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Gale A. Brewer, Borough President

June 14, 2021

Recommendation on ULURP Application No. N210270ZRY
Elevate Transit: Zoning for Accessibility
By the New York City Department of City Planning

PROPOSED ACTIONS

The Metropolitan Transportation Authority and the New York City Department of City Planning (DCP) (the “Applicants”) are seeking a zoning text amendment to modify and add text to the Zoning Resolution pertaining to floor area bonuses for improvements to transit stations, as well as easement requirements, both on qualifying sites across the city. The goal of this text amendment is to increase transit station accessibility, in conjunction with MTA-funded capital improvements and other strategies to improve accessibility for the city’s subway system.

System-wide Easement Requirement

The first component of the proposed text amendment is a system-wide easement requirement. This provision would apply to developments on lots that are over 5,000 square feet in size and located within 50 feet of a mass transit station in most zoning districts. The relevant transit agency would be able to obtain a transit easement volume for future station access if it determines there is a need for one. The developer of that site would receive zoning relief to compensate for the easement on their property.

The easement requirement would apply in all residential districts at or above R5D (and R5 districts with a commercial overlay), all commercial districts with a residential equivalent at or above R5 (and C7 and C8 districts), and all manufacturing districts. Developers of these zoning lots would be required to file an application with the related transit agency, as well as the City Planning Commission (CPC), and be approved either with or without a transit easement prior to receiving a building permit from the Department of Buildings (DOB).

Permitted retail uses would be allowed within an easement until that volume is required for station access or improvement. For sites where an easement is implemented, the floor area of that easement volume would be excluded from the building’s floor area calculation. Certain lot coverage, height, and street wall provisions could be waived to allow for the floor area to be

utilized on the qualifying site. Relief from parking and streetscape requirements could also be granted.

Transit Improvement Bonus

The second component of the application greatly expands the applicability of a transit improvement bonus program which currently exists in certain high-density commercial districts and special purpose zoning districts. Through CPC authorization, developments within R9 and R10 districts and their equivalent that provide transit improvements can be granted a zoning floor area bonus of up to 20% of the maximum floor area ratio (FAR). Qualifying sites must also be within 500 feet of a station envelope, or 1,500 feet if located within a Central Business District.

The relevant transit agency would determine how much floor area would be granted for the proposed station improvements. That bonus would be commensurate with the scope of work proposed by the developer. The developer may also pair the proposed bonus with a bonus granted under the Voluntary Inclusionary Housing program, but no other bonus would be permitted, except as described in several special purpose zoning districts.

Additional Modifications

The CPC may also permit, through an authorization, additional modifications to bulk, use, streetscape, and parking provisions if deemed necessary to facilitate a transit easement or transit improvement bonus. Maximum height may also be increased up to 25% of the height allowed under the underlying zoning district regulations.

The proposed action would also create a special permit for cases where height would exceed a 25% increase. This special permit could also be used for other modifications outlined in the previous paragraph.

BACKGROUND

Special Midtown District (1982)

As part of the Special Midtown District, originally enacted in 1982, a floor area bonus of up to 20% is allowed for non-residential and mixed use buildings that provide transit improvements in accordance with ZR § 74-634. The full list of subway stations that qualify for this provision within the Special Midtown District is provided in ZR § 81-292.

Within the Special Midtown District, the East Midtown Subdistrict also includes provisions for transit improvement bonuses. Qualifying sites, defined as zoning lots with frontage along a wide street which comply with energy design and public space requirements, can receive an FAR bonus for certain transit improvements identified as part of the Priority Improvement List in ZR

§ 81-682. The FAR bonus ranges from 2.7 and 5.4 within the Grand Central Transit Improvement Zone Subarea, and between 2.3 and 4.6 within the Other Transit Improvement Subarea.

For this provision within the East Midtown Subdistrict, the Chair of the City Planning Commission can certify an application 60 days after referral to the local community board, councilmember, and borough president. There is also a special permit option, allowing for up to a 3.0 FAR bonus on qualifying sites where subway station improvements are made in accordance with ZR § 81-292 and ZR § 74-634.

Special Lower Manhattan District (1998)

The Special Lower Manhattan District, originally enacted in 1998, includes a floor area bonus of up to 20% for sites that provide transit improvements in accordance with ZR § 74-634. The full list of subway stations that qualify for this provision within the Special Lower Manhattan District is provided in ZR § 91-43.

Within the Special Lower Manhattan District, additional provisions allow for transit improvement bonuses outside of what is laid out in ZR § 74-634. Qualifying sites, defined as zoning lots in commercial districts adjacent to a subway station on the provided list with an FAR of 10.0 or above, can receive an FAR bonus for any transit improvement defined as a “subway station improvement.” The FAR bonus, except within the Core or Subdistrict areas, can be up to 2.0 or 12.0 total in C6-4 districts, and 3.0 or 18.0 total in C5-3, C5-5, and C6-9 districts. Within the Historic and Commercial Core, the FAR bonus can be up to 3.0 or 18.0 in C5-5 districts.

For these additional provisions, the bonus is granted through a special permit by the City Planning Commission.

Special Union Square District (1985)

The Special Union Square District, which was originally enacted in 1985, includes a floor area bonus of up to 20% for sites that provide transit improvements in accordance with ZR § 74-634. This provision applies only to the 14th Street/Union Square subway station. There are no outlying provisions related to transit improvement bonuses within the Special Union Square District aside from what is laid out in ZR § 74-634.

Commercial Districts of 10.0 FAR and Above in Manhattan (1984)

In addition to the previous special purpose zoning districts, a 1984 amendment to the Zoning Resolution, ZR § 74-634, includes several additional subway stations to the transit bonus program. This section also outlines the details, qualifications, and findings associated with the transit improvement bonus.

These stations include the Broadway-60th Street Line stations at 8th and 23rd Streets; the Lexington Avenue Line stations at 23rd, 28th, and 33rd Streets; the 8th Avenue Line station at 34th Street-Penn Station; and the joint Lexington Avenue and Broadway-60th Street Lines station at 59th Street and Lexington Avenue.

For properties to qualify for the 20% floor area bonus at these sites, they must be physically adjoined to a subway station mezzanine, platform, concourse or connecting passageway upon completion of the improvement. In the case of the Special Union Square District, the site must be adjacent to the station or existing passageways.

According to ZR § 74-634, any transit improvement bonus granted under this provision is subject to findings made by the City Planning Commission. To determine the amount of bonus floor area granted to a site, improvements in accessibility and environment must be found through provision of new connections and improvements to circulation spaces, new escalators and elevators, increased lighting and air quality, and noise control.

Sites That Have Used a Transit Improvement Bonus in Manhattan

Several sites have used existing transit improvement bonuses across multiple commercial districts in Manhattan. The following table details those projects, which stations were improved, and the floor area granted.

Transit Bonus Project	Station (Train Lines)	District	Year	Bonus FAR	Bonus Floor Area (sf)
599 Lexington	Lexington/53 rd Street (6/E/M)	Special Midtown	1984	2.7	146,293
Hines Building	Lexington/53 rd Street (6/E/M)	Special Midtown	1984	2.7	71,544
Zeckendorf Towers	Union Square (NQR/456/L)	Special Union Square	1985	2.0	153,006
Worldwide Plaza	50 th Street (C/E)	Special Clinton / Special Midtown	1986	1.3	200,000
New Coliseum Project	Columbus Circle (AC/BD/1)	Special Midtown	1986	3.0	448,260
Hearst Building	Columbus Circle (AC/BD/1)	Special Midtown	2002	3.0	120,000
15 Penn Plaza	Herald Square and Penn Station (123/BDFM/NQR)	Special Midtown	2010	3.0	480,000
One Vanderbilt Avenue	Grand Central (456/7/S)	Special Midtown	2015	12.37	535,644
45 Broad Street	Broad Street and Wall Street (45/JZ)	Special Lower Manhattan	2018	3.0	71,391

COMMUNITY BOARD RECOMMENDATIONS

Each Manhattan community board was briefed by DCP during April and May 2021. Boards were given a 60-day referral period to opine and present a resolution recommending approval or disapproval of the application.

Of the 12 Manhattan community boards, nine have voted on and submitted resolutions regarding the proposed text amendment by the date of this recommendation. Of the eight that passed resolutions, five voted in favor of the application, two voted against it, and one only submitted comments. All boards except for one listed conditions in their resolutions. The most common conditions noted that DCP should:

- Consult and/or notify relevant community boards and borough presidents on every discretionary action taken by CPC related to this text amendment (included by four community boards);
- Include Mandatory Inclusionary Housing (MIH) requirements in bonus floor area granted for transit improvements where MIH is applied (included by four community boards);
- Clearly outline what qualifies as an access and circulation improvement and ensure that other improvements such as beautification, noise abatement, rider orientation, and other non-access improvements do not result in floor area bonuses (included by three community boards);
- Clearly establish criteria explaining the relationship between the level of investment in a transit improvement and the resulting bonus (included by four community boards);
- Apply density caps to merged zoning lots to regulate size of bonuses granted on those sites (included by three community boards);
- Subject the proposed floor area bonus to a CPC special permit process (included by two community boards); and
- Make transit improvements and other station enhancements mandatory for significant developments.

Three boards—Community Boards 2, 8, and 11—have not issued recommendations on the proposed text amendment but have held hearings and deliberated on the matter. Additional concerns raised by those boards include:

- How private maintenance and stewardship of transit improvements will be enforced by the relevant transit agency and the City;
- To what degree the bonus may supersede height and bulk restrictions in a contextual district or Special Zoning District;
- How much additional floor area will be stacked on a single site between the transit improvement bonus and Voluntary Inclusionary Housing; and
- How this proposal may affect other transit improvement projects in the city, and how it may not equitably serve all neighborhoods.

BOROUGH BOARD RECOMMENDATION

The Manhattan Borough Board received a presentation from DCP about this proposed text amendment at its May 20, 2021 meeting. Members raised questions and concerns which were fielded by representatives of the agency. Concerns included encroachments into rear yards, stacking of different bonuses on the same site, definitions of “major” and “significant” improvements, enforcement of station improvements and maintenance, applicability of the easement requirement, distinction between height and bulk bonuses in the proposal, additional bonuses in highly dense areas of the borough, community board input, other strategies for accessibility outside of zoning, applicability of the bonus, and the interaction between the bonus and lot mergers, bonuses granted for non-accessibility improvements.

Informed by these questions and concerns, as well as by issues raised by individual Manhattan community boards during their own public hearings, the Borough Board will vote on a resolution on June 17, 2021.

BOROUGH PRESIDENT’S COMMENTS

The American with Disabilities Act became law in 1990. In the 31 years since that legislation was passed, the MTA has only been able to bring around one quarter of its 472 stations into compliance with that law. The need to make all stations more accessible to New Yorkers is complicated by the fact that the MTA is facing tremendous capital needs. The MTA’s current 5-year, \$51.5 billion capital program—its largest ever—has proposed investing \$5.2 billion toward making 66 additional stations accessible. While this investment is laudable, it still leaves the majority of stations inaccessible. Furthermore, significant portions of the capital plan remain unfunded with many already-funded projects delayed by the COVID-19 pandemic. As of this writing, the American Jobs Plan, which is slated to increase spending in transportation infrastructure, has not passed. The MTA has sought and continues to seek a variety of sources to address its wide-ranging needs. This proposed text amendment is one of the tools the agency proposes to use. However, if federal funding could be assigned to the MTA, the need to rely on this zoning tool could be diminished.

This application comes at a time when Manhattan is seeing denser development. In light of such development, we need to protect the character of our neighborhoods but we also must provide for accessible transit improvements. The Applicants should modify the proposed text amendment to ensure that the bonused floor area and transit easements are truly being used for the intended purposes of increasing accessibility in stations. The text, as currently proposed, would allow a developer to receive a floor area bonus “for improvements involving environmental design, that measures to augment station beautification, walkability and passenger safety, or environmental noise or air quality.” This language is too broad and could result in an application that would deviate from the original goal of this proposed text amendment.

I am also concerned about the potential that both the floor area bonus and transit easement provision have to introduce development that is out of context and scale, especially in residential neighborhoods. The proposed easement text includes relief for use, bulk, street wall, height and setback, parking and curb cuts, and streetscape special regulations. Furthermore, in certain special zoning districts, developers can combine the proposed transit bonus with other, already existing floor area bonuses:

- Special 125th Street District - Visual/Performing Arts Bonus
- Special Hudson Yards District - District Improvement Fund Bonus
- Special Garment Center District - District Improvement Fund Bonus

The easement provision would allow temporary uses within transit easement volumes as permitted obstructions in open spaces, which also poses concerns about compatibility with the surrounding neighborhood. I believe that the text could be modified to ensure that floor area bonuses and easement provisions do not lead to developments that are incompatible with their surrounding community.

The proposal also includes provisions for additional modifications to various zoning restrictions related to both the transit easement and improvement bonus. These additional reliefs would be granted by CPC either by an authorization or a special permit, depending on the modifications requested, and would, if granted, exceed or exist outside of the regulations of the main proposal as written. I believe that any additional modifications must be subject to public review, and thus should only be granted by special permit.

Finally, I want to address the issue of equity regarding transit accessibility in Manhattan and the city at large. The floor area bonus would have great applicability in high-density areas and even broader applicability in Central Business Districts. Areas like Midtown and Lower Manhattan can expect to see implementation of this provision, while upper Manhattan and other lower-density neighborhoods will be left out. According to data from the American Community Survey, 8% of people living in Manhattan Community Boards 9 through 12 have an ambulatory difficulty, compared to 5.2% of people living in Manhattan Community Boards 1 through 8, and 6.2% for Manhattan overall. This means this proposal would disproportionately benefit accessibility in neighborhoods with smaller disabled populations, while many disabled people, especially communities of color uptown, will be left out. I urge the City and the MTA to prioritize equity in their accessibility strategies moving forward.

BOROUGH PRESIDENT'S RECOMMENDATION

I therefore recommend **approval of the application with conditions**. I request that the Applicants modify the proposed zoning text to:

- Allow the transit improvement bonus to be combined *only* with the Voluntary Inclusionary Housing bonus and no floor area bonuses specific to special purpose zoning districts;
- Demonstrate a commitment and plan to ensure that accessibility improvements are equitably distributed across Manhattan;
- Allow obstructions only as part of transit improvements;
- Ensure that floor area bonuses are *only* granted for developments that deliver station improvements that will increase accessibility;
- Limit the number of reliefs given for a transit easement; and
- Require a special permit for all additional modifications as laid out in ZR § 66-52.

A handwritten signature in black ink that reads "Gale A. Brewer". The signature is written in a cursive, flowing style with a large initial 'G'.

Gale A. Brewer
Manhattan Borough President