

The City Club advocates for the success of New York City. We believe this is best achieved through participatory planning which balances the equities among residents, businesses, and politics.

The City Club supports the proposed zoning for Transit Accessibility as follows:

- It supports the requirement for properties facing a transit station to grant an easement when they are being redeveloped. This requirement should be expanded to include all properties facing a transit station and not exclude properties that are less dense than R5.
- It supports an appropriate and defined bonus being granted to a development that provides an accessibility improvement to the station for which it provides an easement. The bonus should be available to all developments that provide an easement and not exclude properties that are less dense than R9.

The Transit Access proposal has two parts: easements and bonuses.

- Properties within 50 feet of a transit station when being redeveloped would be required to offer an easement to the MTA. The easement might be used for access -- elevators, stairs, escalators -- but could also be used for other purposes such as ventilation, mechanical systems, electrical transformers, and other uses accessory to the station. To accommodate an easement the floor area in the easement would not count as zoning floor area and the building would be allowed to be a bit taller and to intrude into yards and other open space. Properties in districts less dense than R5 would not be required to offer an easement.
- Properties within 500 feet of a transit station (1,500 feet in high density central business district areas) could apply for a bonus for providing transit improvements. Such improvements would not necessarily be on the development property and would not necessarily provide access. Properties in districts less dense than R9 would not be eligible to apply for a bonus.

**Easements:** The position of the City Club is that easements should be required of all zoning lots facing on a transit station and that granting an easement should be a

condition for obtaining a bonus. This would maintain a nexus between improvements and bouses.

The proposed zoning only requires easements on sites that are within 50 feet of a transit station. On Queens Boulevard, and possibly other locations, the avenue is wide enough that the fronting zoning lots may be more than 50 feet from the transit station. A better rule would be that any zoning lot that is being redeveloped and which fronts on a transit station shall offer an easement.

The requirement for easements seems to have worked well for the stations of the Second Avenue subway. It serves to physically integrate new development with the transit from which it benefits and to shift access and ventilation into those new buildings rather than obstruct sidewalk space.

On the other hand, why are zoning districts less dense than R5 omitted from the easement requirement? Does it have to do with the easement being disproportionately large for the anticipated building?

The provisions that are proposed in order to accommodate the easement volume, seem reasonable:

- These provisions exempt easement space within a building from the definition of zoning floor area so as to not reduce the building's usable floor area.
- They reduce parking requirements where the easement might replace garage space; however, since the development is adjacent to a transit station perhaps a better rule would simply omit the parking requirement.
- They allow modifications of zoning envelope constraints, including additional height, in order to accommodate the easement volume, which is okay as long as the relief is the minimum necessary.

On less dense sites the easement might be in a front or side yard rather than within the building. Such easements might relocate a subway stair off of a sidewalk or relocate subway ventilation grates off of a sidewalk and raise them to avoid flooding.

In all cases there should be urban design guidelines to ensure that:

- Tree cover is increased,
- Permeable surface is increased,
- Visibility of transit access is enhanced,
- Pedestrian circulation space is increased.

The easement should be understood as a recognition of the value to the property of its being adjacent to a transit station.

**Bonuses:** The bonus provisions expand on existing provisions for bonusing transit improvements, including most recently the East Midtown rezoning. However, they greatly expand the development sites that would qualify, add additional relaxations of envelope constraints, and mostly reduce public review from that of a special permit to that of an authorization. The goal seems to be to generate as many dollars as possible for transit improvements rather than to better integrate transit and adjacent development.

On the other hand, why does the proposal exclude from earning a bonus properties in districts less dense than R9?

If this is because less dense districts, except on very large development sites, would not produce enough bonus value to pay for an elevator or an escalator what other accessibility improvements that cost less might be provided? Possibilities include automatic door/gate openers, audio and tactile signage for the visually impaired, accessible toilets, and so on.

A difference between the two parts of the proposal is that the easements facilitate the integration of the transit system into the built environment while the bonus provisions shift the cost of transit improvements from all who benefit to the new buildings. Zoning is a police power intended to regulate the design and use of buildings; it is not a taxing power. Perhaps the bonus provisions and envelope relaxations should be constrained to avoid the adverse consequences of using them to produce revenue for the City.

The Zoning Resolution has long included provisions in support of public transit. For example:

- The Special Transit Land Use District (ZR 95-00), mapped at existing and proposed subway stations, requires developments to offer easements for access to those stations.
- A requirement in some locations to relocate a subway stair from the sidewalk into an adjacent new or enlarged building (ZR 37-40).
- The special permit for subway station improvement bonus (ZR 74-634) allowing a bonus of not more than 20% for developments or enlargements adjacent to listed stations.

These show two trends: from on-site to off-site improvements -- from making an access easement available through providing an entrance on-site to performing or paying for work in an adjacent subway station -- and from ministerial to discretionary approval.

This is a worrisome trend. Zoning functions best when it regulates what happens on a site -- providing an easement for access to a subway station or requiring a subway

entrance be moved from the adjacent sidewalk onto the site – and when the requirements are well enough defined to be ministerial, allowing both developers and the public to anticipate the result.

The separation of the transit improvement from the building that receives the bonus is also worrisome. The improvement is intended to mitigate the increased density allowed by the bonus. The theory presumes proximity between the larger building and the transit improvement such that the benefits and disbenefits are shared locally.

The special permits authorized for the Vanderbilt Corridor and East Midtown moved from the predictability of well defined, largely as-of-right, on-site requirements to the unpredictability of ill defined, largely discretionary provisions. The developer and the City/MTA negotiate the transfer of development rights, identify on-site and off-site improvements to the public realm and the bonus floor area they are to earn, and modify many of the requirements of the Special Midtown District. The floor area generated by a transit improvement can land far from its source, breaking the relationship between increased density and its ameliorating amenity.

**Zoning Theory:** Zoning is intended to be equitable. It is intended to treat like properties alike. Zoning is a police power. It is intended to control the use of land, in the public interest, so as to avoid the use of one property hurting the use of other properties. Zoning is not a taxing power. It is not intended to raise money from developments to fund the municipality.

The current zoning proposal:

- Does not treat like properties alike. It does not require easements from properties less dense than R5. It does not offer floor area and compensating envelope bonuses to properties less dense than R9. It allows properties adjacent to a transit station and properties relatively remote from a transit station to qualify for a transit accessibility improvement bonus.
- Does allow some properties to hurt other properties. It provides increased density and envelope on development sites that are not adjacent to transit stations to shadow other properties.
- Does exact payments from individual developments to pay for transit access improvements that benefit all those within range of the transit station. This is inequitable in that not all of the properties that benefit from the improvement are paying for it.

Who pays is important. It is fairest if each property pays its fair share. Zoning exactions mean that the new building is paying for stuff that benefits the entire neighborhood instead of all the buildings sharing the cost. This makes new buildings more expensive or requires them to have greater subsidies.

Zoning bonuses should be limited to improvements that are provided on or connected to the development site, taking advantage of the occasion of development to physically incorporate improvements. This is much more efficient than the municipality or the transit authority condemning easements.

Zoning-for-dollars takes money from a development to pay for stuff everyone should be paying for. This leads the City Club to favor the requirement for easements – for access as well as accessory uses and for all sites adjacent to transit stations – and to be skeptical of the bonus and compensatory envelope provisions.

**In conclusion:** The City Club supports the proposed zoning for Transit Accessibility as follows:

- It supports the requirement for properties facing a transit station to grant an easement when they are being redeveloped. This requirement should be expanded to include all properties facing a transit station and not exclude properties that are less dense than R5.
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