

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 22, 2024

CASE NO.: OLT-23-000647

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: First Capital Realty Inc.
Subject: Request to amend the Official Plan – Failure to make a decision
Description: To facilitate the development of a 24-storey residential building
Reference Number: 22 170531 NNY 08 OZ
Property Address: 34 – 70 Montgomery Avenue
Municipality: City of Toronto
OLT Case No.: OLT-23-000647
OLT Lead Case No.: OLT-23-000647
OLT Case Name: First Capital Realty Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: First Capital Realty Inc.
Subject: Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description: To facilitate the development of a 24-storey residential building
Reference Number: 22 170531 NNY 08 OZ
Property Address: 34 – 70 Montgomery Avenue
Municipality: City of Toronto
OLT Case No.: OLT-23-000648
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BEFORE:

A. MASON) Monday, the 22nd
MEMBER)
) July, 2024

THESE MATTERS involving appeals under subsections 22(7) and 34(11) of the *Planning Act*, R. S.O. 1990, c. P. 13, as amended, regarding the failure of the City of Toronto to make a decision within the prescribed time period in respect to applications for an Official Plan Amendment and Zoning By-Law Amendment to originally facilitate a 24-storey residential mixed-use building with 306 residential dwelling units and 535 square metres of grade-related retail at 24-74 Montgomery Avenue, having come before the Tribunal for a written hearing to consider a settlement proposal proffered on consent of the Parties on June 27, 2024;

AND THE TRIBUNAL, having received and considered the visual and written materials filed on consent of the Parties, including the affidavit and exhibits, sworn and dated June 11, 2024, of Katie Hickey, a member of the Ontario Professional Planners Institute and Canadian Institute of Planners, in the area of land use planning;

AND THE TRIBUNAL, having reviewed and considered the uncontroverted affidavit evidence of Katie Hickey on the nature and scope of the revisions that have led to the settlement proposal, including:

- i. a 27-storey residential mixed-use building inclusive of a 6-storey podium comprised of 353 residential dwelling units and 550 square metres of non-residential GFA;
- ii. a redesigned podium to include a colonnade along the south, east and west sides of the building to achieve greater setbacks and opportunities for tree planting on Montgomery Avenue;
- iii. revised programming on the ground floor to include commercial space along the majority of the Montgomery Avenue and Duplex Avenue frontages, along with the residential lobby and ancillary

residential and commercial uses such as long-term bike storage and servicing areas;

- iv. podium step backs on Levels 2-6 of varying depths;
- v. modifications to the tower element step backs;
- vi. incorporation of specific performance standards, including;
 - a. securing of ten affordable housing units for a minimum of 25 years through agreement with the City of Toronto as set out more specifically in the proposed revised Official Plan Amendment;
 - b. provision of amenity space at a combined rate of 4.0 square meters each dwelling unit; and
 - c. provision of a minimum of 15 percent of the units as 2-bedroom units, a minimum of 10 percent of the units as 3-bedroom units, and additional 15 percent of the units to be provided as a combination of 2-bedroom and 3-bedroom units, or units that can be converted to 2-bedroom and 3-bedroom units through the use of adaptable design measures.

AND THE TRIBUNAL, having accepted the uncontested evidence of Katie Hickey, finds that the proposed settlement and the revised instruments giving effect thereto:

- i. have appropriate regard for matters of provincial interest under s. 2 of the *Planning Act*, in particular by optimizing the use of existing land and infrastructure within a settlement area;
- ii. are consistent with the *Provincial Policy Statement 2020*, conforms to and does not conflict with *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019*, by supporting intensification in

underutilized sites in built-up urban areas that are well served by municipal infrastructure and higher-order transit;

- iii. are in conformity with the City of Toronto Official Plan that was in force at the time of the initial applications in June 2022 and the policies of the Yonge-Eglinton Secondary Plan (OPA 405), as they would facilitate a proposed development that will fit in with the existing and approved buildings within the Montgomery Square Character Area,
- iv. represent good planning and are in the public interest by implementing a high-quality transit-oriented mixed-use proposal that would result in the introduction of additional housing, including affordable housing units, within the Yonge-Eglinton Area.

NOW THEREFORE:

THE TRIBUNAL ORDERS that the appeals are allowed in part, on an interim basis, contingent upon confirmation, satisfaction or receipt of those pre-requisite matters identified in paragraphs i-xii below, and the Official Plan Amendment and Zoning By-Law Amendment set out in Attachment 1 and 2 respectively to this Interim Order, are hereby approved in principle.

AND THE TRIBUNAL will withhold the issuance of its Final Order contingent upon confirmation from the City Solicitor, of satisfaction of the following pre-requisite matters:

- i. the final form and content of the Official Plan Amendment and Zoning By-law Amendments are to the satisfaction of the City Solicitor and the Chief Planner and Executive Director, City Planning;
- ii. City Council, or the Chief Planner and Executive Director, City Planning, where authorized to do so, has approved a Rental Housing Demolition application under Chapter 667 of the Toronto Municipal Code pursuant to

Section 111 of the City of Toronto Act, 2006, to permit the demolition of the one existing rental dwelling unit at 70 Montgomery Avenue and the Applicant/Appellant has provided an undertaking to the City to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor, securing an acceptable Tenant Relocation and Assistance Plan addressing financial compensation and other assistance to lessen hardship;

- iii. the Applicant/Appellant has entered into one or more agreements, to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor, to ensure the provision of the affordable housing in accordance with the terms of Settlement Offer;
- iv. the Applicant/Appellant has submitted updated sun/shadow and pedestrian level wind studies, including the identification of any required mitigation measures to be secured in the Zoning By-law Amendment and through the site plan process to the satisfaction of the Chief Planner and Executive Director, City Planning;
- v. the Applicant/Appellant has submitted a revised Travel Demand Management Plan acceptable to, and to the satisfaction of the Chief Planner and Executive Director, City Planning and the General Manager, Transportation Services and that such matters arising from such study be secured if required through the implementing Zoning By-law Amendment and, or Site Plan approval;
- vi. the Applicant/Appellant has satisfactorily addressed the Transportation Services matters in the Engineering and Construction Services Memorandum dated March 10, 2023, any outstanding issues raised by Transportation Services, arising from the ongoing technical review (including provision of acceptable reports and studies including a revised Transportation Impact Study, including all requested revisions to the

satisfaction of the General Manager, Transportation Services), as they relate to the Official Plan Amendment and Zoning By-law Amendment applications to the satisfaction of the General Manager, Transportation Services;

- vii. the Applicant/Appellant has satisfactorily addressed matters from Engineering and Construction Services as contained in the Engineering and Construction Services Memorandum dated March 10, 2023, or any outstanding issues raised by Engineering and Construction Services, arising from the ongoing technical review (including provision of acceptable reports and studies), as they relate to the Zoning By-law Amendment application, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;
- viii. the Applicant/Appellant has satisfactorily addressed matters from Parks, Forestry and Recreation as contained in the Parks, Forestry and Recreation Memorandum dated January 4, 2023, or any outstanding issues raised by Parks, Forestry and Recreation arising from the ongoing technical review (including provision of acceptable reports and studies), as they relate to the Zoning By-law Amendment application, to the satisfaction of the General Manager, Parks, Forestry and Recreation;
- ix. the Applicant/Appellant has satisfactorily addressed matters from Tree Protection and Plan Review, Urban Forestry Memorandum dated October 18, 2022, or any outstanding issues raised by Urban Forestry, arising from the ongoing technical review (including provision of acceptable reports and studies), as they relate to the Zoning By-law Amendment application, to the satisfaction of the General Manager, Parks, Forestry and Recreation;
- x. the Applicant/Appellant has submitted to the Chief Engineer and Executive Director, Engineering and Construction Services for review and acceptance, prior to final approval of the rezoning, a Functional Servicing

Report to determine the storm water runoff, sanitary flow and water supply demand resulting from this development and whether there is adequate capacity in the existing municipal infrastructure to accommodate the proposed development;

- xii. the Applicant/Appellant has made satisfactory arrangements with Engineering and Construction Services and entered into the appropriate financially secured agreement with the City for the design and construction of any improvements to the municipal infrastructure, should it be determined that upgrades are required to the infrastructure to support this development, according to the accepted Functional Servicing Report accepted by the Chief Engineer and Executive Director, Engineering and Construction Services; and,
- xiii. the Applicant/Appellant has provided space within the development for installation of maintenance access holes and sampling ports on the private side, as close to the property line as possible, for both the storm and sanitary service connections, in accordance with the Toronto Municipal Code Chapter 681, Sewers, Section 681-10.

AND THE TRIBUNAL FURTHER orders that the member will remain seized for the purposes of reviewing and approving the final drafts of the Official Plan Amendment and Zoning By-Law Amendment and the issuance of the Final Order.

AND THE TRIBUNAL FURTHER orders that if the Parties do not submit the final drafts of the Official Plan Amendment and Zoning By-Law Amendment, and provide confirmation that all other contingent pre-requisites to the issuance of the Final Order set out in paragraphs i-xii directly above have been satisfied, and do not request the issuance of the Final Order by **Wednesday, January 8, 2025**, the Applicant and the City shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft Official Plan

Amendment and Zoning By-Law Amendment and issuance of the Final Order by the Tribunal.

AND THE TRIBUNAL FURTHER orders that it may, as necessary, arrange the further attendance of the Parties to determine the additional timelines and deadlines for the submission of the final form of the instruments, the satisfaction of the contingent pre-requisites and the issuance of the Final Order.

“Euken Lui”

EUKEN LUI
ACTING REGISTRAR

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

Attachment “1”

Draft: June 24, 2024

Authority: Ontario Land Tribunal Decision issued on [date] Order issued on [date] in Tribunal File OLT-23-000647

CITY OF TORONTO

BY-LAW No. XXX-2024(OLT)

To adopt Amendment No. XXX to the Official Plan of the City of Toronto respecting the lands municipally known in the year 2023 as 34-70 Montgomery Avenue.

Whereas authority is given to the Ontario Land Tribunal under the Planning Act, R.S.O. 1990, c. P.13, as amended, to approve this By-law; and

The Official Plan of the City of Toronto, as amended, is further by the Ontario Land Tribunal, as follows:

1. The attached Amendment XXX to the Official Plan is hereby adopted pursuant to the Planning Act, as amended.

Pursuant to Ontario Land Tribunal Decision issued on ~, 20~ and Order issued on ~, 20~ in OLT-23-000647

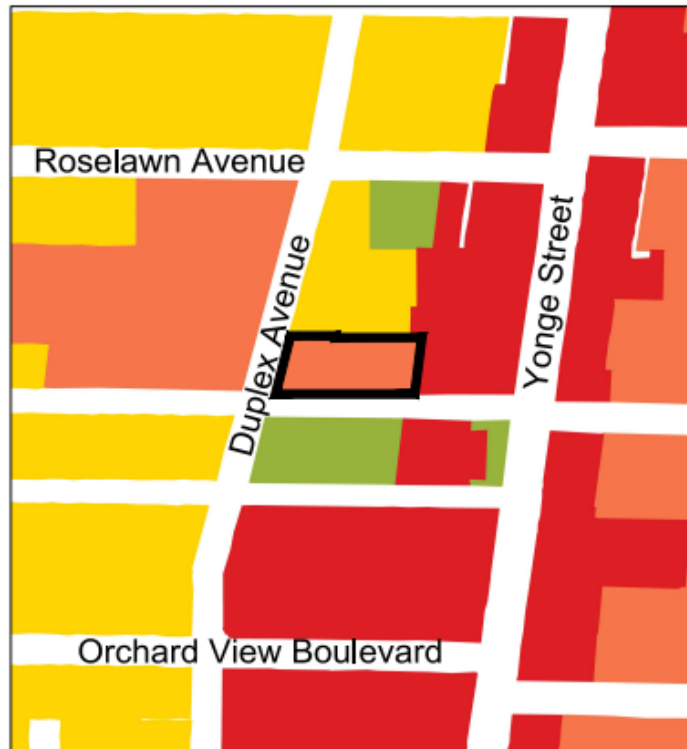
AMENDMENT NO. XXX TO THE OFFICIAL PLAN
LANDS MUNICIPALLY KNOWN IN THE YEAR 2023 AS
34-70 MONTGOMERY AVENUE

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

1. Map 17, Land Use Plan is amended by re-designating the lands municipally known as 34-70 Montgomery Avenue from *Neighbourhoods* to *Apartment Neighbourhoods*, as shown on the attached Schedule A.
2. On the lands municipally known as 34-70 Montgomery Avenue, as shown on the attached Schedule A, ten (10) units shall be provided as affordable housing to be secured for a minimum of twenty-five (25) years and the owner of the lands shall enter into an agreement with the City which secures the provision of the affordable housing in accordance with this Policy.

Schedule A

SCHEDULE A



Official Plan Amendment - Map 17



34-70 Montgomery Avenue: From Neighbourhoods to Apartment Neighbourhoods



- | | |
|--|---|
|  Neighbourhoods |  Mixed Use Areas |
|  Apartment Neighbourhoods |  Parks |

Attachment “2”

City of Toronto By-law xxx-20~

Authority: Ontario Land Tribunal Decision issued on [date] Order issued on [date] in Tribunal File OLT-23-000647

BY-LAW ###-2024 (OLT)

To amend Zoning By-law 569-2013, as amended, with respect to the lands municipally known in the year 2023 as 34-70 Montgomery Avenue.

Whereas the Ontario Land Tribunal, by its Decision issued on [date] and its Order issued on [date], in respect of Tribunal File OLT-23-000647, upon hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P13, as amended, determined to amend Zoning By-law 569-2013, as amended, with respect to the lands municipally known in the year 2023 as 34-70 Montgomery Avenue; and

Whereas the Ontario Land Tribunal has the authority pursuant to Section 34 of the Planning Act, as amended, to pass this By-law; and

The Ontario Land Tribunal Orders:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to 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 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 outlined by heavy black lines from a zone label of R (d1.0)(x768) to a zone label of RA (xXXX) as shown on Diagram 2 attached to this By-law.
4. Zoning By-law 569-2013, as amended, is further amended by amending the Parking Area Zone Overlay Map in Section 995.5 for the lands subject to this By-law, to Parking Zone B, as shown on Diagram 3 attached to this By-law.
5. Zoning By-law 569-2013, as amended, is further amended adding Article 900.7.10 Exception Number [#] so that it reads:

(###) Exception RA (xXXX)

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 34-70 Montgomery Avenue, if the requirements of By-law [Clerks to

insert By-law ##) are complied with, a **building** or **structure** may be constructed, used or enlarged in compliance with Regulations (B) to (U) below:

- (B) Despite Regulations 15.5.40.10(1), the height of a **building** or **structure** is the distance between the Canadian Geodetic Datum of 168.5 metres and the elevation of the highest point of the **building** or **structure**;
- (C) Despite Regulation 15.10.40.10(1), the permitted maximum height of a **building** or **structure** is the number in metres following the letters "HT" as shown on Diagram 4 of By-law **[Clerks to insert By-law ##]**;
- (D) Despite Regulations 15.5.40.10(2) to (6) and (C) above, the following equipment and **structures** may project beyond the permitted maximum height shown on Diagram 5 of By-law **[Clerks to insert By-law ##]**:
 - (i) equipment used for the functional operation of the **building** including electrical, utility, ventilation and mechanical equipment, inclusive of structures that enclose screen or cover the equipment, enclosed stairwells, roof access, maintenance equipment storage, elevator shafts, chimneys, and vents, by a maximum of 6.0 metres;
 - (ii) architectural features, parapets, and elements and **structures** associated with a **green roof**, by a maximum of 2.0 metres;
 - (iii) **building** maintenance units and window washing equipment, by a maximum of 4.0 metres;
 - (iv) planters, **landscaping** features, guard rails, and divider screens on a balcony and/or terrace, by a maximum of 3.0 metres; and
 - (v) trellises, pergolas, and unenclosed **structures** providing safety or wind protection to rooftop **amenity space**, by a maximum of 3.0 metres;
 - (vi) elements listed in (D)(iii) may exceed the height of a mechanical penthouse listed in (i) above, by a maximum of 4.0 metres
- (E) Regulation 15.5.50.10(1), with respect to **landscaping** requirements on a **lot** in the Residential Apartment Zone category, does not apply;
- (F) Regulation 15.5.50.10(2), with respect to **landscaping** requirements on a **lot** in the Residential Apartment Zone category abutting a **lot** in the Residential Zone category, does not apply;
- (G) Despite Regulation 15.5.80.30(1), a surface **parking space** must be at least 1.5 metres from any **main wall** of an **apartment building**;

- (H) Despite Regulation 15.10.40.40(1), the permitted maximum **gross floor area** of all **buildings** and **structures** on the **lot** is 23,600 square metres, of which:
- (i) the permitted maximum **gross floor area** for residential uses is 23,000 square metres;
 - (ii) the required minimum **gross floor area** for non-residential uses is 549 square metres;
- (I) In addition to the permitted uses in Clause 15.10.20, a **restaurant, take-out restaurant** and **outdoor patio** are permitted, and are not subject to specific use conditions;
- (J) Regulation 15.10.20.20(13), with respect to specific use conditions for **retail stores** in an **apartment building**, does not apply;
- (K) Regulation 15.10.20.20(7), with respect to specific use conditions for **nursing homes** or **retirement buildings**, does not apply;
- (L) Pursuant to Regulation 15.10.40.50(1), **amenity space** must be provided at a minimum rate of 4.0 square metres for each **dwelling unit**, of which:
- (i) at least 2.0 square metres for each **dwelling unit** is indoor **amenity space**; and
 - (ii) at least 40.0 square metres is outdoor **amenity space** in a location adjoining or directly accessible to indoor **amenity space**; and
 - (iii) no more than 25% of the outdoor component may be a **green roof**;
- (M) Despite Clause 15.10.40.70, the required minimum **building setbacks** are as shown in metres on Diagram 4 of By-law [Clerks to insert By-law ##];
- (N) Despite Clause 40.10.40.60 (M) above, the following elements may encroach into the required minimum **building setbacks** as follows:
- (i) decks, porches, and balconies, by a maximum of 2.5 metres;
 - (ii) canopies and awnings, by a maximum of 3.0 metres;
 - (iii) exterior stairs, access ramps and elevating devices, by a maximum of 3.0 metres;
 - (iv) cladding added to the exterior surface of the **main wall** of a **building**, by a maximum of 1.0 metre;
-

- (v) architectural features, such as a pilaster, decorative column, cornice, sill, belt course, or chimney breast, by a maximum of 1.0 metre;
 - (vi) window projections, including bay windows and box windows, by a maximum of 1.0 metre;
 - (vii) eaves, by a maximum of 1.0 metre;
 - (viii) a dormer, by a maximum of 1.0 metre; and
 - (ix) air conditioners, satellite dishes, antennae, vents, and pipes, by a maximum of 1.0 metre;
- (O) Regulation 15.5.80.30(1), with respect to the distance between a **parking space** and the **main wall** of a **building**, does not apply;
- (P) Despite Regulation 200.5.10.1(1) and Table 200.5.10.1 **parking spaces** must be provided in accordance with the following:
- (i) no minimum residential occupant parking supply is required;
 - (ii) **parking spaces** for residential occupants of the building must be provided at a maximum rate of:
 - (a) 0.7 for each bachelor **dwelling unit** up to 45 square metres and 1.0 for each bachelor **dwelling unit** greater than 45 square metres; and
 - (b) 0.8 for each one bedroom **dwelling unit**;
 - (c) 0.9 for each two bedroom **dwelling unit**;
 - (d) 1.1 for each three or more bedroom **dwelling unit**;
 - (iii) a minimum of 2.0 plus 0.05 **parking spaces** per **dwelling unit** for visitors to residents of the building;
 - (iv) a maximum of 4.0 **parking spaces** for each 100 square metres of **gross floor area**;
- (Q) Despite Regulation 200.5.1.10(2)(A)(iv) and (D), a maximum of 10 **parking spaces** may be "small car parking spaces";
- (i) For the purposes of this exception, a "small car parking space" means a **parking space** that is obstructed on one or both sides in

accordance with Regulation 200.5.1.10(2)(D), in which despite Regulation 200.5.1.10(2)(A)(iv), the **parking space** is not required to be increased by a minimum width of 0.3 metres for each side that the space is obstructed;

- (R) Despite Regulations 200.15.1(1) to (4), accessible **parking spaces** must be provided in accordance with the following:
- (i) An accessible **parking space** must have the following minimum dimensions:
 - (a) width of 3.4 metres;
 - (b) length of 5.6 metres; and
 - (c) vertical clearance of 2.1 metres;
 - (ii) The entire length of an accessible **parking space** must be adjacent to a 1.5 metre wide accessible barrier free aisle or path on one side of the accessible **parking space**; and
 - (iii) A maximum of one accessible **parking space** is not required to be the closest space to a barrier free entrance to a **building** or passenger elevator that provides access to the first **storey** of the **building**;
- (S) Despite Clause 220.5.10.1, one Type 'G' **loading space** must be provided;
- (T) Despite Regulations 230.5.1.10(9) and (10), and Clause 230.40.1.20, "long-term" and "short-term" **bicycle parking spaces** may be:
- (i) located in a stacked **bicycle parking space** arrangement, in any combination of vertical, horizontal or stacked positions; and
- (U) The provision of **dwelling units** is subject to the following:
- (i) a minimum of 15 percent of the total number of **dwelling units** must contain two bedrooms;
 - (ii) a minimum of 10 percent of the total number of **dwelling units** must contain three bedrooms;
 - (iii) an additional 15 percent of the total number of **dwelling units** must be provided as a combination of 2-bedroom and 3-bedroom **dwelling units**, or units that can be converted to 2 and 3 bedroom units through the use of accessible or adaptable design measures.

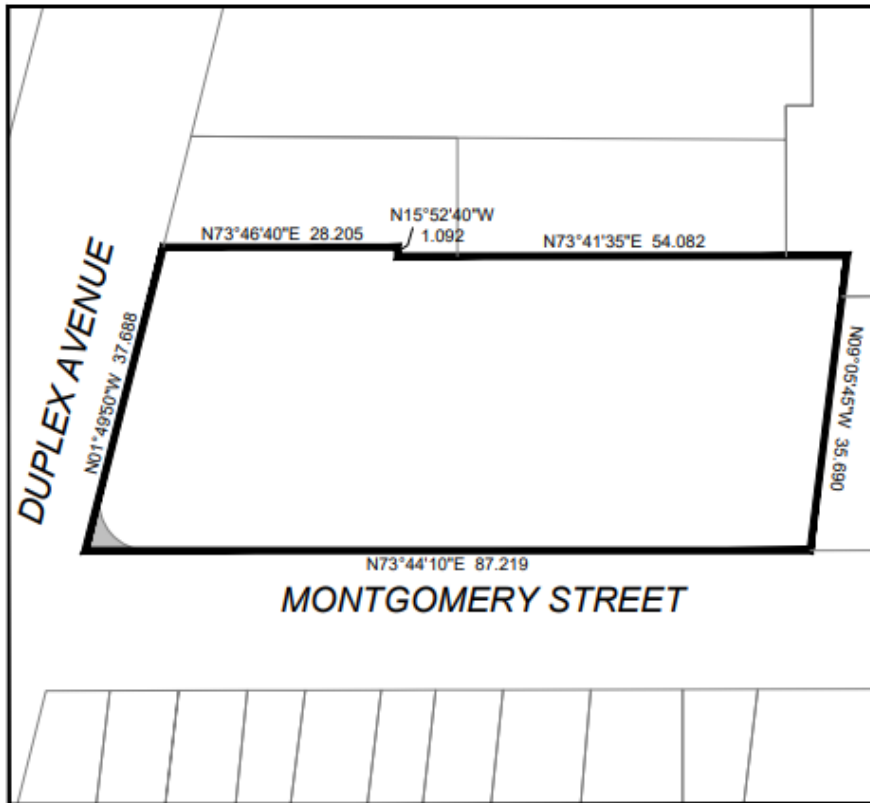
- (V) NTD: proposed language with respect to the vertical clearance of the colonnade to be discussed with City staff.

Prevailing By-laws and Prevailing Sections: None Apply

- 6.** Despite any severance, partition or division of the lands, the provisions of this By-law shall apply as if no severance, partition or division occurred.

Ontario Land Tribunal Decision issued on [date] and its Order issued on [date], in respect of Tribunal File OLT-23-000647.

City of Toronto By-law No. XXXX-2024(OLT)



34-70 Montgomery Avenue & 479-487 Duplex Avenue

Diagram 1

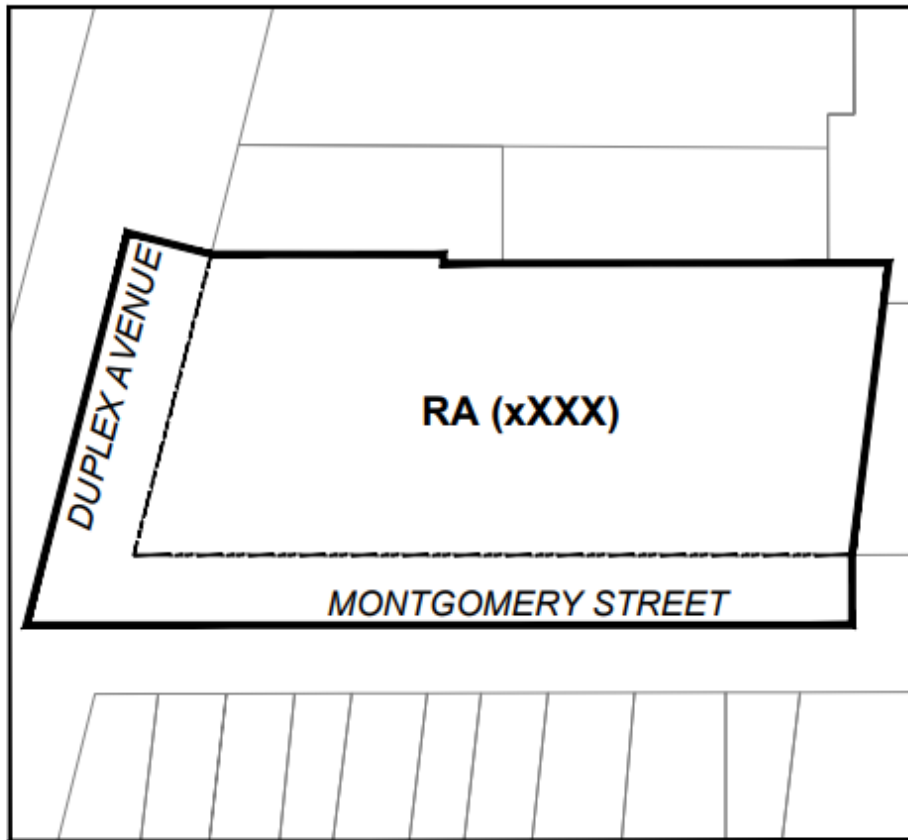
File #22 170531 NMY 08 02

Corner Rounding



Not to Scale

City of Toronto By-law No. XXXX-2024(OLT)



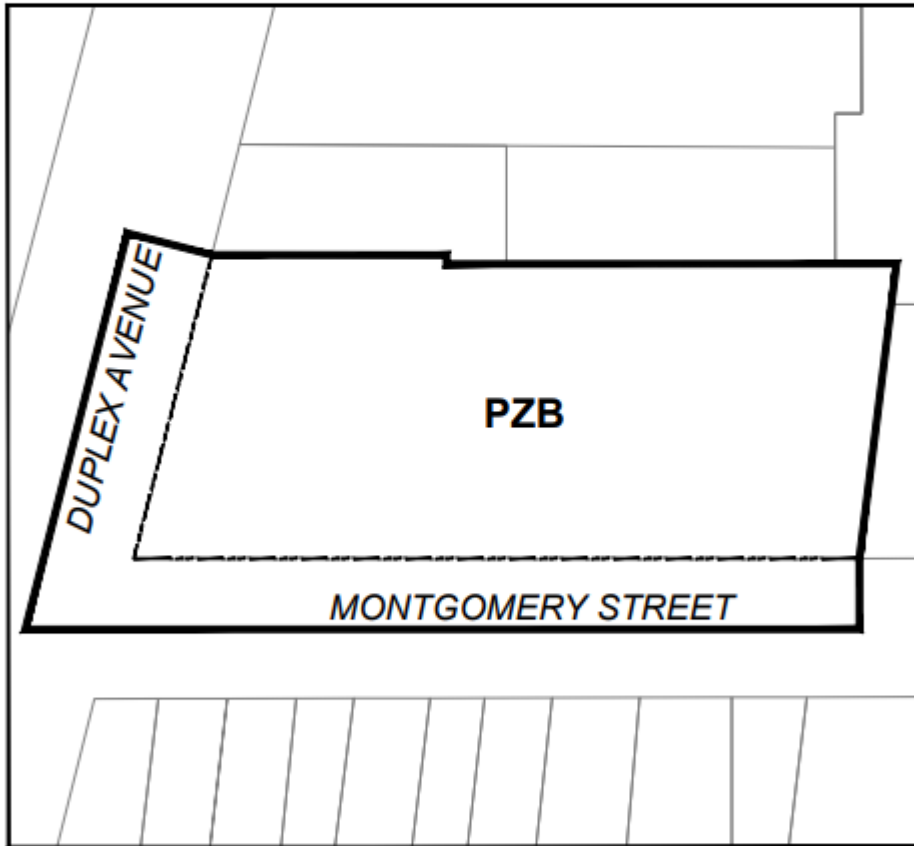
 **TORONTO**
Diagram 2

34-70 Montgomery Avenue & 479-487 Duplex Avenue

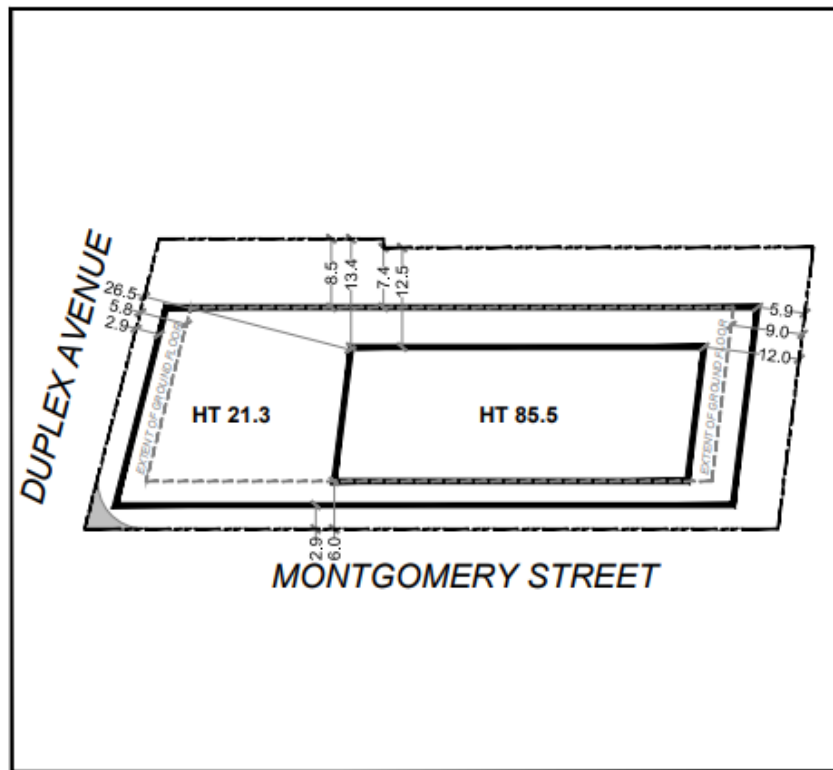
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City of Toronto By-law No. XXXX-2024(OLT)



City of Toronto By-law No. XXXX-2024(OLT)



 **34-70 Montgomery Avenue & 479-487 Duplex Avenue**

Diagram 4

File #22 170531 MNY 08 02

 Corner Rounding


Not to Scale