

TRANSACTIONAL REAL ESTATE

Expert Analysis

Transit-Related Zoning Programs

For decades, New York City has succeeded in using zoning laws to require and incentivize owners of private property to provide space for, and make improvements to, the mass transit infrastructure that is vital to the functioning and growth of the city. However, the scope of these programs has been fairly modest relative to the overall size of the city's public transportation system, one of the largest in the world.

Last month, the Department of City Planning and the Metropolitan Transportation Authority (MTA) announced proposed zoning changes that would significantly expand the breadth of these initiatives in an effort to make the city's mass transit system more accessible to individuals with ambulatory disabilities and mobility limitations.

In addition, the city's ongoing construction of Phase 2 of the Second Avenue subway line will increase its need for space to accommodate the facilities required to build and operate that line. The article provides a brief outline of the main transit-



By
**Peter E.
Fisch**



And
**Salvatore
Gogliormella**

related zoning programs currently in place and the new accessibility-related initiatives being proposed.

Required Relocation of Subway Entrances

Where a development or enlargement on a zoning lot with a lot area of at least 5,000 square feet fronts on a sidewalk containing an entrance for one of over 50 specified subway stations, the subway stair entrance must be relocated from the street onto the zoning lot and must satisfy certain design standards and pedestrian circulation requirements.

Transit Improvement Bonuses In High-Density Areas

The Zoning Resolution allows floor area bonuses of up to 20% in exchange for significant transit improvements. These bonuses are only available to sites adjacent to specified stations in certain high-density areas (commercial districts

with maximum floor area ratios at or above 10), including parts of Midtown, Lower Manhattan, Downtown Brooklyn, and Court Square in Long Island City. In the case of Court Square, the bonuses are available as-of-right. In all other cases, the bonuses can only be obtained by

Last month, the MTA announced proposed zoning changes that would make the city's mass transit system more accessible to individuals with ambulatory disabilities and mobility limitations.

special permit after a discretionary review and approval process. During the almost 40 years that this program has been in place, property owners have constructed station elevators and entrances, new pedestrian connections between formerly disconnected stations, and expanded station mezzanines and platforms.

Special Transit Land Use Districts

In 1974, following the commencement of construction of the Second Avenue subway line (after a decades-long planning process and before a decades-long pause in construction), a Special Transit Land Use District

PETER E. FISCH and SALVATORE GOGLIORMELLA are partners at Paul, Weiss, Riffkind, Wharton & Garrison.

was created to support construction of the subway line, ease pedestrian flows, provide light and air to underground transit facilities, and enhance pedestrian amenities, while conserving the value of land and buildings. The district is mapped at locations along Second Avenue between Chatham Square in Chinatown and East 126th Street in Harlem.

Prior to filing an application for an excavation or building permit from the Department of Buildings for a development or enlargement, the owner of a zoning lot within the district must request a certification from the MTA and the City Planning Commission as to whether or not a transit easement volume is required on the zoning lot. If the MTA and the Commission jointly certify within 60 days that such a volume is required, the owner must submit to the MTA and the Commission for their joint approval a site plan indicating the location and type of easement volume that would be most compatible with the proposed development or enlargement.

The MTA may use the easement volume for public access to and from the subway, to provide light and air to subway stations, for related uses, and in the case of stations being constructed as part of Phase 2, for ancillary facilities required to support the functioning of the subway (including emergency egress and ventilation structures). The type of easement to be granted (including the dimensions of the easement volume and the purposes for which it can be used) depends on a number of factors, including which station is located near the zoning lot, the

size of the zoning lot, the amount of frontage, and the nature of the access to be provided.

The easement volume may be located within a building, in open areas (including public plazas), or in areas covered by a building's projected overhangs, but it must be as close as possible to the street containing the transit line and must have at least one vertical face at a front lot line. In addition, any underground walls constructed along the front lot line must contain a knockout panel in a location and of a size indicated by the MTA, but in all events not less than 12 feet wide and running below curb level down to the bottom of the easement.

Owners granting these easements are entitled to the following zoning-related accommodations: (a) if the transit easement volume is located within a building, the space occupied by the volume does not constitute "floor area" for zoning purposes, (b) any space occupied by the volume and protected from the elements by an overhang or roofed area is treated as a "public plaza" in districts that allow zoning bonuses for the same, (c) the volume, any construction allowed therein, or any weather protection provided thereon by an overhang or roofed area, is considered a "permitted obstruction" within required yards, open spaces or public plaza areas, (d) the permitted lot coverage (but not the maximum floor area ratio) may be increased by an amount equal to 10% of the lot area, and (e) in some parts of the district, certain accessory parking requirements are reduced or waived.

The owners are also entitled to locate columns or footings within the transit easement volume to support their buildings, subject to certain limitations (like minimum clear distances of 12 feet between columns and 10 feet between columns and walls bounding the volume) and certain rights of the MTA. The MTA and the Commission may elect to permit above-grade penetration of the easement volume by a building lobby, where the lobby space serves as a pedestrian circulation system and offers direct public access to a subway entrance within the volume. In addition, the owner may make temporary use of the volume for permitted purposes until, but must vacate the volume before, the MTA or its designee requires the same for transit purposes, and the MTA must give the owner at least 6 months' notice so that the owner can vacate tenants.

The MTA constructs and maintains the transit-related improvements within these easement volumes. However, it is not responsible for any columns or footings to support the owners' buildings.

Zoning for Accessibility

Over two-thirds of subway and commuter rail stations within New York City are not accessible to individuals with ambulatory disabilities or mobility limitations. In an effort to make these stations readily accessible to, and usable by, such individuals, the MTA and the Department of City Planning are currently proposing amendments to the Zoning Resolution that require transit easements on a system-wide basis and expand the transit improvement bonuses

available in high-density areas. The proposal circulated last month—Elevate Transit: Zoning for Accessibility—includes two key components, which are described below.

First, owners developing or enlarging buildings on zoning lots with lot areas of at least 5,000 square feet and located within 50 feet of mass transit stations in most zoning districts—specifically, all residential districts at or above R5 (with commercial overlay) or R5D, all commercial districts at or above C7 or with a residential equivalent at or above R5, and all manufacturing districts—would be required to first consult with the MTA and City Planning regarding the need for a transit easement and, if the MTA and City Planning determine that such an easement is needed, grant an easement in a specified volume within which the MTA can construct, operate and maintain transit improvements.

In order to address potential issues presented, and additional burdens imposed, by this requirement, the proposal would offer the following types of accommodations to owners: (a) preserving the total floor area that can be built on the site by (i) excluding easement volumes from zoning floor area and (ii) increasing maximum heights by 10 feet (or, where easement volumes are located above-grade in residential districts at or above R7, 20 feet), (b) providing greater flexibility in locating easement volumes by treating them as “permitted obstructions” for zoning purposes, (c) allowing easement areas to be integrated more easily (i) into buildings by increasing maximum lot coverage in certain districts and (ii) into

streetscapes by excluding easements areas from ground floor uses regulations and planting requirements and by restricting curb cuts within 30 feet of easement areas, (d) creating better flow by allowing additional street wall flexibility within 15 feet of easement areas, (e) mitigating adverse impacts on owners’ ability to meet parking requirements by reducing or (in the case of sites with smaller lot areas) waiving those requirements, (f) expanding the uses permitted on the owners’ sites by allowing (i) local retail uses within 30 feet of easement volumes in residential districts, (ii) second-floor commercial uses to extend into rear yards and (iii) permitted non-residential uses, and local retail uses in residential

Over two-thirds of subway and commuter rail stations within New York City are not accessible to individuals with ambulatory disabilities or mobility limitations.

districts, within easement volumes until they are improved, and (g) in the case of unique site constraints, (i) additional bulk modifications (including a height increase of up to 25% and other use, parking, loading and streetscape relief) by authorization and (ii) further height increases by special permit after a discretionary review and approval process. In addition, if owners of zoning lots located within 50 feet of mass transit stations in any of the zoning districts specified above (x) are developing or enlarging buildings on their zoning lots and the lot areas comprise *less than* 5,000 square feet or (y) are *converting* their buildings, and are therefore not

subject to the requirement described above, but nonetheless voluntarily grant transit easements to the MTA, then those owners would receive all of the foregoing accommodations (in the case of clause (x)) or some of them (in the case of clause (y)).

Second, the proposal by MTA and City Planning would further incentivize the construction by private owners of significant transit improvements (such as station elevators and entrances) by expanding the bonus program described above in “Transit Improvement Bonuses in High-Density Areas.”

Under the proposal, (a) bonuses would be available to sites in R9 or R10 residential districts, equivalent commercial districts, or M1-6 manufacturing districts that are located within 500 feet—or in specified central business districts (Midtown, the Garment Center, Hudson Yards, Lower Manhattan, Long Island City and Downtown Brooklyn) within 1,000 feet—of a station, (b) height increases of up to 25% and other use, bulk, parking, loading and streetscape requirement modifications would be available by authorization and (c) further height increases would be available by special permit after a discretionary review and approval process.