

You Are About to Enter the Twilight Zoning

One of the most difficult things to understand in our industry is the New York City zoning resolution. The zoning resolution is thousands of pages, and there are only a handful of professionals in the city that know the code frontward and backward, and even they need to refer to the text to answer questions.

The current zoning resolution went into effect in 1961 and actually has done a tremendous service to our industry. New York City has as-of-right zoning districts which means that the development of underutilized properties can take place without having to go through an entitlement process. This as-of-right nature allows land to be sold on a contingent-free basis and is actually a broker's dream given that land transactions contingent upon getting entitlements can take years to close.

Various zoning designations around the city tell us three main things: First, they tell us what a particular parcel of land can be used for. The primary uses of land are residential, commercial and manufacturing. The second thing they tell us is how large a building can be on any particular parcel of land. This is generally expressed in a floor-to-area ratio

(FAR), which tells us for every square foot of land, how many square feet of building can be constructed. FARs in the city range from a low of 0.25, to as high as 33 in the super district in the Hudson Yards. The third thing zoning tells us is the shape that a new building can have. This "contextual zoning" informs what

street wall heights need to be and what setbacks are required in order to conform to the code. Involved in this contextual zoning are, among other things, sky plane exposures. These exposures are guided by the angles created by lines drawn from straight verticals across the tops of each of the setback floors.

Changing the established zonings can transform neighborhoods and stimulate development. The

City Planning Commission has done a wonderful job over the past couple of decades increasing zoning densities, or FARs, around major transportation hubs and downzoning, or decreasing the FARs, around areas of the city without easy access to public transportation. Zoning changes are a very effective way to create incentives for the private sector to construct buildings where the city wants them constructed.



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A significant need that the city has is for affordable and workforce housing. The right package of incentives to motivate the private sector to act has not been formulated yet, and there is hope that if 421a legislation is revived it will help stimulate new construction.

The need for rental housing is apparent and it is difficult to satiate this need under current conditions because land values in New York City typically get so high, so fast, that developers are forced to build condominiums as opposed to rental units.

First, the city and state should lift the 12 FAR maximum for residential use. Given the ease with which larger buildings are constructed today, a maximum residential FAR of 16 or 18 should be implemented.

Second, in certain high-density districts, there should be different FARs established for condos versus rental housing. The rental housing should have a significantly higher FAR associated with it than condos such that the values are essentially equal on a price-per-buildable-square-foot basis (not including any affordable component the rental buildings would have). These rental buildings which took advantage of higher FARs would need deed restrictions such that conversion to condo would not be possible for at least a 99-year period.

Third, in the Hudson Yards District, west of Ninth Avenue, most of the zoning designations call for a large commercial component with perhaps 25 percent of the square footage permitted to be residential. Given the extremely large floor plates of many of the office properties either being constructed, or planned, in the area, smaller-lot-sized properties cannot compete with these larger sites essentially leaving hotel as the only viable use for these site's commercial components. Given the number of hotel rooms planned in Hudson Yards, developers are not excited to build more. Another change that would help things, particularly in this district, would be to allow developers to "buy" residential conversion rights for these commercial rights if floor plates are less than 15,000 square feet. This money could be used to fund the third phase of Hudson Boulevard or other improvements.

There are many other changes that would create more incentive for the private sector to build, achieving the objectives the public sector has. All that is required are some common sense proposals and adoption by the city.

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