montclair Avenue, Toronto

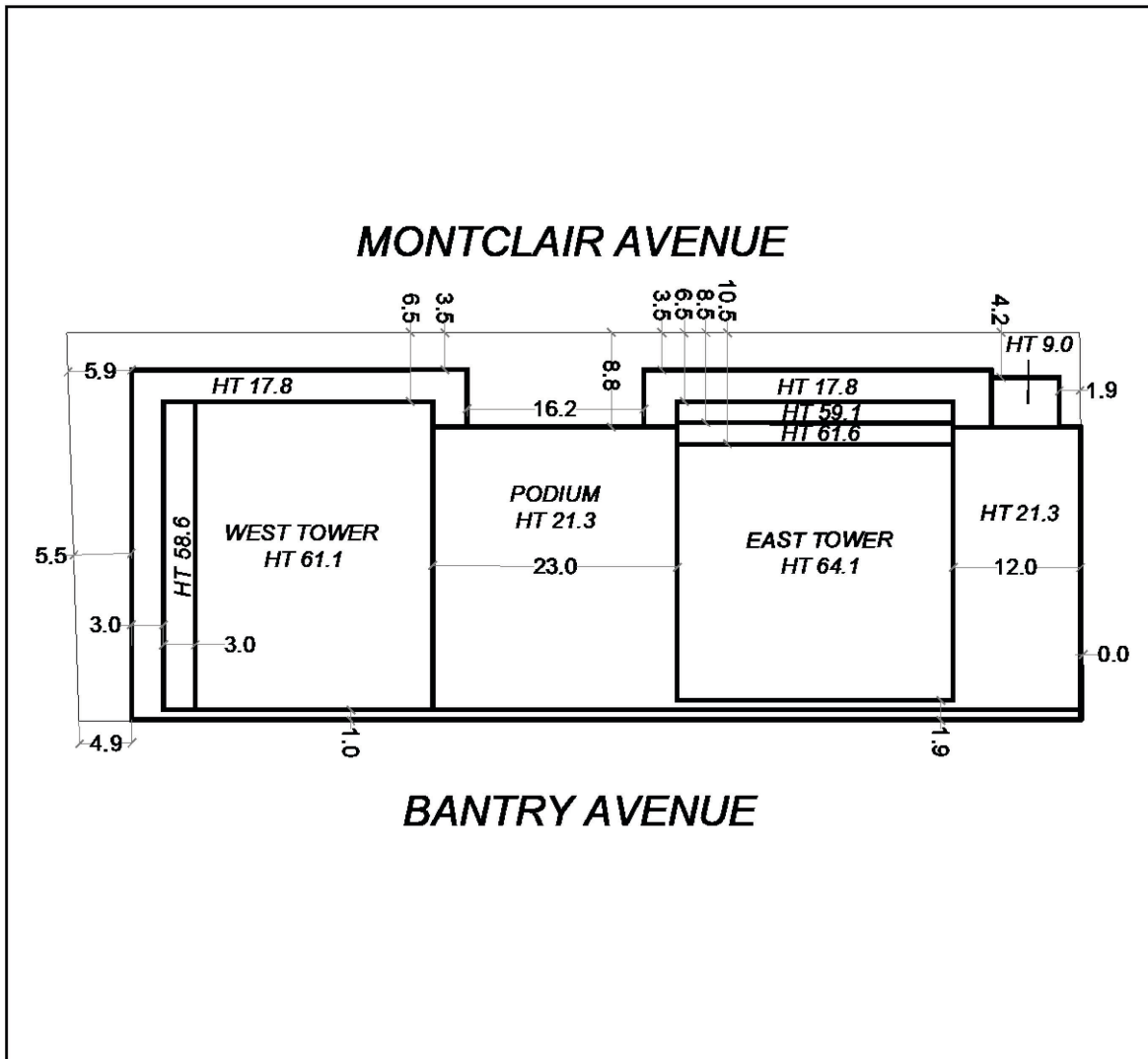
Map 1

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Not to Scale

Map 2



63-91 Montclair Avenue, Toronto

Map 2

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Not to Scale