



Kagan | Shastri
DeMelo | Winer | Park
LAWYERS | LLP

JASON PARK
Direct: 416.645.4572
jpark@ksllp.ca

File No. 23030

March 15, 2023

CONFIDENTIAL
WITHOUT PREJUDICE

VIA EMAIL: jessica.braun@toronto.ca; uttra.gautam@toronto.ca

Jessica Braun and Uttra Gautam
City of Toronto Legal Services
Planning & Administrative Tribunal Law
Metro Hall, 26th Floor
55 John Street
Toronto, ON M5V 3C6

Dear Mesdames:

Re: 438-440 Avenue Road & 169, 171A & 171B Balmoral Avenue, City of Toronto
Planning Application No.: 21 177893 STE 12 OZ
Appeals to OLT of Official Plan Amendment and Rezoning Applications
OLT Lead Case No. OLT-22-002490

As you know, we are the solicitors for Augend Investments Ltd. (the "Applicant"), the owners of the lands known municipally as 438-440 Avenue Road and 169-171B Balmoral Avenue, in the City of Toronto, and the appellant with respect to the above-noted appeals.

Further to our settlement discussions with respect to the above-noted appeals, we are pleased to provide the following settlement offer on a without prejudice basis in full settlement of these appeals:

- (1) Our client would agree to formally revise its development proposal that is the subject of the above noted appeals before the OLT as shown on the attached plans prepared by IBI Group dated January 19, 2023 (the "Proposed Development"). The main revisions from the proposal that is currently before the Tribunal relate to decreasing the height of the westerly "bump out" portion

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Yorkville Office:
188 Avenue Road,
Toronto, ON, M5R 2J1
P. 416.368.2100 | F. 416.368.8206 | ksllp.ca

Downtown Office:
250 Yonge Street, Ste 2302, P.O. Box 65
Toronto, ON, M5B 2L7
P. 416.645.4584 | F. 416.645.4569 | ksllp.ca

of the development from 10 storeys to 8 storeys, increasing the northerly stepback for this bump out from 1.5 metres to 3.0 metres and increasing the westerly stepback for this bump out from 1.5 metres to 2.0 metres. The Proposed Development will also comply with the following:

- a. Provide a minimum of 10 percent 3 bedroom units and a minimum of 15 percent 2 bedroom units; and
 - b. The indoor amenity space will be a minimum of 2 square metres per unit and the outdoor amenity space will be a minimum of 2 square metres per unit;
- (2) In terms of rental replacement our client is agreeable to full replacement of all existing 10 rental units either on site or off site in a comparable location to the satisfaction of the Chief Planner and Executive Director, City Planning, including the following terms:
- a. the replacement of same type and size, with rents secured for a minimum of 10 years;
 - b. securing the right to return for existing tenants to return to similar units at similar rents; and
 - c. an acceptable Tenant Relocation and Assistance Compensation Plan, to the satisfaction of City Planning Staff;
- (3) In terms of the site plan application, our client agrees to work with City staff to resolve the remaining site plan issues in order to finalize a NOAC following the approval by the OLT of the necessary zoning by-law amendment for the Proposed Development.

With respect to the issuance of the final Order for the Official Plan Amendment and Zoning By-law Amendment for the Proposed Development, our client is agreeable to the final Order being withheld subject to the following conditions being satisfied:

- (1) The OLT has been advised by the City Solicitor that the proposed Official Plan Amendment and Zoning By-law Amendment's form and content is satisfactory to the City; and
- (2) The City receiving a revised wind study for the Proposed Development in accordance with the City's terms of reference for wind studies to the satisfaction of the Chief Planner and Executive Director, City Planning.

In support of the settlement offer, please find attached the following via a Dropbox link:

- (1) Architectural Plans dated January 19, 2023 prepared by IBI Group;
- (2) Draft Official Plan Amendment for the Proposed Development; and
- (3) Draft Zoning By-law Amendments for the Proposed Development.

If you have any questions regarding the above, please do not hesitate to contact me at 416.645.4572 or via email at jpark@ksllp.ca.

Yours truly,

KAGAN SHASTRI DeMELO WINER PARK LLP



Jason Park
JIP/ss

Please reply to the: Downtown Office

cc: Augend Investments Ltd.

Draft Zoning By-law Amendment (March 7, 2023)

Authority: Ontario Land Tribunal decision issued on ~, 20~
in Tribunal Case OLT-22-002490

CITY OF TORONTO

BY-LAW NO. XXXX-2023(OLT)

**To amend Zoning By-law No. 569-2013 with respect to the lands municipally known
in the year 2022 as 438-440 Avenue Road and 169, 171A, and 171B Balmoral
Avenue**

Whereas the Ontario Land Tribunal in its decision issued on ~, 20~ in Tribunal Case OLT-22-002490, in hearing an appeal under Section 34(11) of the *Planning Act*, R.S.O. 1990, c P.13, as amended ordered the amendment of City of Toronto By-law 569-2013, as amended with respect to the lands municipally known in the year 2022 as 438-440 Avenue Road and 169, 171A and 171B Balmoral Avenue;

The Ontario Land Tribunal Orders:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to and forming part of this By-law;
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law 569-2013, Chapter 800 Definitions;
3. Zoning By-law No. 569-2013, as amended, is further amended by amending the zone label on the Zoning By-law Map in Section 990.10 respecting the lands municipally known as 438-440 Avenue Road and 169, 171A and 171B Balmoral Avenue to R (xXX), as shown on Diagram 2 attached to this By-law;
4. Zoning By-law No. 569-2013, as amended, is further amended by adding Article 900.2.10 Exception Number (xx) so that it reads:

Exception R (xXX)

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections.

Site Specific Provisions:

- (A) On 438-440 Avenue Road and 169-171B Balmoral Avenue, if the requirements of Section 6 and Schedule A of By-law [Clerks to supply by-law ##] are complied with, a **building, structure**, addition or enlargement may be constructed or used if it complies with (B) to (Q) below:
- (B) For purposes of this exception, the **lot** shall refer to those lands delineated by a heavy black line on Diagram 1 of By-law [Clerk to supply by-law #];
- (C) Despite Regulation 10.10.40.40(1), the total residential **gross floor area**

on the lot must not exceed 17,000 square metres;

- (D) Despite Regulation 10.5.40.10(1), the height of a **building** or **structure** is the vertical distance between the Canadian Geodetic Datum elevation of 150.46 metres and the elevation of the highest point of the **building** or **structure**;
- (E) Despite Regulation 10.10.40.10(1), the permitted maximum **height** of any **building** or **structure** is the numerical value, in metres, following the letters “HT” on Diagram 3 of By-law [Clerks to supply by-law ##];
- (F) Despite (E) above and Regulations 10.5.40.10(2), (3) & (4) and 10.10.40.10(8), (9) & (10), the following elements of **buildings** or **structures** may exceed the maximum **building** heights shown on Diagram 3 of By-law [Clerks to supply by-law ##]:
 - (i) guard rails, railings, dividers, parapets, mechanical equipment and any associated enclosure structures, wind screens, elevator overruns, awnings, fences, pergolas, trellises, balustrades, eaves, screens, stairs, stair enclosures, roof drainage, windowsills, window washing equipment, chimneys, vents, terraces, lightning rods, light fixtures, architectural features, landscaping, pool, pool deck and pool equipment, and elements of a green roof, which may project above the height limits shown on Diagram 3;
- (G) Despite Clause 10.10.40.70 and Regulation 10.5.40.70(1), the required minimum **building setbacks** is shown in metres on Diagram 3 of By-law [Clerks to supply by-law ##];
- (H) Despite (G) above and Clause 10.5.40.60, the portions of a **building** or **structure** above ground must be located within the areas delineated by heavy lines on Diagram 3 attached to and forming part of this By-law, except that:
 - (i) cornices, light fixtures, balconies, stairs and stair enclosures, ornamental elements, art and landscape features, patios, decks, pillars, trellises, balconies, terraces, eaves, window sills, planters, ventilationshafts, guardrails, balustrades, railings, doors, wheelchair ramps, fences, screens, site servicing features, awnings and canopies, and underground garage ramps and associated structures, which may extend beyond the heavy lines shown on Diagram 3 of this By-law;
 - (ii) balconies are permitted to encroach into the required minimum **building setbacks** only within the area delineated by a dashed line on Diagram 4;
- (I) Despite Regulation 10.5.100.1(4), a **driveway** may have a maximum total

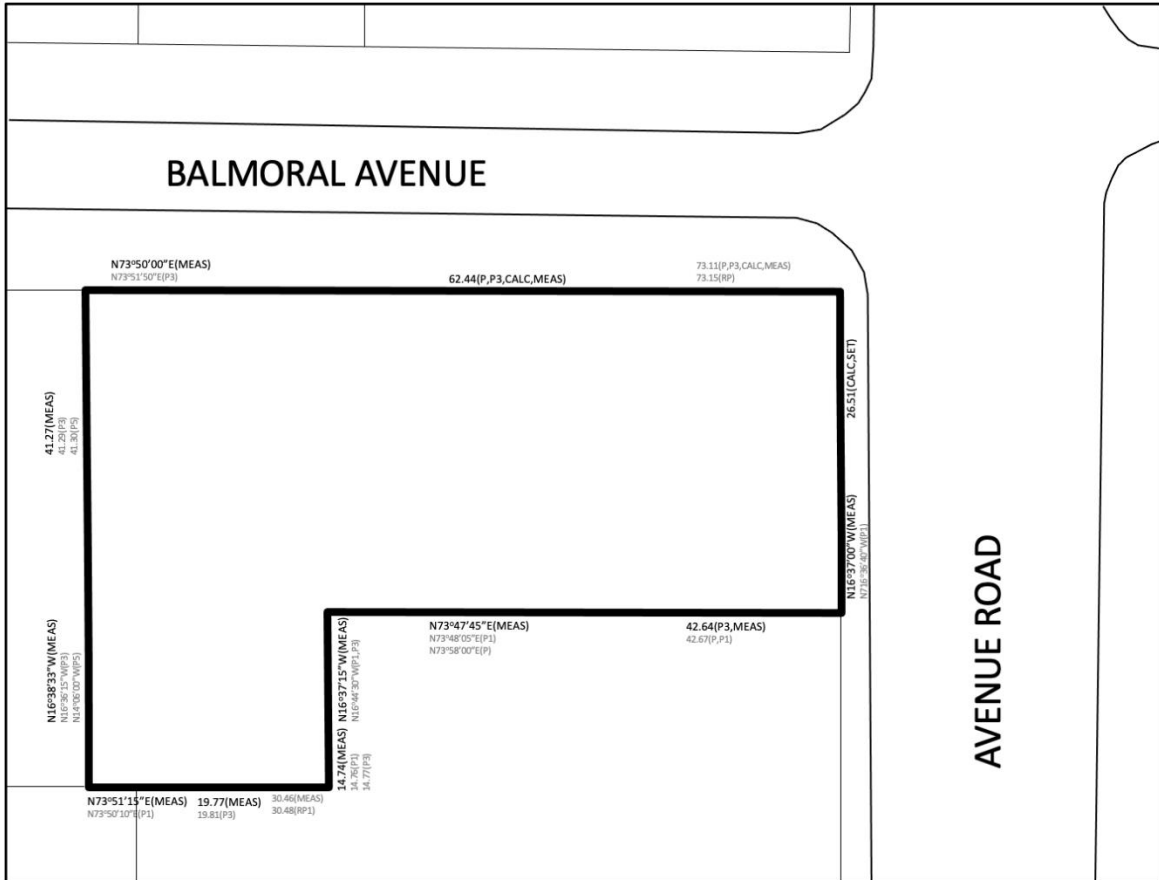
width of 7.8 metres;

- (J) Despite Regulation 200.5.10.1(1) and Table 200.5.10.1, **parking spaces** must be provided and maintained in accordance with the following:
 - (i) A minimum of 0.5 **parking spaces** per unit shall be provided for residents; and
 - (ii) A minimum of 0.1 **parking spaces** per unit shall be provided for visitors.
- (K) Despite Regulation 200.15.1(4), accessible **parking spaces** may be located anywhere in the below-grade parking garage;
- (L) A **stacked parking space** is permitted.
- (M) Despite Regulations 230.40.1.20(2), “long-term” and “short-term” **bicycle parking spaces** may be located indoors or outdoors or in an enclosed or secured room or enclosure;
- (N) Despite Regulations 230.5.1.10(4)(A) and 230.5.1.10(10) both “long-term” and “short-term” **bicycle parking spaces** may be located in a **stacked bicycle parking space** and must comply with the size requirements in Regulation 230.5.1.10(4);
- (O) Despite (N) above, if placed in a horizontal stacked **bicycle parking space**, the stacked **bicycle parking space** must have a minimum width of 0.45 metres, minimum length of 1.8 metres, and a minimum vertical clearance of 1.2 metres; and
- (P) Regulations 10.5.50.10(4) and (5), with respect to **landscaping** requirements for an **apartment building**, does not apply;
- (Q) Regulation 10.10.40.30(1), with respect to maximum building depth, does not apply.

Prevailing By-laws and Provisions: (None apply)

1. Despite any future severance, partition or division of the lot as shown on Diagram 1, the provisions of this By-law will apply as if no severance, partition or division occurred;

Pursuant to the Decision of the Ontario Land Tribunal issued on ~, 20~ in Tribunal Case OLT-22-002490.



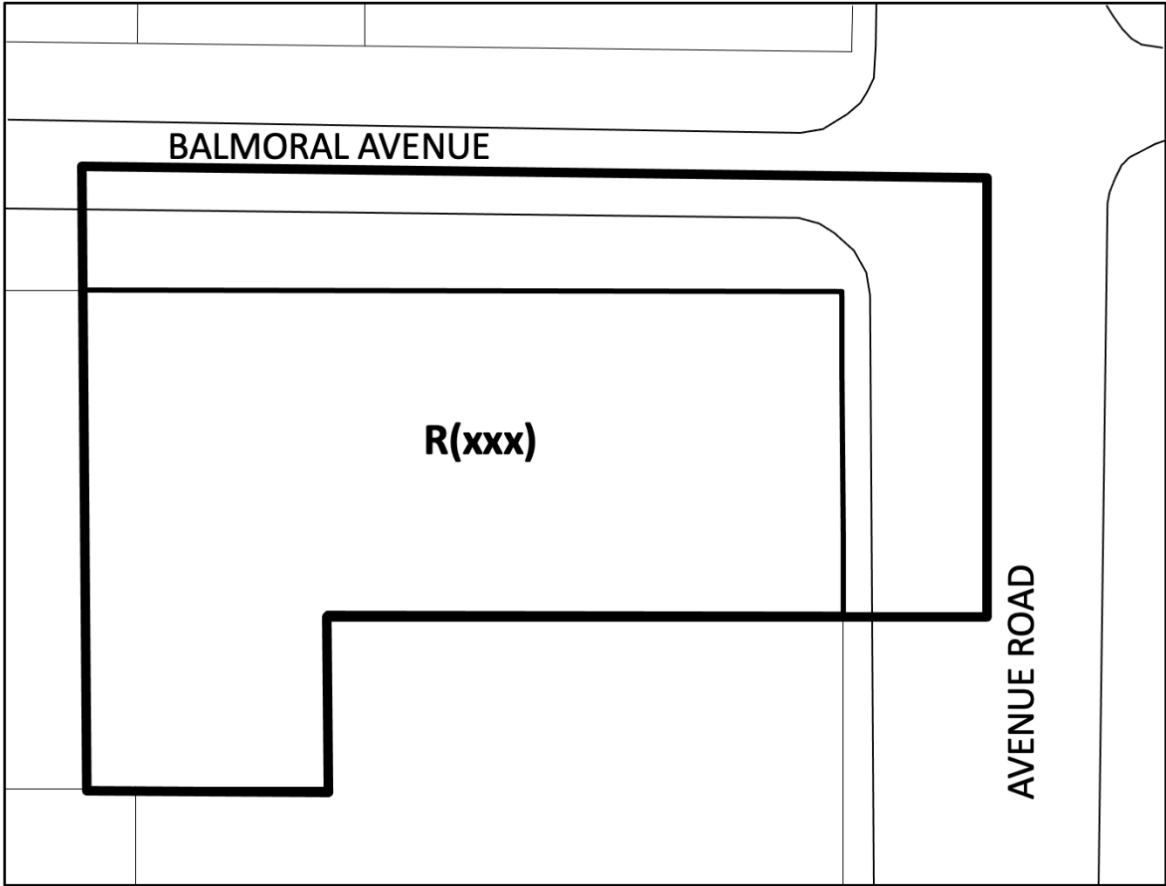
**438-440 Avenue Road and
169-171B Balmoral Avenue**

Zoning By-law Amendment

FILE #

Diagram 1

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Not to Scale



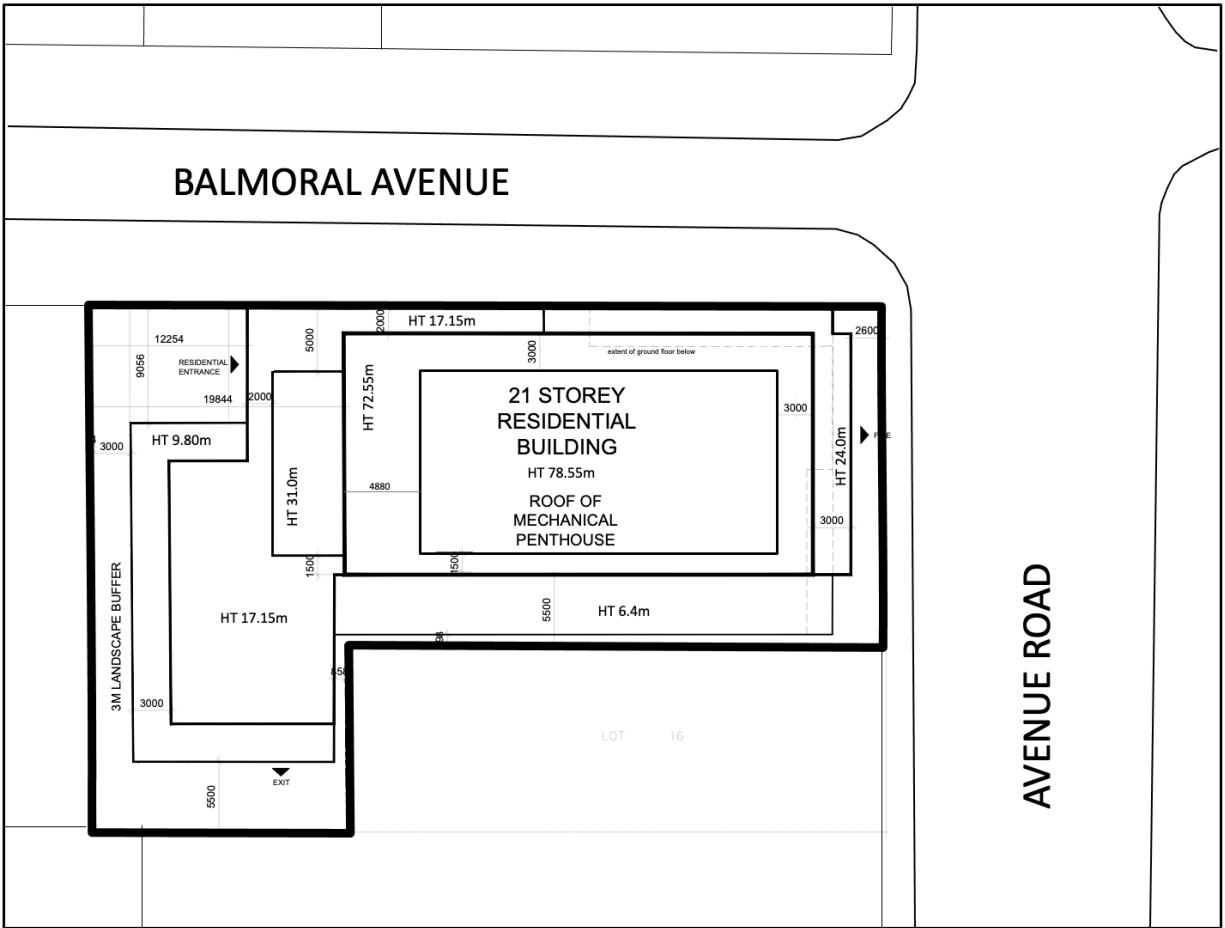
**438-440 Avenue Road and
169-171B Balmoral Avenue**

Zoning By-law Amendment

FILE #

Diagram 2

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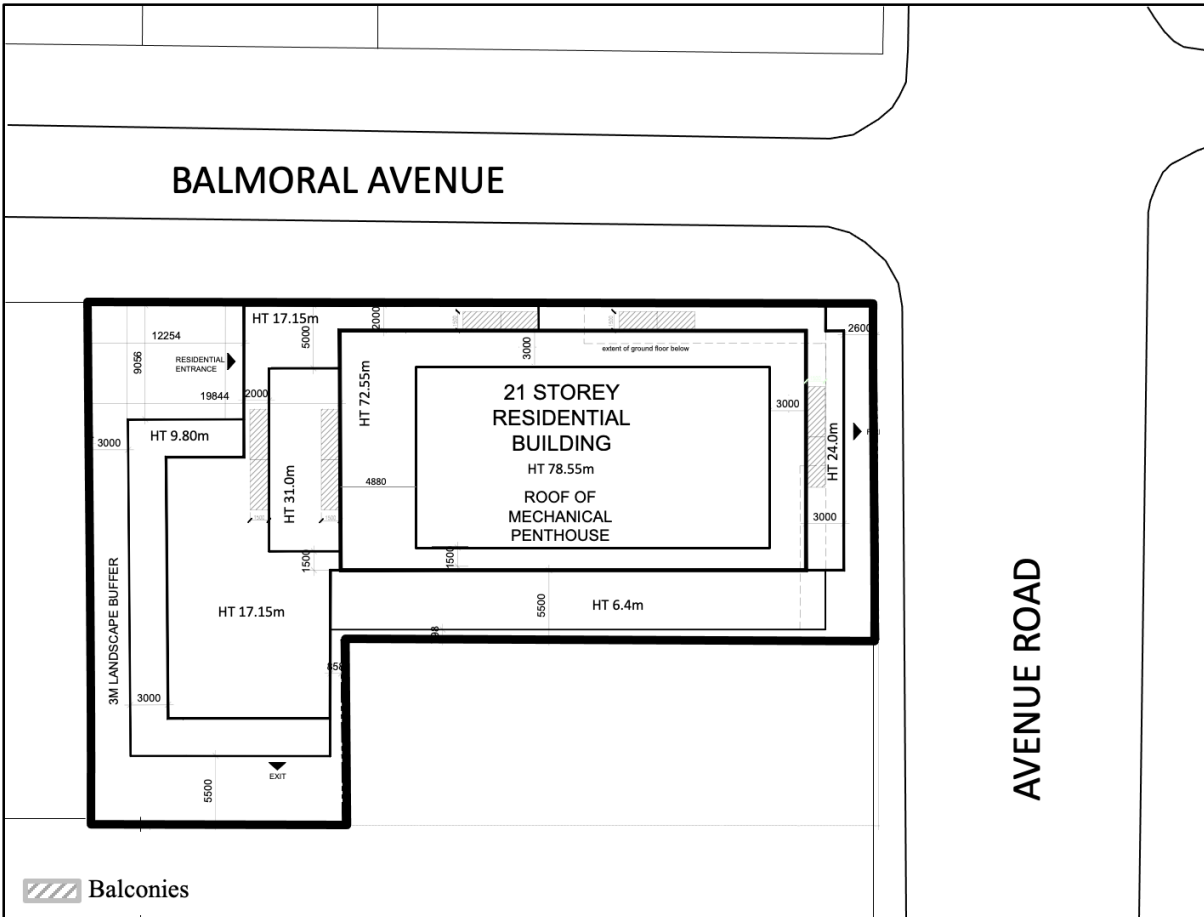
**438-440 Avenue Road and
169-171B Balmoral Avenue**

Zoning By-law Amendment

FILE #

Diagram 3

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Not to Scale



**438-440 Avenue Road and
169-171B Balmoral Avenue**

Zoning By-law Amendment

FILE #

Diagram 4

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Draft Zoning By-law Amendment (March 7, 2023)

Authority: Ontario Land Tribunal decision issued on ~, 20~
in Tribunal Case OLT-22-002490

CITY OF TORONTO

BY-LAW NO. XXXX – 2023(OLT)

To amend Zoning By-law No. 438-86 of the former City of Toronto with respect to the lands municipally known in the year 2022 as 438-440 Avenue Road and 169, 171A and 171B Balmoral Avenue

Whereas the Ontario Land Tribunal in its decision issued on ~, 20~ in Tribunal Case OLT-22-002490, in hearing an appeal under Section 34(11) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended ordered the amendment of City of Toronto By-law 438-86, as amended with respect to the lands municipally known in the year 2022 as 438-440 Avenue Road and 169, 171A and 171B Balmoral Avenue;

The Ontario Land Tribunal Orders:

1. None of the provisions of Section 2(1) with respect to “*grade*”, “*height*”, “*residential gross floor area*”, and “*lot*”, and Sections 4(2)(a), 4(4), 4(13)(a) and (c), 6(3) Part I 1, 6(3) Part II 2, 3, 4, 5 and 8, 6(3) Part III 1, 6(3) Part IV 2, of By-law No. 438-86 of the former City of Toronto, 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” as amended, shall apply to prevent the erection and use of a *residential building* on the *lot*, provided that:
 - (a) The *lot* comprises the lands outlined by heavy lines on Map 1 attached to and forming part of this By-law;
 - (b) The total *residential gross floor area* on the *lot* shall not exceed 17,000 square metres;
 - (c) No portion of any *building* or *structure* on the *lot* shall exceed the *height* in metres specified by the numbers following the “HT” symbol as shown on Map 2 attached to and forming part of this By-law, with the exception of the following:
 - (i) guard rails, railings, dividers, parapets, mechanical equipment and any associated enclosure structures, wind screens, elevator overruns, awnings, fences, pergolas, trellises, balustrades, eaves, screens, stairs, stair enclosures, roof drainage, windowsills, window washing equipment, chimneys, vents, terraces, lightning rods, light fixtures, architectural features, landscaping, pool, pool deck and pool equipment, and elements of a green roof, which may project above the height limits shown on Map 2;
 - (d) No portion of any *building* or *structure* 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:

Draft Zoning By-law Amendment (March 7, 2023)

- (i) cornices, light fixtures, stairs and stair enclosures, ornamental elements, art and landscape features, patios, decks, pillars, trellises, balconies, terraces, eaves, window sills, planters, ventilation shafts, guardrails, balustrades, railings, doors, wheelchair ramps, fences, screens, site servicing features, awnings and canopies, and underground garage ramps and associated structures, which may extend beyond the heavy lines shown on Map; 2
- (ii) balconies are permitted to encroach into the required minimum building setbacks only within the area delineated by a dashed line on Map 3;
- (e) *Parking spaces* shall be provided and maintained on the *lot* in accordance with the following:
 - (i) A minimum of 0.5 *parking spaces* per unit shall be provided for residents; and
 - (ii) A minimum of 0.1 *parking spaces* per unit shall be provided for visitors.
 - (iii) A *stacked parking space* is permitted.
- (f) A minimum of 5 accessible *parking space* shall be provided and maintained on the *lot*, and 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-wide accessible barrier free aisle or path;
- (g) The accessible *parking spaces* required by (e) and (f) may be located anywhere in the below-grade parking garage;
- (h) Notwithstanding Section 4(13), *bicycle parking spaces* shall be provided and maintained on the *lot* in accordance with the following:
 - (i) 204 *bicycle parking spaces* for residents; and
 - (ii) 32 *bicycle parking spaces* for visitors.
- (i) Notwithstanding Section 2(1) and the definitions of *bicycle parking space* – *occupant* and *bicycle parking space* – *visitor* in Section 4(13), *bicycle parking spaces* may be provided in accordance with the following:
 - (i) *bicycle parking spaces* may be located in *stacked bicycle parking spaces* at or below *grade*;
 - (ii) each vertical *stacked bicycle parking space* must have a minimum width of 0.6 metres, minimum length of 1.8 metres, and a minimum vertical clearance of 1.2

Draft Zoning By-law Amendment (March 7, 2023)

metres;

(iii) each horizontal *stacked bicycle parking space* must have a minimum width of 0.45 metres, minimum length of 1.8 metres, and a minimum vertical clearance of 1.2 metres; and

(iv) *bicycle parking spaces - visitor* may be located indoors or outdoors or in an enclosed or secured room or enclosure.

(j) One *loading space - Type "G"* shall be provided and maintained on the *lot*;

2. None of the provisions of By-law No. 438-86 shall apply to prevent a *sales office* on the *lot*.
3. Despite any future severance, partition or division of the *lot* as shown on Map 1, the provisions of this By-law shall apply as if no severance, partition or division occurred.
4. 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 No. 438-86, as amended, with the exception of the following terms:
 - (i) “*grade*” shall mean 150.46 metres Canadian Geodetic Datum;
 - (ii) “*height*” shall mean, the vertical distance between *grade* and the highest point of the structure, except for those elements otherwise expressly permitted in this By-law;
 - (iii) “*lot*” shall mean the parcel of land outlined by heavy lines on Map 1 attached to and forming part of this By-law; and
 - (iv) “*residential gross floor area*” shall mean the sum of the total area of each floor level of a building, above and below the ground, measured from the exterior main wall of each floor level. The gross floor area of the *residential building* is reduced by the area in the building used for:
 - i. Parking, loading and bicycle parking below *grade*;
 - ii. *Loading spaces* at the ground level and *bicycle parking spaces* at or above *grade*;
 - iii. Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms below *grade*;
 - iv. Shower and change facilities required by this By-law for required bicycle parking spaces;
 - v. *Residential amenity space* required by this By-law;
 - vi. Elevator shafts;
 - vii. Garbage shafts;
 - viii. Mechanical penthouse; and
 - ix. Exit stairwells in the building.
 - (v) “*sales office*” means a building, structure, facility or trailer on the *lot* used for the purpose of the used exclusively for the initial sale and/or initial

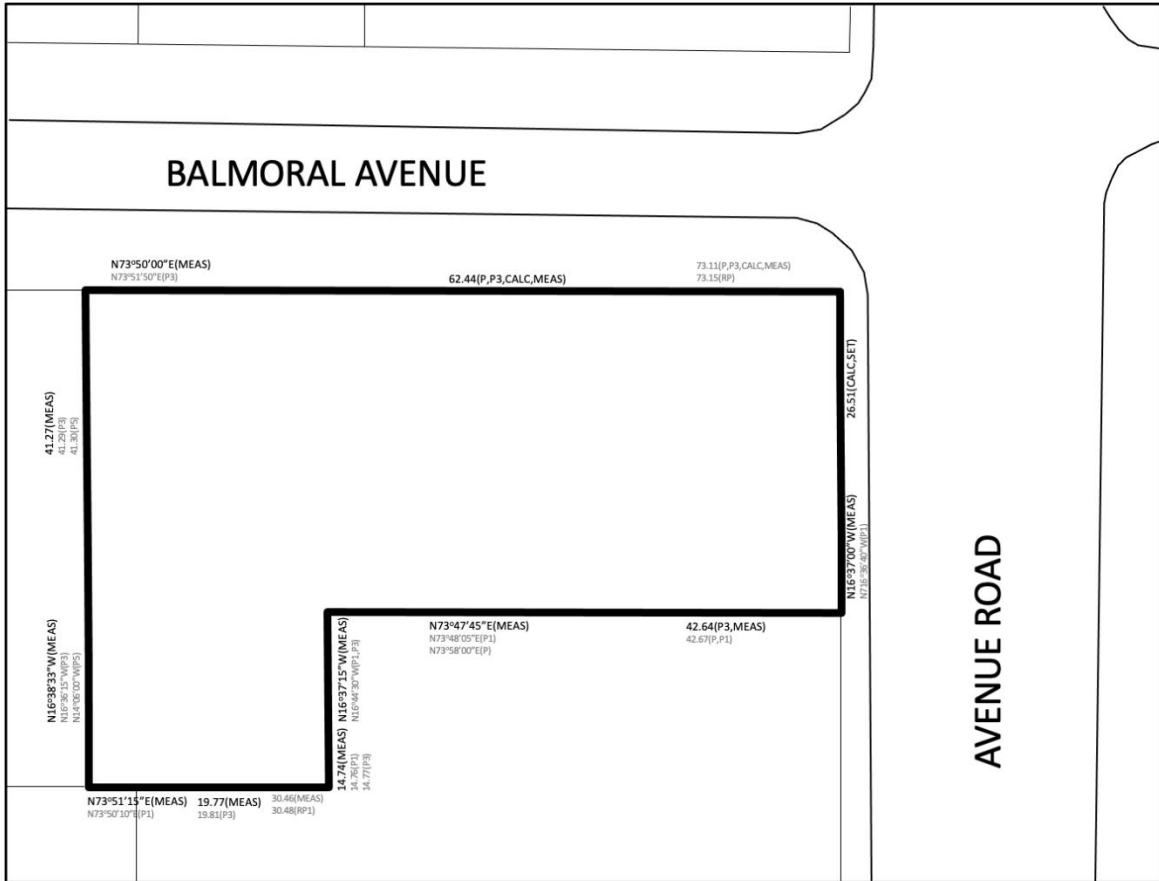
Draft Zoning By-law Amendment (March 7, 2023)

leasing of *dwelling units* or *non-residential gross floor area* uses proposed on the *lot*;

- (vi) "*stacked bicycle parking space*" means a horizontal bicycle parking space that is positioned above or below another bicycle parking space and may be equipped with a mechanical device providing floor level access to both bicycle parking spaces.
- (vii) "*stacked parking space*" means a *parking space* that is positioned above or below another *parking space* and. Is accessed only by means of an elevating device.

5. Except as otherwise provided herein, the provisions of By-law No. 438-86, as amended, shall continue to apply to the *lot*.

Pursuant to the Decision of the Ontario Land Tribunal issued on ~, 20~ in Tribunal Case OLT-22-002490.



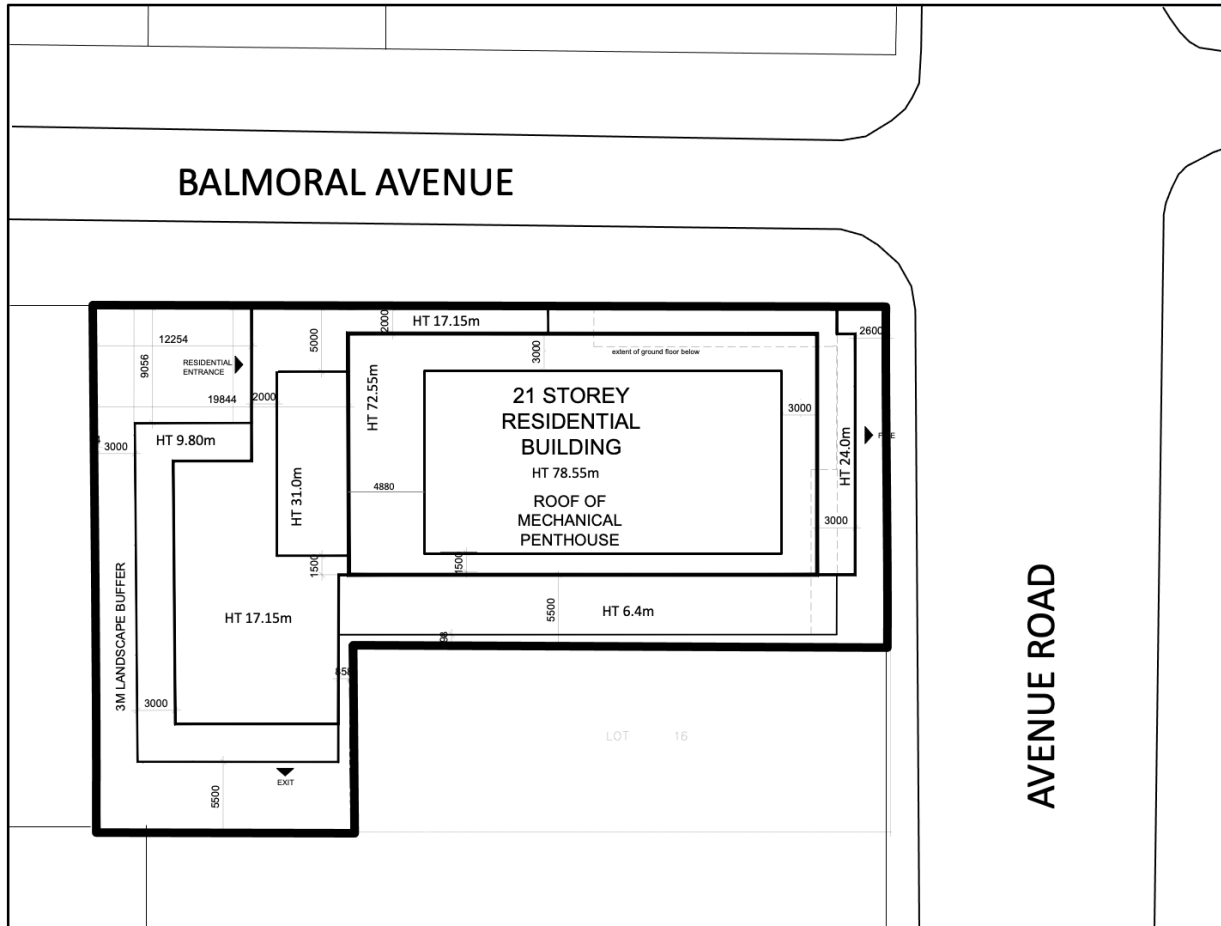
**438-440 Avenue Road and
169-171B Balmoral Avenue**

Zoning By-law Amendment

FILE #

Map 1

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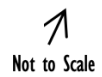


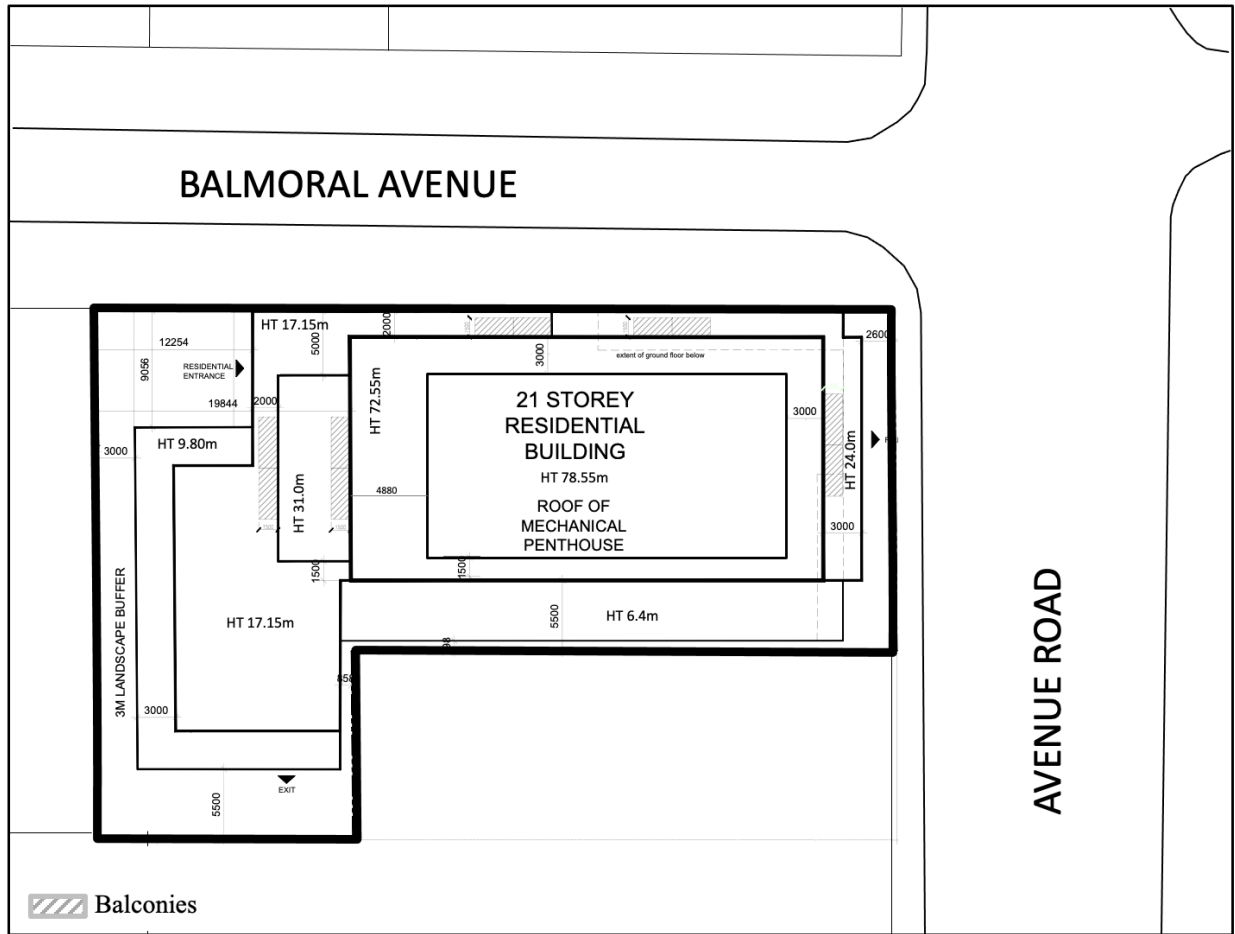
**438-440 Avenue Road and
169-171B Balmoral Avenue**

Zoning By-law Amendment

FILE #

Map 2





**438-440 Avenue Road and
169-171B Balmoral Avenue**

Zoning By-law Amendment

FILE #

Map 3

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Not to Scale

Authority: Ontario Land Tribunal Decision issued on _____

CITY OF TORONTO

BY-LAW NO. XXXX-2023 (OLT)

To adopt Amendment XXX to the Official Plan for the City of Toronto with respect to lands known municipally in the year 2022 as 438-440 Avenue Road and 169, 171A, and 171B Balmoral Avenue

Whereas the Owner of the lands known municipally in the year 2022 appealed a proposed Official Plan Amendment to the Ontario Land Tribunal pursuant to subsection 22(7) of the *Planning Act*, R.S.O. 1990, c.P.13, as amended; and

Whereas the Ontario Land Tribunal, by its Decision issued on _____, approved amendments to the Official Plan for the City of Toronto with respect to the lands known municipally as 438-440 Avenue Road and 169, 171A, and 171B Balmoral Avenue;

The Ontario Land Tribunal Orders:

1. The attached Amendment No. ~ to the Official Plan is hereby in force pursuant to the Planning Act, as amended.

Ontario Land Tribunal Order issued on _____ in OLT-_____.

AMENDMENT XXX TO THE OFFICIAL PLAN

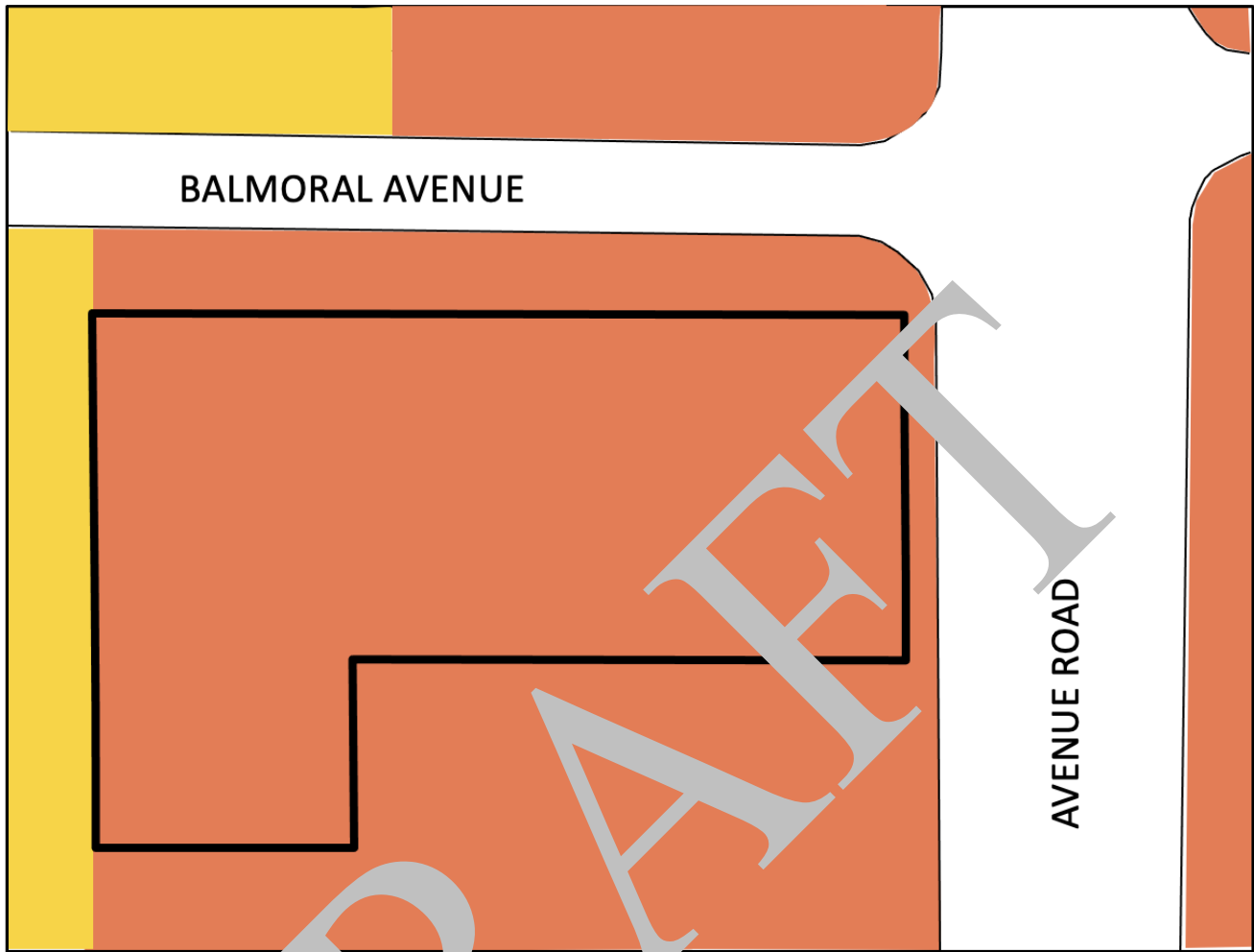
**LANDS MUNICIPALLY KNOWN IN THE YEAR 2022 AS 438-440 Avenue Road and 169,
171A AND 171B BALMORAL AVENUE**

The following text and map constitute Amendment XXX to the City of Toronto Official Plan.

The Official Plan of the City of Toronto is amended as follows:

1. Map 17, Land Use Plan is hereby amended by redesignating the lands known as 171A and 171B Balmoral Avenue from *Neighbourhoods* to *Apartment Neighbourhoods* in accordance with Diagram 1 attached hereto.

DRAFT






**438-440 Avenue Road and
169, 171A, and 171B Balmoral Avenue**

Official Plan Amendment

File # 21 177893 STE 12 OZ

Diagram

↑
Not to Scale

-  Location of Project
-  Neighbourhood
-  Apartment Neighbourhoods