

Authority: Ontario Land Tribunal Decision issued on January 31, 2019 and Ontario Land Tribunal Order issued on August 17, 2022 in File PL170831

CITY OF TORONTO

BY-LAW 1191-2022(OLT)

To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known in the year 2021 as 15 Duncan Street and 150-158 Pearl Street.

Whereas the Ontario Land Tribunal in its Decision issued on January 31, 2019 and Order effective on August 11, 2022 in file PL170831, upon hearing an appeal under Section 34(11) of the Planning Act R.S.O. 1990, c. P.13, as amended, ordered the amendment of former City of Toronto Zoning By-law 438-86, as amended, for the City of Toronto with respect to lands municipally known in the year 2021 as 15 Duncan Street and 150 to 158 Pearl Street; and

Whereas the Official Plan for the City of Toronto contains provisions relating to the authorization of increase 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 or 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, a 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 permitted beyond that otherwise permitted on the aforesaid lands by By-law 438-86, as amended, is to be permitted in return for the provision of the facilities, services and matters set out in this By-law, which are secured by one or more agreements between the owner of the land and the City of Toronto;

The Ontario Land Tribunal, by Order, amends By-law 438-86, as amended, of the former City of Toronto as follows:

1. Pursuant to Section 37 of the Planning Act, the heights and density of development permitted in this by-law are permitted subject to compliance with all of the conditions set out in this By-law, including the provision by the owner of the *lot* of the facilities, services and matters set out in Schedule A hereof, to the City at the owner's expense and in accordance with and subject to the agreement referred to in Section 2 of this By-law.
2. Upon execution and registration of an agreement or agreements with the owner of the *lot* pursuant to Section 37 of the Planning Act securing the provision of the facilities,

services or matters set out in Schedule A hereof, the *lot* is subject to the provisions of this By-law, provided that in the event the said agreement(s) requires the provision of a facility, service or matter of the payment of any monetary contribution as a precondition to the issuance of a *building permit*, the owner may not erect or use such building until the owner has satisfied the said requirements.

3. Wherever in this By-law a provision is stated to be conditional upon the execution and registration of an agreement(s) being entered into with the City pursuant to Section 37 of the Planning Act, then once such agreement(s) has been executed and registered, such conditional provisions shall continue to be effective notwithstanding any subsequent release or discharge of all or any part of such agreement.
4. Except as otherwise provided herein, the provisions of By-law 438-86, as amended, shall continue to apply to the *lot*.
5. None of the provisions of Section 2 of By-law 438-86, as amended, with respect to the definition of the terms *lot*, *grade*, *height*, *residential gross floor area*, *non-residential gross floor area* and *bicycle parking space - visitor*, and Sections 4(2), 4(5), 4(8), 4(12), 4(13), 4(16), 7(3), 12(2) 132, 12(2)246, 12(2)270 and 12(2)380 of General Zoning Bylaw 438-86 of the former City of Toronto, 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 a *mixed use building* and *car-share parking spaces* on the *lot* provided that:
 - (A) The *lot* consists of at least the lands delineated by heavy lines on Map 1 attached to and forming part of this By-law;
 - (B) In addition to those uses permitted pursuant to Section 7(1) of By-law 438-86, permitted uses on the *lot* shall also include a *club*, *car-share parking spaces*, and *bicycle-share parking spaces*;
 - (C) The total combined residential gross floor area and non-residential gross floor area erected or used on the *lot* shall not exceed 42,550 square metres, provided that:
 - (i) A minimum of 3,915 square metres of *gross floor area* erected or used on the *lot* shall be comprised of non-residential uses;
 - (D) At least ten percent (10 percent) of the total number of *dwelling units* erected on the *lot* shall contain three or more bedrooms;
 - (E) No portion of a *building* or *structure* located above finished ground shall be located otherwise than wholly within the areas delineated by heavy lines on Map 2, Map 3, Map 4, Map 5, Map 6, Map 7 and Map 8 attached to and forming part of this By-law, with the exception of the following:

- (i) Public art landscape features, wheel chair ramps, light fixtures, stairs and stair enclosures, guardrails, bollards, awnings, canopies, railings, fences, vents, shafts, stacks, chimneys, roof drainage, roof ballast and thermal insulation, waterproofing, satellite dishes, retaining walls, underground garage ramp and its associated structures, and window washing equipment;
 - (ii) Eaves, cornices and window sills may project a maximum of 0.5 metres beyond the heavy lines;
 - (iii) Architectural elements may project a maximum of 0.5 metres beyond the main wall of the building;
 - (iv) Eaves, cornices, window sills and architectural elements may project a maximum of 1.85 metres beyond the southerly main wall of the building, provided they are not located within areas that do not permit balcony projections as identified on Map 5, Map 6, Map 7 and Map 8;
 - (v) Balconies may project a maximum of 2.0 metres beyond the heavy lines shown on Map 2 provided such balconies are not located within areas that do not permit balcony projections as identified on Map 5, Map 6, Map 7 and Map 8;
 - (vi) A balcony on the fifth storey of the building may project beyond the heavy lines shown on Map 2 provided such balcony is located within the area identified as Terrace on Map 5; and
 - (vii) Exterior building support columns may be located within the area delineated by heavy lines and identified as H=180.0 M on Map 2, notwithstanding any requirements relating to the cantilevering of portions of the building;
- (F) No part of a building or structure erected or used above finished ground on the lot shall exceed the *height* limits in metres above *grade* specified by the numbers following the symbol "H" as shown on Map 2, except for:
- (i) The erection or use of the structures, elements and enclosures permitted by subsection (E) above;
 - (ii) Parapets, provided the maximum height of such elements is no higher than 2.0 metres above the *height* limits specified on Map 2;
 - (iii) Privacy screens provided the maximum *height* of such elements is no higher than 3.0 metres above the *height* limits specified on Map 2;
 - (iv) Structures used for outside or open air recreation, safety or wind protection purposes, provided the height of such elements is not higher than 3.4 metres above the *height* limits specified on Map 2;

- (v) Elements associated with a green roof, provided the *height* of such elements does not exceed 3.0 metres above the *height* limits specified on Map 2; and
 - (vi) Notwithstanding any provision of subsection (F) (i), (ii), (iii), (iv) and (v), no permitted projections shall exceed a *height* of 180.0 metres, except for mechanical pipes or shafts required by the Building Code;
- (G) Notwithstanding any other provisions of this By-law to the contrary, that portion of the building labelled as Elevator Machine Room on Map 2, may exceed a *height* of 180.0 metres but shall not exceed a *height* of 187.0 metres and shall only be used for elevator overruns and associated machine rooms for such elevator overruns, service rooms, and emergency exiting stairs, and all such elements shall in total not exceed an area of 150 square metres measured horizontally;
- (H) *Residential amenity space* shall be provided on the lot for the use of residents of the building in accordance with the following:
- (i) A minimum of 2.0 square metres of indoor *residential amenity space* per *dwelling unit* shall be provided in a room or rooms, whether or not they are contiguous, and
 - (ii) A minimum of 1.3 square metres of outdoor *residential amenity space* per *dwelling unit* shall be provided of which a minimum of 200 square metres shall be provided in a location directly accessible from an area containing indoor *residential amenity space*.
- (I) If the calculation of the number of required *parking spaces* results in a number with a fraction, the number is rounded down to the nearest whole number, but there may not be less than one parking space;
- (J) *Tandem parking spaces* are permitted on the *lot*, but a required *parking space* may not be a *tandem parking space*;
- (K) *Parking spaces* for residents on the *lot* shall be provided and maintained in accordance with the following minimum requirements:
- (i) 0.2 *parking spaces* per *dwelling unit*, exclusive of *tandem parking spaces*;
 - (ii) Notwithstanding (K)(i), a maximum of four (4) *car-share parking spaces* may be used to reduce the minimum resident *parking space* requirement by four (4) *parking spaces* per *car-share parking space*;
- (L) *Parking spaces* are not required for residential visitors;
- (M) *Parking spaces* for non-residential uses on the lot shall be provided and maintained in accordance with the following minimum requirements:

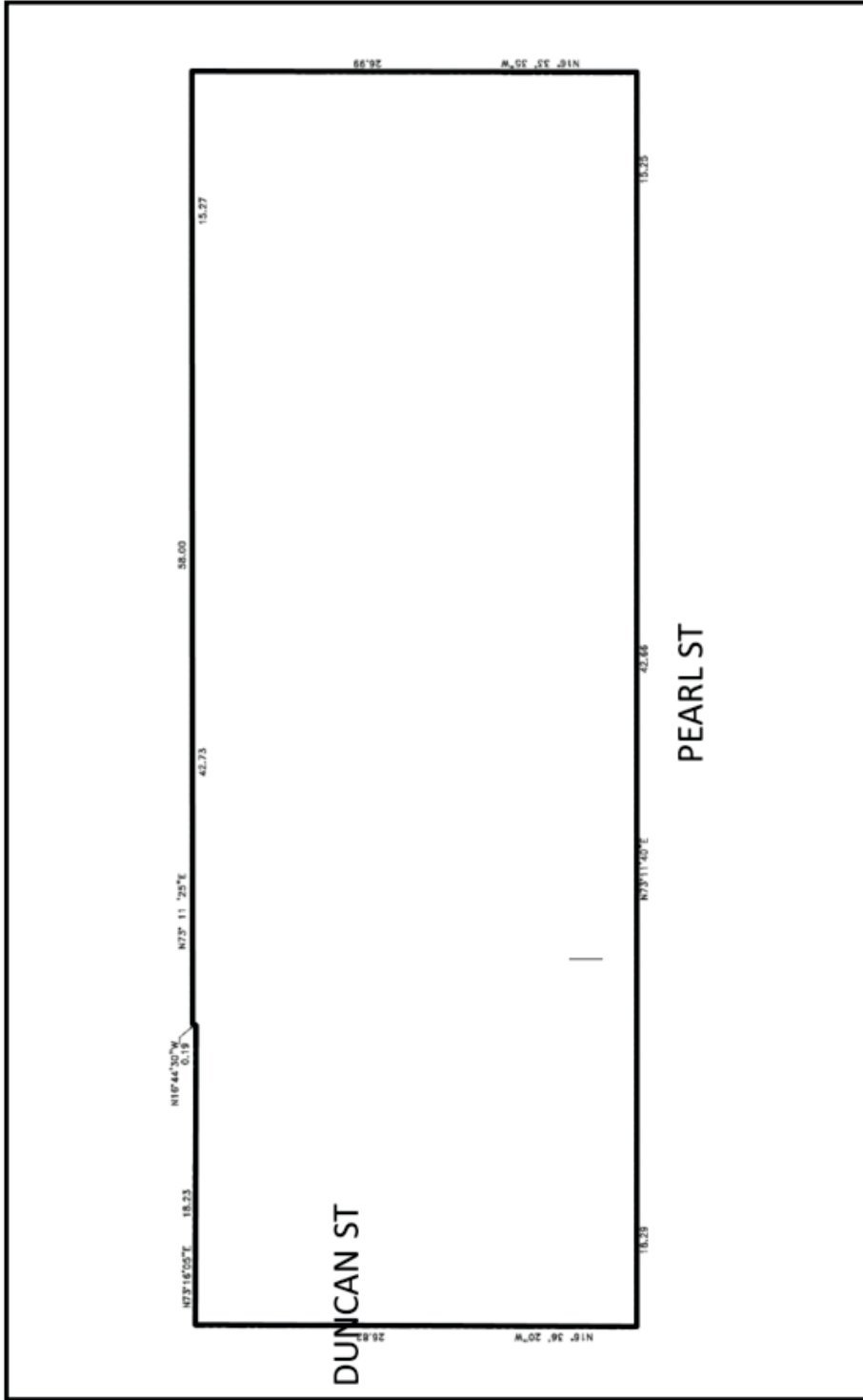
- (i) 0.25 *parking spaces* per 100 square metres of non-residential *gross floor area*;
- (N) A minimum of one (1) *loading space* – type G and one (1) *loading space* – type C shall be provided and maintained on the *lot*;
- (O) *Bicycle parking spaces* shall be provided on the *lot* in accordance with the following minimum requirements:
 - (i) For *dwelling units*: 0.9 *bicycle parking spaces* for each *dwelling unit*, allocated as *long term bicycle parking spaces* and 0.1 *bicycle parking spaces* for each *dwelling unit* allocated as *short term bicycle parking spaces*, and
 - (ii) For non-residential uses: 0.2 *long-term bicycle parking spaces* for each 100 square metres of *interior floor area*;
- (P) Where located within a building, *bicycle parking spaces* may be located on the ground, second, third and fourth floors;
- (Q) For the purpose of this exception, each word or expression in italics type shall have the same meaning as each such work or expression is defined in Section 2 of By-law 438-86, except for the following:
 - (i) "*above-grade building permit*" means the first building permit issued respecting all or any part of the lot that permits the erection of any above grade portion of a building;
 - (ii) "*bicycle parking space*" means an area used for storing bicycles having the following minimum dimensions:
 - a. Where the bicycles are to be parked on a horizontal surface, the *bicycle parking space* shall have a minimum length of 1.8 metres, a minimum width of 0.6 metres and a minimum vertical dimension from the ground of a least 1.9 metres;
 - b. Where the bicycles are to be parked in a vertical position, the *bicycle parking space* shall have a minimum length or vertical clearance from the wall of 1.2 metres, a minimum width of 0.6 metres and a vertical dimension of at least 1.9 metres;
 - c. Where the bicycles are to be parked in a bicycle stacker, the *bicycle parking space* shall have a minimum vertical clearance of 1.2 metres;
 - (iii) "*building permit*" means a permit issued under the Building Code Act, 1992, S.O. 1992, c.23 as amended or re-enacted from time to time, including a permit for excavation or shoring and including a conditional

permit, but it does not include any permit issued to construct a temporary sales presentation centre or portion thereof or for usual and minor works, repairs and maintenance of the Existing Heritage Building on the lot acceptable to the Senior Manager, Heritage Planning;

- (iv) "*car-share*" means the practice whereby a number of people share the use of one or more motor vehicles and such car-share motor vehicles are made available to at least the occupants of the building for short term rental, including hourly rental;
- (v) "*car-share parking space*" means a parking space exclusively reserved and signed for a car used only for *car-share* purposes;
- (vi) "*grade*" means the Canadian Geodetic Datum elevation of 86.44 metres;
- (vii) "*gross floor area*" means the sum of the total area of each floor level of a building or structure above and below ground level, measured from the exterior main wall of each floor level, exclusive the any areas in a building or structure used for:
 - a. Parking and loading located below ground level;
 - b. Required *loading spaces* at ground level;
 - c. Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms below finished ground level;
 - d. Facilities for bicycle parking;
 - e. *Residential amenity area* required by this By-law;
 - f. *Elevator shafts, garbage shafts*;
 - g. Mechanical penthouse; and
 - h. Exit stairs in the building or structure;
- (viii) "*height*" means the vertical distance between *grade* and the highest point of the building or structure, including mechanical penthouse;
- (ix) "*interior floor area*" means the floor area of any part of a building measured to the interior side of a main wall or an interior wall, or as measured to a line delineating the part being measured, excluding the following areas:
 - i. Parking, loading and bicycle parking;

- j. Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms;
 - k. Elevator shafts, mechanical penthouse, or exit stairs;
 - (x) "*long term bicycle parking space*" means a *bicycle parking space* for use by occupants or tenants of a building;
 - (xi) "*short term bicycle parking space*" means a *bicycle parking space* for use by visitors to a building;
 - (xii) "*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;
 - (xiii) "*tandem parking space*" means a *parking space* that is only accessed by passing through another parking space from a street, lane, drive aisle or driveway.
6. Despite any existing or future severance, partition or division of the *lot*, the provisions of this Exception and By-law 438-86 shall apply to the whole of the lands as one lot as if no severance, partition or division had occurred.
7. Within the lands shown on Map 1, attached hereto, no person shall use any land or erect or use any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:
- (A) All new public roads have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway; and
 - (B) All water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.
8. None of the provisions of By-law 438-86 of the former City of Toronto, as amended, or of this By-law shall apply to prevent the erection or use on the *lot* of a temporary sales presentation centre for the purpose of marketing and sale/lease of the *dwelling units* permitted on the *lot*.
9. None of the provisions of By-law 1106-2016, a by-law amending former City of Toronto By-law 438-86, shall apply to the *lot*.

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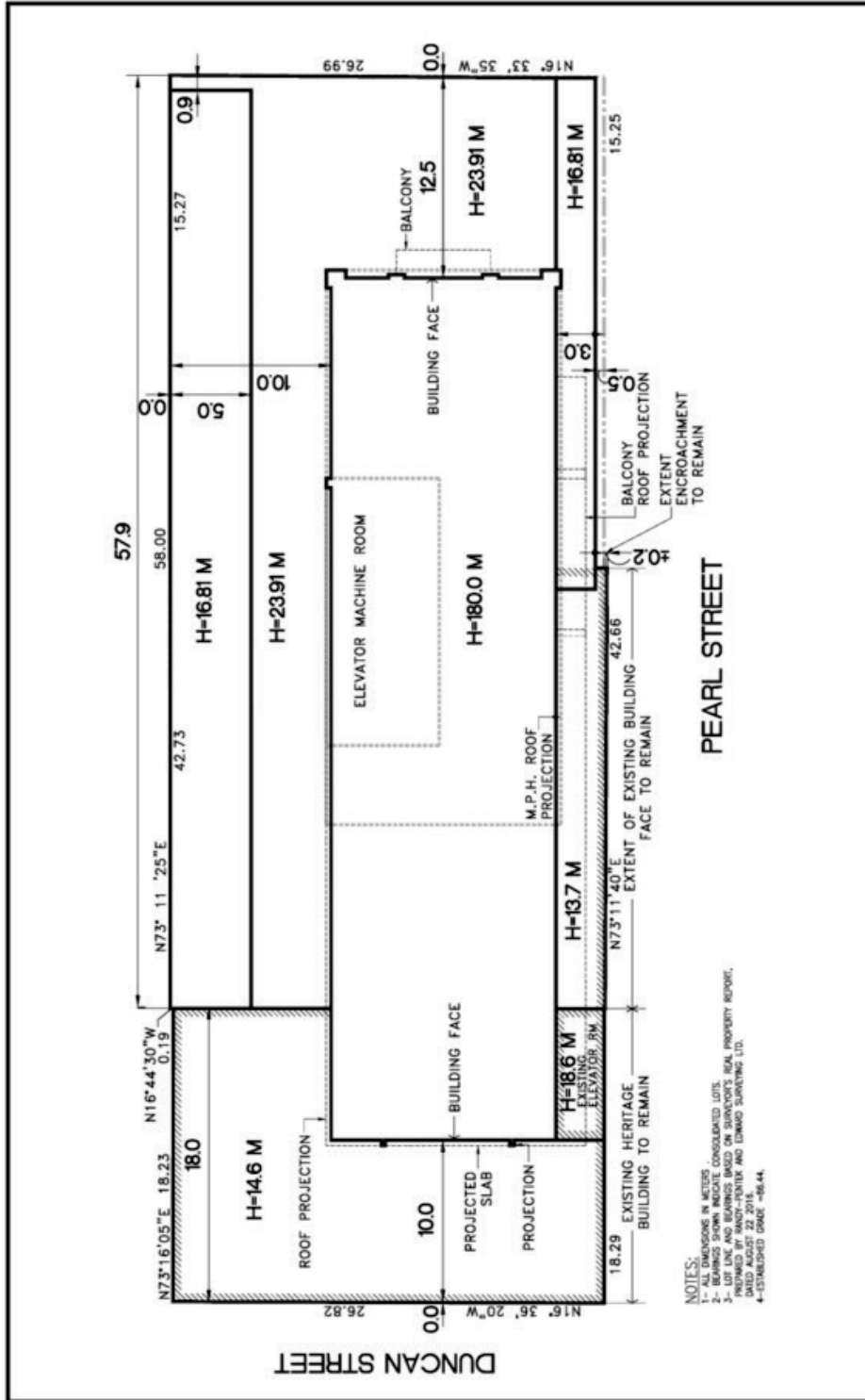
15 Duncan Street, 150-158 Pearl Street

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Map 1



15 Duncan Street, 150-158 Pearl Street

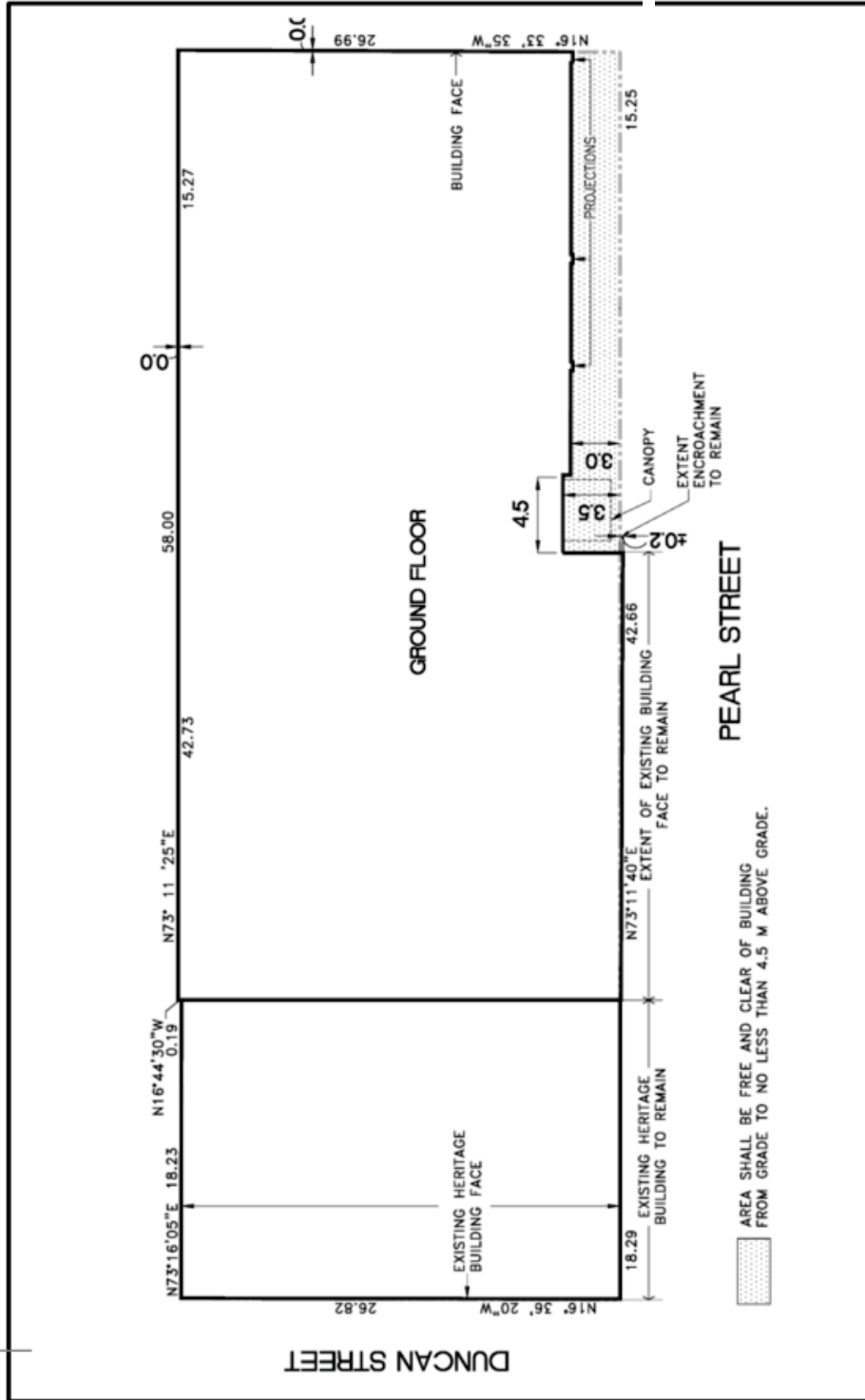
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Map 2



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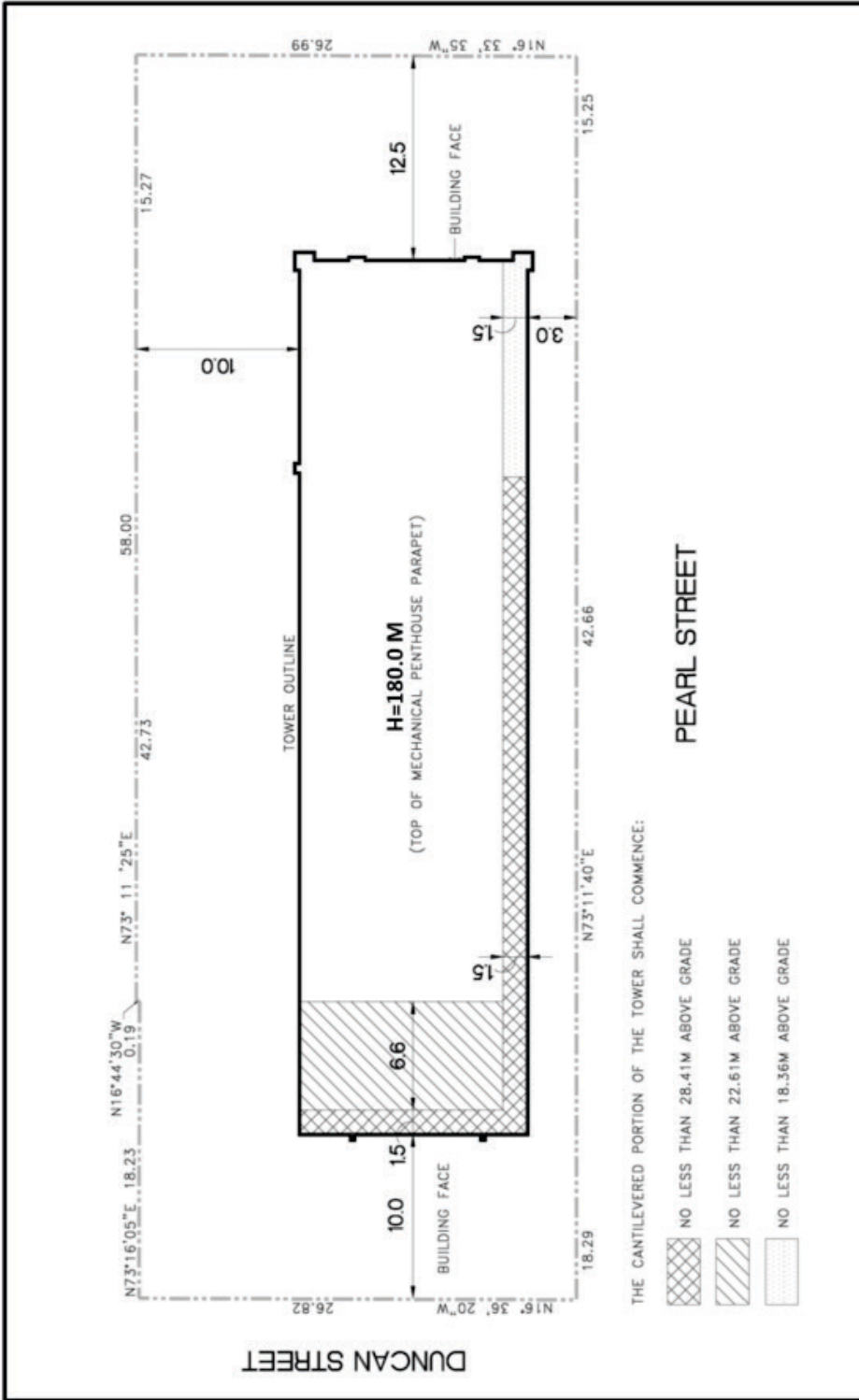
15 Duncan Street, 150-158 Pearl Street

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Map 3

AREA SHALL BE FREE AND CLEAR OF BUILDING FROM GRADE TO NO LESS THAN 4.5 M ABOVE GRADE.



15 Duncan Street, 150-158 Pearl Street

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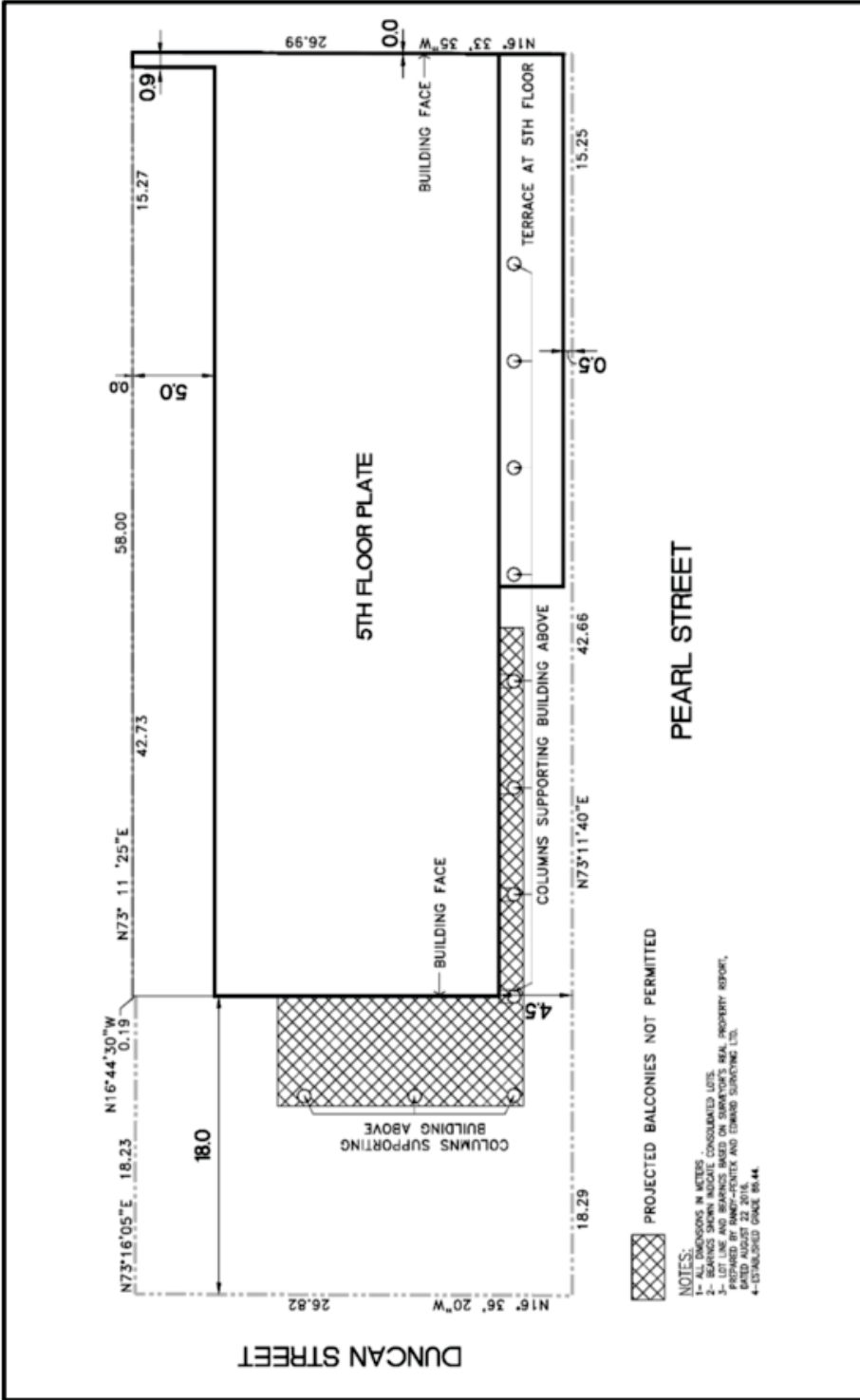


City Planning



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Map 4



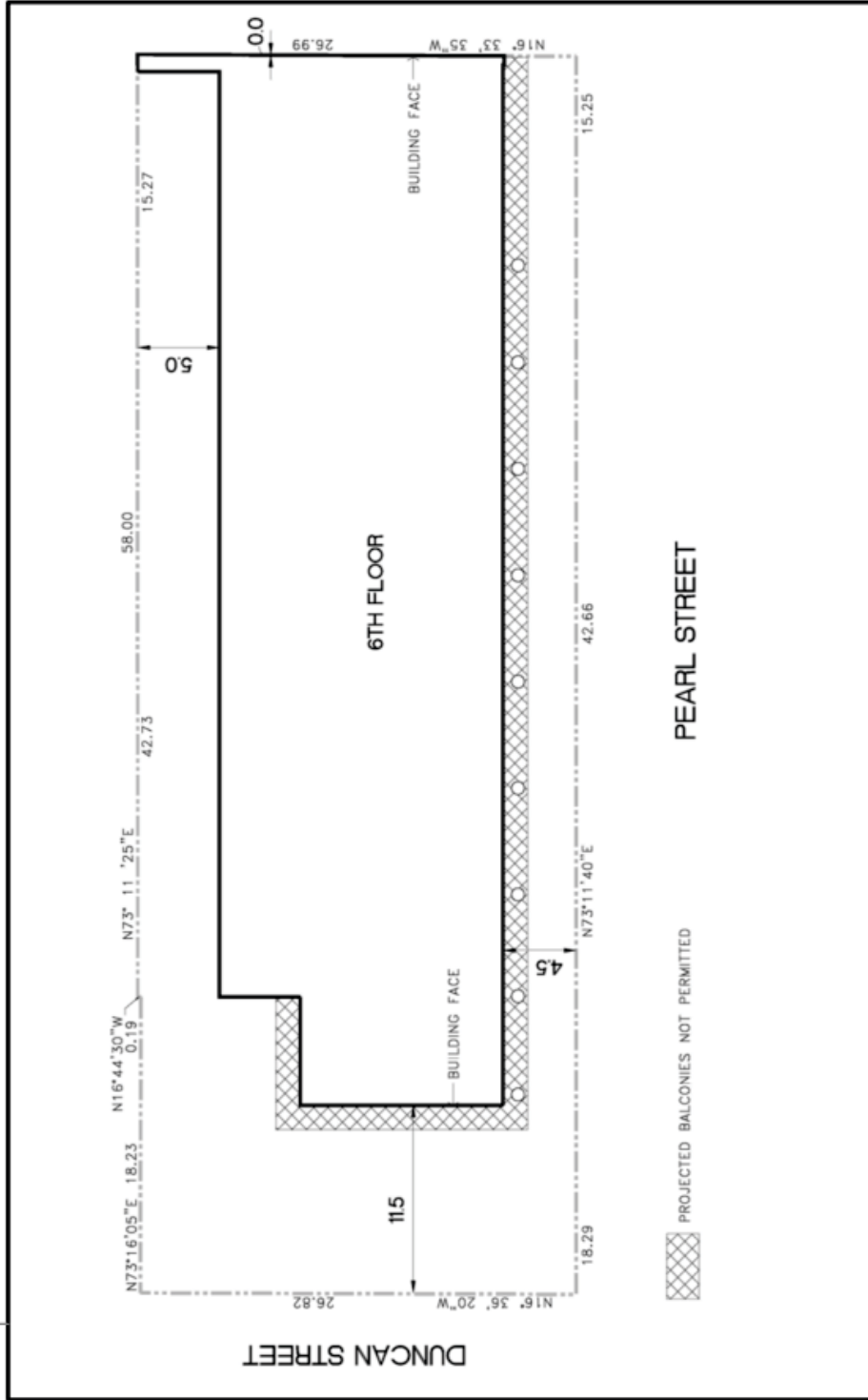
15 Duncan Street, 150-158 Pearl Street

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Map 5

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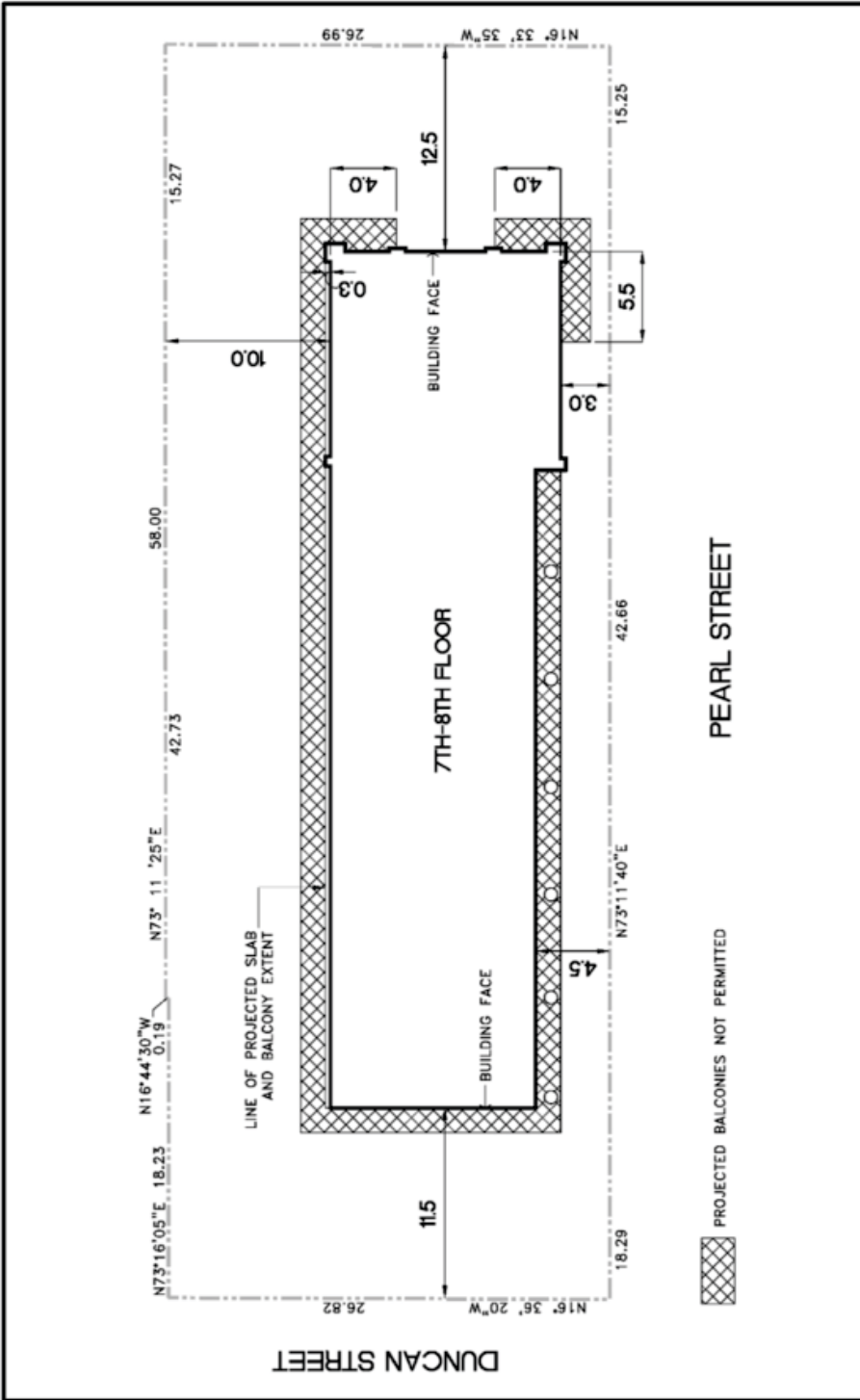
15 Duncan Street, 150-158 Pearl Street

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Map 6



15 Duncan Street, 150-158 Pearl Street

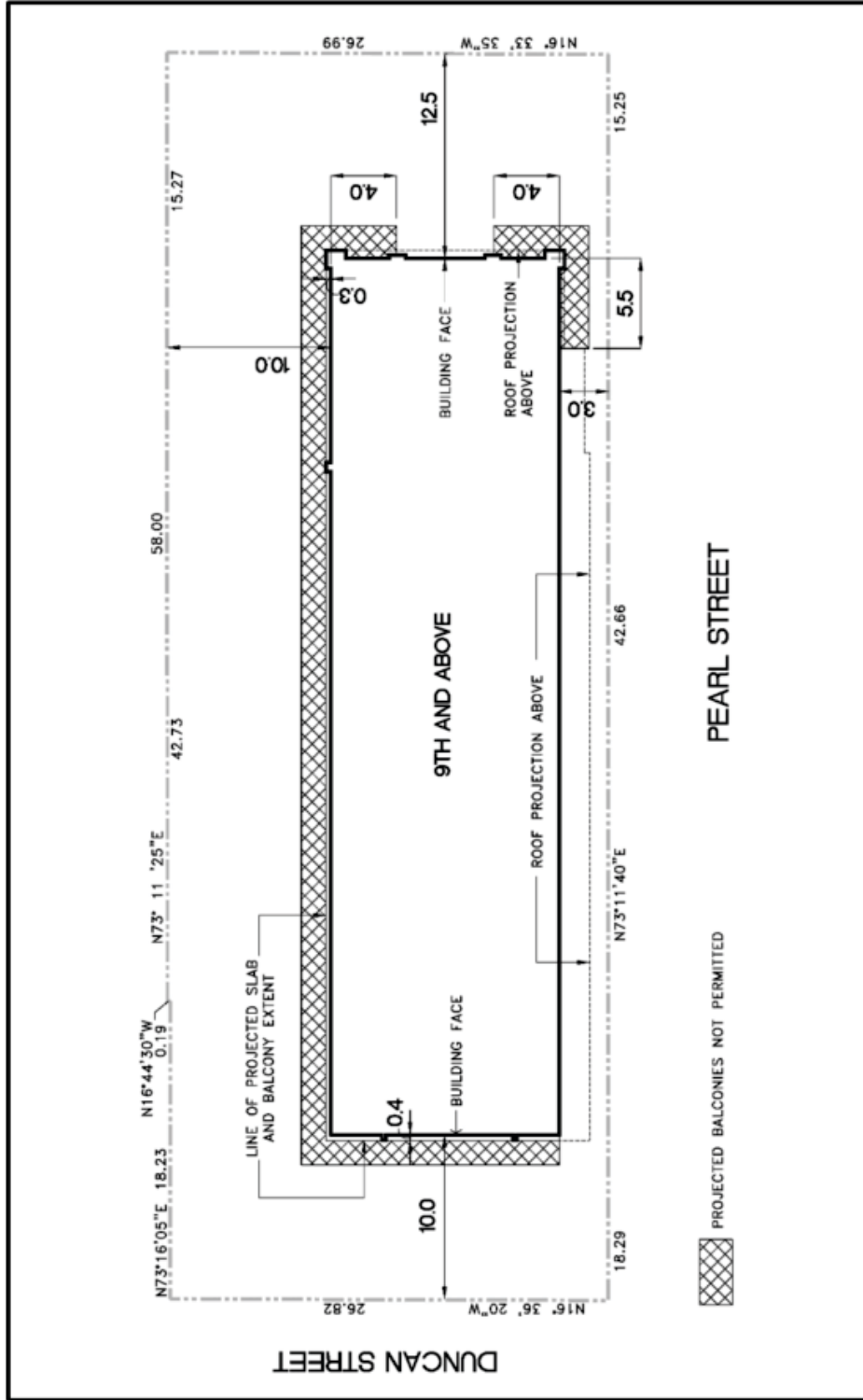
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Map 7



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15 Duncan Street, 150-158 Pearl Street

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Map 8

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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 on the lands shown in Map 1 in this By-law. Prior to the issuance of any **building** permit, the owner shall enter into an agreement, on such terms and conditions, including upwards indexing, securities, details and requirements, and register such agreement on title to the lands, to the satisfaction of the City Solicitor pursuant to Section 37(3) and (4) of the Planning Act, as it read on the day before Section 1 of Schedule 17 to the COVID-19 Economic Recovery Act, 2020, S.O. 2020, C.18, as amended, came into force, (the "**Section 37 Agreement**") to secure the community benefits and matters required to support the development below, whereby the owner agrees as follows:

1. Prior to the issuance of the first *above-grade building permit* for all or part of the *lot*, the owner shall pay to the City the sum of \$4,175,000, to be allocated as follows:
 - (A) \$1,900,000 for streetscape improvements to Pearl Street, Duncan Street and/or John Street, of which up to \$1,000,000 may be spent on the John Street Cultural Corridor project;
 - (B) \$800,000 for Community Services and Facilities contribution within or serving the King – Spadina neighbourhood, including those identified within the Downtown Community Services and Facilities Strategy and through the John Street Precinct Plan process;
 - (C) \$975,000 for the provision of new affordable rental housing units in the Alexandra Park Revitalization project; and
 - (D) \$500,000 for the provision of arts and cultural spaces in the King-Spadina neighbourhood.
2. The payments required in item 1 above shall be increased by upwards indexing in accordance with the Construction Price Index, calculated from the date of the Ontario Land Tribunal decision to the date of payment.
3. In the event that the cash contribution has not been used for the intended purposes within three (3) years after the date the Amending By-law comes into full force and effect, the cash contribution may be redirected for another purpose or purposes, at the discretion of the Chief Planner in consultation with the Ward Councillor, provided that the purpose or purposes are identified in the Official Plan and will benefit the community in the vicinity of the Site.
4. The owner shall provide a minimum of 10 percent of the residential *dwelling units* within the development to be *three-bedroom dwelling units*.
5. The owner shall make satisfactory arrangements with the Executive Director, Engineering and Construction Services to design, financially secure, pay for, construct

and make operational any upgrades and improvements to the municipal infrastructure, should it be determined that upgrades and/or improvements are required to the infrastructure to support this development, in accordance with the functional servicing and stormwater management report(s) and the hydrogeology assessment and the geotechnical report, all as accepted by the Chief Engineer and Executive Director, Engineering and Construction Services.

6. Prior to Final Site Plan approval in connection with the Zoning By-law Amendment for the property at 15 Duncan Street and 150-158 Pearl Street the owner shall:
 - (A) provide final site plan drawings related to the approved Conservation Plan, to the satisfaction of the Senior Manager, Urban Design/Heritage, City Planning;
 - (B) provide an Interpretation Plan for the subject properties, including reference to Upper Canada College formerly situated on the site, to the satisfaction of the Senior Manager, Urban Design/Heritage, City Planning and afterward shall implement such Plan to the satisfaction of the Senior Manager, Urban Design/Heritage, City Planning;
 - (C) provide a Heritage Lighting Plan that describes how the heritage property will be sensitively illuminated to enhance its heritage character to the satisfaction of the Senior Manager, Urban Design/Heritage, City Planning;
 - (D) provide a detailed Landscape Plan for the subject property satisfactory to the Senior Manager, Urban Design/Heritage, City Planning; and
 - (E) submit a Signage Plan for the proposed development to the satisfaction of the Senior Manager, Urban Design/Heritage, City Planning.
 - (F) The owner shall be financially responsible for all costs associated with the excavation, improvement, removal and/or relocation of any above or below-grade public or private utility resulting from the development of this property; and
 - (G) The owner shall submit a Wind Study for the proposed development and thereafter shall implement the necessary mitigation measures, to all the satisfaction of the Chief Planner and Executive Director, City Planning.

7. Prior to the issuance of any permit for all or any part of the properties at 15 Duncan Street and 158 Pearl Street, including a heritage permit or a building permit but excluding permits for repairs, maintenance and usual and minor works for the existing heritage buildings as are acceptable to the Senior Manager, Urban Design/Heritage, City Planning, the owner shall:
 - (A) obtain final approval for the necessary zoning by-law amendments required for the alterations to the properties at 15 Duncan Street and 158 Pearl Street, such amendments to have been enacted by City Council in connection with a Ontario Land Tribunal Order, and to have come into effect in a form and with content acceptable to City Council as determined by the Director, Urban Design, City

- Planning, in consultation with the Senior Manager, Urban Design/Heritage, City Planning;
- (B) provide building permit drawings, including notes and specifications for the conservation and protective measures keyed to the approved Conservation Plan, including a description of materials and finishes, to be prepared by the project architect and a qualified heritage consultant, all to the satisfaction of the Senior Manager, Urban Design/Heritage, City Planning;
 - (C) provide a Letter of Credit, including provisions for upwards indexing, in a form and amount and from a bank satisfactory to the Senior Manager, Urban Design/Heritage, City Planning, to secure all work included in the approved Conservation Plan, Heritage Lighting Plan, Landscape Plan and Interpretation Plan;
 - (D) prior to the release of the Letter of Credit required in (iii) above, the owner shall:
 - (i) provide a letter of substantial completion prepared and signed by a qualified heritage consultant confirming that the required conservation work, required heritage lighting work, and the required interpretive work has been completed in accordance with the Conservation Plan, Lighting Plan, Landscape Plan and Interpretation Plan and that an appropriate standard of conservation has been maintained, all to the satisfaction of the Senior Manager, Urban Design/Heritage, City Planning; and
 - (ii) provide replacement Heritage Easement Agreement photographs to the satisfaction of the Senior Manager, Urban Design/Heritage, City Planning.
8. The owner shall submit a Construction Management Plan, to the satisfaction of the Chief Planner and Executive Director, City Planning, the General Manager of Transportation Services and the Chief Building Official, in consultation with the Ward Councillor and thereafter in support of the development will implement the plan during the course of construction. The Construction Management Plan will include, but not be limited to, details regarding size and location of construction staging areas, dates of significant concrete pouring activities, measures to ensure safety lighting does not negatively impact adjacent residences, construction vehicle parking locations, refuse storage, site security, site supervisor contact information, and any other matter deemed necessary.
9. The owner shall provide any necessary modifications to the functional servicing and stormwater management report(s), to the satisfaction of the Executive Director, Engineering and Construction Services.
10. The owner shall provide any necessary modifications to the hydrogeology assessment, geotechnical report and associated municipal servicing plans, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services.