

## It's Alive! NYC's East Midtown Rezoning Plan Returns

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In 2013, then-New York City Mayor Michael Bloomberg's ambitious and in some ways groundbreaking East Midtown rezoning proposal went down to defeat at the City Council. A modified form of the proposal, now dubbed the Greater East Midtown Rezoning, to distinguish it from the original, has recently begun its journey through the city's land use and environmental public review procedure, but this time with the imprimatur of at least some of those who opposed the original rezoning proposal, most notably, the City Council member whose district encompasses East Midtown. Will this "Son of East Midtown" proposal pass muster and succeed where its progenitor failed? To answer that question, we need to compare the two proposals to understand how they are alike and, more importantly, how they are different.



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East Midtown is the area of midtown Manhattan to the east of Grand Central Terminal from approximately 39th Street to 57th Street between Fifth Avenue and Third Avenue, a 73-block area in which, according to the city's department of city planning, the majority of buildings are more than 50 years old, with small floor plates and windows, low ceilings and lacking the high-tech and energy amenities of new buildings. To encourage the development of new, "world class" office towers like those going up in other cities such as London, Tokyo, Singapore and Shanghai, the original East Midtown Rezoning proposed a number of changes to the zoning text and maps, among them being the following.

The original rezoning proposed to allow buildings in East Midtown to have a floor area ratio (FAR) of up to 30, almost 10 FAR more than the previous maximum that had been in place since the 1980s. (The FAR is a number by which the lot area is multiplied to arrive at the maximum floor area that may be developed on the lot.) Such maximum FAR could be reached in one of two ways. Unused floor area from a designated landmark building could be purchased and transferred to a development site anywhere in the East Midtown district. Previously, landmark floor area could only be transferred to adjacent sites or within a much smaller area immediately adjacent to Grand Central Terminal. Primarily, however, the maximum FAR could be reached, for the first time in the history of New York City zoning, by directly purchasing additional floor area from the city. It is hard to understate how significant a change this was and how much debate it engendered. Previously, bonus floor area could be earned only in exchange for the provision of a public good, such as a plaza, subway improvement or affordable housing. Never before could floor area simply be purchased, cash on the barrelhead. The purchase price, set at \$250 per square foot, would be paid into a district improvement fund (DIF), which would then be used by the city to pay for improvements to the area's public infrastructure. Previously, bonus floor area could also be earned if the developer were to construct an improvement to the area's transit and pedestrian network. With the creation of the DIF, however, that option was eliminated; all such improvements would be

constructed by the city, not by private developers.

Another innovation of the original East Midtown Rezoning was to allow existing buildings with more floor area than permitted by current zoning to be completely demolished and reconstructed. Previously, if more than 75 percent of the building were demolished, it could only be rebuilt to the current allowable FAR and the existing floor area in excess of that would be lost. A 50 percent contribution to the DIF (i.e., \$125 per square foot) would be required to rebuild the excess floor area.

Although the East Midtown Rezoning was generally supported by the city's real estate industry and construction unions as well as the venerable Regional Plan Association, it was opposed by a coalition of community boards, planning and preservation groups, the local City Council member and City Council speaker, who contended, variously, that the rezoning was being rushed through at the eleventh hour of the Bloomberg mayoralty without adequate public participation; that selling floor area would compete with and drive down the market for landmark floor area; that the development of a dozen or more very high density buildings would overwhelm the capacity of local streets, sidewalks and transit unless improvements to the area's public infrastructure were made before or at least concurrently with new development. Ultimately, notwithstanding approval by the city planning commission, facing defeat at the City Council, Mayor Bloomberg withdrew the proposal in November 2013, just weeks after the election in which Bill de Blasio was elected to replace him.

In January 2014, shortly after being sworn in, Mayor de Blasio established a task force, to be co-chaired by the local City Council member and the Manhattan borough president, to relook at the East Midtown Rezoning and come up with recommendations for a modified proposal. In October 2015, the task force released its report and in August 2016, the department of city planning released a draft scope of work outlining the Greater East Midtown Rezoning, which largely follows the recommendations of the task force.

The Greater East Midtown Rezoning carries forward a number of the original rezoning's concepts, but also differs from it in several key respects. The two biggest differences are that the maximum FAR has been reduced from 30 to 27 and the concept of purchasing additional floor area has been abandoned. Instead, to generate funds for making improvements to the area's public infrastructure, landmark floor area transfers would no longer be "free" but would require a payment into a public realm improvement fund. The task force recommended a contribution rate of between 20 percent and 40 percent of the purchase price, but the draft scope of work says only that the contribution rate will be "informed" by an appraisal of area development rights values.

The Greater East Midtown Rezoning also differs from the original rezoning in that it returns to the existing Midtown regime by which private developers construct improvements to the area's transit system in exchange for bonus floor area. Within a transit improvement zone in the area immediately around Grand Central Terminal, new developments would be required to obtain the first 10 to 20 percent of the maximum permitted FAR by constructing a transit improvement chosen from a list of improvements to be developed by the transit authority. Only then could a development utilize landmark floor area. The draft scope of work does not specify how or how much bonus floor area will be earned for each such transit improvement, but the task force recommended that it relate to certain criteria such as the proximity of the development site to a transit facility, the size of the development site and/or whether it fronts on a wide street or avenue.

The Greater East Midtown Rezoning keeps the earlier rezoning's provisions that hotels be permitted only by special permit and that new developments using bonus floor area be no more than 20 percent

residential — both provisions intended to ensure the development of commercial office buildings. It also retains the proposal to allow rebuilding overbuilt floor area in existing buildings that are demolished for redevelopment, but increases the contribution from 50 percent to the same rate as for landmark floor area transfers.

To the extent it is outlined in the draft scope, the Greater East Midtown Rezoning addresses several of the objections/concerns with the original rezoning. The abandonment of the proposal to sell floor area responds to the concern of some that it would compete with and depress the value of landmark floor area, and/or that as a matter of principle, the government should not be an active player in the marketplace. On the other hand, replacing that proposal with a 20 to 40% “tax” on the transfer of landmark floor area raises not dissimilar concerns. The local City Council member and the Manhattan borough president both expressed concern that the original rezoning was focused too much on promoting new development and not enough on the public environment and quality of life. Not surprisingly, then, the task force they co-chaired placed equal if not greater emphasis on improving the public environment as it did on the development of new “world class” skyscrapers. Whether Greater East Midtown will allay their concerns and earn their and their fellow elected officials’ ultimate support will depend on the details, which have yet to be determined.

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