

A Complex Plan's Aim: Simpler Zoning Rules

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by David W. Dunlap

In what may be the single boldest zoning proposal since 1961, New York City's planning chief, Joseph B. Rose, says he wants to simplify the rules governing the size of new buildings.

But even a simplified zoning proposal is not simple. Groups as sophisticated as the Real Estate Board of New York and the Municipal Art Society have had to hire zoning consultants to help them figure out what the amendment will do.

It is meant to curtail "tower in a park" zoning that yields buildings vastly out of scale with their neighbors, too tall and set apart on barren plazas from the street wall formed by older structures. The new zoning would impose height limits from 35 to 720 feet in most areas outside mid-Manhattan and lower Manhattan. And it would encourage buildings closer to the street wall.

Generally, current zoning rules impose no height limits. Buildings can rise as high as necessary to accommodate the floor area permitted on the site. For example, in R7 districts of small apartment houses, current rules encourage buildings of 14 to 16 stories, set back from the street line. The new rules would require a building with more of a street wall, rising no more than 80 feet, or seven to eight stories.

"What this does," Mr. Rose said, "is give the comfort and security that buildings like this Trump thing aren't going to pop up."

The Trump World Tower at First Avenue and 47th Street to which Mr. Rose was referring will be 856 feet tall, where the new rules would impose a 495-foot cap. It covers only 13 percent of the merged zoning lot from which it derives its development rights, where the new rules would require a minimum coverage of 33 percent. And it uses the development rights from one kind of zoning district (C1-9) to build in a different district (C5-2) — a transfer that the new rules would prohibit.

Another project allowed under current zoning that would have been affected by the amendment is the Regal Cinemas multiplex and Barnes & Noble bookstore that Forest City Ratner is building at 100 Court Street in Brooklyn, which rises to 195 feet. Under the proposal, it would be capped at 140 feet. And the 50-story Madison Belvedere at 10 East 29th Street would not have benefited from a 20-percent development bonus for providing a plaza.

Next month, at the beginning of his seventh year as chairman of the City Planning Commission and director of the City Planning Department, Mr. Rose will formally send out the amendment for review by community planning boards. It is expected to reach the City Council by summer.

Both the real estate industry and civic watchdogs have tentatively given Mr. Rose and his colleagues an A (or at least a B+) for effort. But just as instructively, neither side has wholeheartedly embraced the proposal, partly to give themselves maneuvering room and partly because they are really not sure what land mines are buried, even inadvertently, among the 536 pages of revisions.

"When they talk about the devil being in the details, he's really hiding in this one," said Councilman Walter L. McCaffrey, Democrat of Queens, who heads the zoning subcommittee. "On the other hand, Joe is being very bold, and I say that in a very positive sense, in trying to address this. He has to be lauded for the scope of this."

Mr. Rose insists there is no hidden agenda masked by arcana. "There are assumptions that you need to pore over it to see where the Trojan horse is," he said. "There are no Trojan horses in this document."

But even he admits, "It's not $1 + 1 = 2$."

A broad amendment of the 1961 zoning resolution is long overdue, said Norman Marcus, former counsel to the planning department and a member of the zoning committee of the American Planning Association. "We're dealing with a document that's nearly 50 years old

and is carrying the intervening years on its back the way a whale carries barnacles," he said. The new rules, he said, will produce a "more predictable, no-surprises kind of development."

The Municipal Art Society is still studying the fine print, but its president, Kent L. Barwick, applauded the spirit of the proposal. "The need to rezone New York is paramount," he said. "Therefore, we're appreciative of the Giuliani administration's willingness to take it on."

One of the savviest zoning experts in the city, Michael Kwartler, confessed to doubts about the "19th-century format" of regulations that try to anticipate every possible condition in advance. But he said generally about the proposal: "It's a step in the right direction. It puts to rest the 'tower in a park' and that's a real plus. It takes the view that the city is a mature place and we ought to pay attention to that identity."

The Real Estate Board, meanwhile, is scrambling to understand the practical implications of the zoning amendment. "We're still in the process of digesting," Michael Slattery, the senior vice president for research, said last week. "In some ways, this is kind of like a blueprint. You have to see how it works in reality."

In an advertisement earlier this month, Steven Spinola, the president of the board, was quoted as saying, "We see this as more positive than negative."

Among the positive points, at least for the real estate industry:

The exemption from many of the new rules, including height limits, of most of mid-Manhattan between Third and Eighth Avenues, 40th and 58th Streets, and much of lower Manhattan below Chambers Street.

The elimination of a formula known as "packing the bulk" in high-density residential districts, which requires that 55 percent of the floor area on a zoning lot be located below 150 feet. Intended to curtail the transfer of development rights, this rule is despised by developers. (Ever see a condominium ad boasting third-floor views?)

A rezoning of downtown Brooklyn that would preserve the right to build towers up to 495 feet in areas around Metrotech, Flatbush Avenue and Livingston Street where there would otherwise be a 140-foot limit. It would increase by up to 74 percent the allowable residential density in a nine-block area between Court and Smith Streets. A rezoning along Lexington Avenue, from 54th to 57th Street, would permit slightly taller buildings than are now allowed.

A generous limit of 720 feet (fewer than 30 buildings in New York reach this height) for zoning district C5-3, which is mapped in the Court Square area of Long Island City, Queens, and might be used elsewhere.

Among the negative points for developers is the abolition of the 20 percent bonus granted as a matter of right for plazas in high-density residential districts.

"Residential plazas, even when well designed, have by and large not been a success," Mr. Rose said. "We're uninterested in providing bonuses for non-amenities."

One of the last projects in the pipeline with such a plaza is the Madison Belvedere near Madison Square. The developer, Adam R. Rose, president of Rose Associates, is the planning chief's cousin. But he said that as a matter of family policy, he and Joseph Rose never discuss public policy.

The plaza at the Madison Belvedere has been designed by Thomas Balsley Associates, Adam Rose said, and will be a boon to the neighborhood, including residents of the former Prince George Hotel, now a supportive housing project by Common Ground Community, across the street.

While acknowledging the problems of some plazas, Adam Rose said: "The new ones really are maintainable and manageable. New York has never had enough green space. It's hard not to like them."

Buildings like the Madison Belvedere, Trump World Tower and 100 Court Street that are under construction will not be affected by the new zoning. Neither will those that have a building permit and completed foundations when the measure is voted on by the City Council. This would presumably include the Alexander's site at Lexington Avenue and 59th Street,

which would otherwise be subject to a 495-foot height limit, quite a bit shorter than the tower envisioned by the developer Steven Roth.

The Con Ed property south of the United Nations would have to be rezoned in any event. Mr. Rose said that a 495-foot height limit is contemplated on that site.

But the industry wonders what will happen to projects caught in zoning limbo. "Grandfathering could be a serious issue," said Samuel H. Lindenbaum of Rosenman & Colin, the dean of the land-use bar and author of the zoning strategy that allowed Trump World Tower. "You have some buildings that have been designed, where people have spent enormous sums on architectural plans and the financing is in place, but for some reason they can't get their foundations in time."

Asked about the possibility of an intermediate "grandfathering" period in which buildings could conform to past zoning rules if it suited them better, Joseph Rose replied simply, "What grandfathering?"

That is not say the planning chairman is ignoring objections raised by the industry.

For instance, in the rules as first drafted, the 120-foot height limit on community facilities like schools, medical centers and cultural institutions in medium-density districts such as R7 would have made it practically impossible to build double-height floors for an auditorium, cafeteria or gymnasium without sacrificing some of the overall floor area allowed on the site.

Mr. Rose said last week that the height limit would be adjusted to 140 feet.

The ease with which the adjustment was made, he said, underscored the appeal of the system. "If you want to limit height, you don't need a complex formula," Mr. Rose said. "You only need a simple number."

Although height limits have received much public attention, the control that most worries the real estate industry may be the requirement that a tower occupy at least 33 percent of the total merged zoning lot from which it draws development rights.

This is intended to prevent the harvesting of air rights up and down a block for the purpose of piling up bulk on a single site, as was done in the case of Trump World Tower.

A merged zoning lot includes the parcel owned by a developer on which the new building will rise and those adjacent parcels owned by others from whom the developer has purchased unused development rights, which represent the difference between the size of the existing building and the maximum size that zoning would permit on the site. A 10,000-square-foot church on a site where a 100,000-square-foot tower could be constructed would have 90,000 square feet of unused development rights to sell.

But the Real Estate Board's zoning consultant, H. Thomas O'Hara, calculated that on a 20,000-square-foot merged zoning lot, half of it occupied by an existing building, the setback requirements would yield a tower with floors of 6,450 square feet — or 32 percent of the lot — which is below the allowable minimum of 33 percent.

"A very large church may not be able to transfer its development rights" under the 33 percent rule, said Paul D. Selver of the law firm Battle Fowler.

One example is the Roman Catholic Church of St. Paul the Apostle at Columbus Avenue and 60th Street, which sold its air rights to the Brodsky Organization, developers of a 41-story tower next door at 2 Columbus Avenue. "That tower was nowhere near 33 percent of the zoning lot," said Peter Claman of Schuman Lichtenstein Claman Efron, the architects of 2 Columbus Avenue.

Mr. Claman said the 33-percent rule "definitely would affect the value of the property that the archdiocese has."

And Mr. Slattery asked, "Do you need 33 percent if you have a height limit?"

Mr. Rose seems unconvinced by such entreaties. "It comes as no surprise to us that the industry would like to get rid of things that complicate their life and have as few substituting restraints as possible," he said. "We're aware of their desire to build ever-taller buildings."

"Does 33 percent have an implication for the transfer of air rights? Yes. Does it prevent them? No."

Another aspect of multiple-lot development addressed by the new rules are sites that straddle more than one zoning district. The current rules are "indecipherable," said Sandy Hornick, deputy executive director of the planning department.

As a result, they can be manipulated in such a way that a developer gets the benefit of the more liberal provisions from one district to build in another. The new rules would clarify which districts would be regarded as interchangeable. "A Talmudic massaging of the zoning resolution shouldn't yield different answers for the same piece of property," Mr. Rose said.

Bruce S. Fowle, the co-chairman of the zoning task force of the American Institute of Architects, said, "The concept of going to minimum lot coverage and height limits is a good one as far as controlling zoning lot mergers is concerned.

"But what really scares me is that we're saying that every building on the Upper East Side is going to be the same height and go straight up with a 33 percent lot coverage, have a flat top on it and be ugly as sin."

Not at all, the planners respond. There is room within the prescribed envelope for variety and there is a special permit process to encourage exceptional architecture.

Height limits, lot coverage requirements and setback rules could all be modified by the planning commission and the City Council for a project if it "exhibits superior design quality," in the language of the zoning text, and the modification "significantly enhances" the relationship between the new building and its surroundings.

The new building would also have to be designed in a way that "maximizes sunlight on public parks and playgrounds" nearby and permits "adequate access of light and air to surrounding streets and properties."

"To the extent that people want to do things that go beyond the box, let architects be the ones to earn it for developers, not lawyers," Mr. Rose said.

How will superior design quality be determined? With the help of a seven-member advisory panel appointed by the planning director and composed of "persons with knowledge and experience in the areas of architecture and urban design."

"It's an area where additional professional input could be beneficial," said David Karnovsky, counsel to the planning department. Mr. Rose said neither the commission nor the Council would be bound by the recommendation of the proposed panel.

Mr. Rose said he is certain this process will be used. "We've already had requests from potential applicants," he said.

Others are less sure that good architecture will result or that developers and lenders, keenly conscious of time equaling money, would voluntarily undertake a discretionary review procedure.

"Great designs do not come out of committee sessions," said Costas Kondylis, the architect of Trump World Tower. "Also, I think it's going to be an unpredictable process and most developers will shy away. It will take six months to a year, without any certainty of outcome."

AS a "ticket to something outside zoning," the notion of an advisory panel concerns the community group Civitas. But overall, said its president, Genie Rice, the proposed amendment is a "wonderful initiative and very, very welcome."

Her words were echoed by Mr. Barwick. "The spirit of it is exactly right," he said. "We'd like to support this package."

In a new manifesto, "Zoned Out," the society outlined its greatest concerns with the regulations as they now exist: the proliferation of overscaled towers and lifeless plazas; unrestricted zoning lot mergers; an allowance that permits educational, medical and cultural institutions to build structures in rear yards and the exemption of mechanical space from zoning calculations, even though it can add enormously to a building's bulk.

Among the questions it has raised about the zoning proposal is whether it might increase the development pressures in Midtown and downtown Manhattan, since they would not have height caps, while peripheral areas would be regulated. "If you push the edges down, you may be pushing the middle up," Mr. Barwick said.

The planning department said that height limits would effectively cap the amount of unregulated mechanical space at about 10 percent. But Mr. Barwick said the Bear Stearns headquarters now rising on the block at Madison Avenue and 46th Street, which has more than twice that much mechanical space, would not have been affected since it is in a district without height limits. In any case, Mr. Rose does not want to try to regulate mechanical space too closely. "You tread in this area at a great risk of standing in the way of technological innovation," he said.

Clearly, there will be much maneuvering in coming weeks, on and off stage. "The hope," Mr. Lindenbaum said, "is to get a proposal that each side will find better than what we have today."