

Proposed East Midtown Rezoning: Observations and Recommendations

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Background

The Special Midtown District Height and Setback regulations, adopted in 1982, embody the standards, objectivity, accountability and flexibility to respond successfully to the complex requirements of development in Midtown including:

- the “light” going out in Midtown in the late 1970s as a result of a special permit process which had no limiting factor or standards allowing buildings to rise sheer from their street lines, (e.g., AT&T (Sony) @ 647 ft., IBM buildings @ 606 ft.) which set the daylighting standards back to pre-1916 zoning daylighting conditions (e.g., Equitable Life Building now the home of the Department of City Planning);
- widely varied site assemblages including Zoning Lot Mergers “ZLMs”), Transfer of Development Rights from Landmarks (“TDR”) and irregular and small sites;
- the need for clear and flexible as-of-right regulations, and a supportable daylight standard, in lieu of the regulations which tended to prescribe a rigid zoning envelope which drove the applicants to seek special permits to modify the then existing Height and Setback regulations;
- energy conservation and solar access for perimeter task lighting;
- the recognition that new buildings benefit greatly from the richness of the built environment, and displacing a development’s diseconomies (e.g., blocking solar access) onto other zoning lots and the public space of streets becomes a burden to all as eloquently expressed in Garrett Hardin’s “Tragedy of the Commons” where incremental overuse of the Commons destroyed the Commons for all; and

- the need to insure the vitality and environmental quality of the pedestrian's experience.

The response was new performance-based Height and Setback regulations based on an analysis of the actual daylight and openness of East Midtown's streets (see attached Daylight Evaluation map of Midtown's streets and 1916 Height District maps). The daylighting standard was the result of a thorough analysis of Midtown's streets and avenues which objectively quantified the historic expectation of daylighting resulting from both the 1916 and 1961 Zoning Resolutions, which was a minimum of 66% of the sky left open on any street and an overall average score of 75% of the sky left open above 70° - the typical streetwall height in Midtown for all streets. The daylighting analysis included pre-1916 buildings as well (e.g., Algonquin Hotel).

As noted in the Department's *Midtown Development* (June 1981), the Daylight Compensation and Daylight Evaluation Height and Setback regulations "...give great flexibility in building design so long as the daylight standard is achieved ...and prevent buildings from being placed entirely up against the street line, overwhelming the adjacent street." (pp. 65-66)

Because a typical pedestrian's experience is glancing or nearly parallel to the building's façade, a pedestrian experiences two major impacts of buildings regarding daylight and the sense of openness. One is the amount of sky visible above and around the building – the micro view – (e.g., the daylight squares delineated by the zoning lot). The second is the effect on a pedestrian's perception of the long view down an avenue or street of the profile of the building – the macro view. Thin towers built at the street line may have exemplary daylighting at the adjacent sidewalk but from a few blocks away obscure significant areas of the sky by the constricting effect of the leading edge of the building creating the perception in the viewer's mind of a dark, canyon-like street simply because less sky was visible. The profile penalty area, like the daylight standard, was a result of 62 years of zoning which required setbacks either as the building increased in height as per the 1916 zoning regulation until it becomes a tower or at grade in the case of the 1961 tower regulations. The profile penalty defined the area of the sky which would have historically been expected to be visible from the street as a result of the sky exposure planes and tower regulations, hence the profile curve with the penalty surcharge.

DCP Proposed Modifications to Daylight Evaluation in East Midtown

Visual Simulation of Projected Build-Out

Neither the DEIS, nor the Department of City Planning ("DCP") public presentations of the proposed amendments include three dimensional visual simulations of complying buildings under the proposed amendments nor what a build-out of sites listed as "projected" and "potential" would mean for the livability and environmental quality of

East Midtown. It is astounding, given the array of 3D modeling tools available and the City's own 3D model of midtown that eye-level views of a built-out East Midtown are not available to the public for its deliberations, notwithstanding DCP's assertion that each projected and potential site have been modeled and analyzed re: its daylighting performance. There is almost no reference to daylighting in the DEIS as it was not required by CEQRA. Instead we are treated to shadow analyses which provide almost no information while a daylighting evaluation of the streets in Midtown, the dominant public open space, would have provided relevant information about the performance of the proposed amendments and the resultant buildings. This is a serious omission, given that the Midtown Height and Setback regulations are at the core of the Special Midtown District environmental quality regulations.

Multiple Daylighting Standards

As proposed by DCP East Midtown and West Midtown will have very different daylighting standards – 75% on average with the profile penalty area for all fronting streets for buildings in West Midtown, the current standard, – and 66% on average without the profile penalty area in East Midtown as proposed in the amendments for “qualifying sites” and the Grand Central Terminal Core Area. This raises the question of why there are multiple daylighting standards – the original standard based on an extensive analysis of historic expectation of daylighting and openness of the sky adopted in 1982, and the proposed reduced standard for qualifying sites and the Grand Central Core Area.

DCP presentations have misrepresented the origin of the 66% score which analysis has demonstrated is the **minimum** amount of sky left open above 70° in East Midtown as **not** being the minimum score but rather the average score for all streets in East Midtown. This is incorrect and not supportable by the facts. In other words the proposed text modifications are neither accountable nor transparently arrived at but rather asserted.

Grand Central Core Area

The area with the highest proposed FARs in East Midtown is around Grand Central Terminal and Madison Avenue which, on average, scored less than 70% (see 1982 Daylight Analysis Map). The DCP proposed amendments would eliminate the profile penalty area and measuring daylight below 150 ft. on both wide and narrow streets rather than 70°. One Vanderbilt Avenue scores only 24% under the proposed Daylight Evaluation modifications, better than the negative 62% score it achieved under the current regulations which require the average amount of sky left open above typical street wall heights for all street frontages be no less than 75% of the sky left open.

There is no precedent for 150 ft. streetwalls in East Midtown on narrow streets other than the pre-1916 zoning buildings such as the Algonquin Hotel (see 1916 Height District map).

TDR from a Landmark

In the instance of TDR from a landmark, the 1982 Special Midtown District contemplated that some form of modification of the Height and Setback daylighting standard be permitted, creating a unique dispensation for designated landmarks as distinct from other developments and non-landmark special permits. The Supreme Court's decision in Penn Central recognized:

“that Penn Central could gain revenue through transferring some or all of its development rights under Section 74-79.” (p. 4 CPC Report, C980862ZDM, 1999)

In fact, in my testimony regarding the Vanderbilt Corridor I suggested a reasonable standard in the case of TDR from a landmark would be an average daylight score of 66%, inclusive of all street frontages and the profile penalty area, the average minimum buildings in Midtown scored, rather than the required 75% score for other buildings.

What has been proposed for “qualifying sites” and the Grand Central Core Area would extend the unique dispensation for landmarks, which served a clear public purpose, to East Midtown, TDR recipient or otherwise. A 66% score, the current minimum daylighting score for any street frontage, there appears to be no minimum required percent of the sky left open for any street frontage, potentially resulting in scores for each street below the minimum, setting East Midtown back to pre-zoning daylighting standards.

In the instance of non-qualifying sites which are receiving lots in East Midtown, ZR 74-79 (TDR from Landmark) permits the modification of the Height and Setback daylighting regulations. The standard in ZR 74-79 is vague as to how the City Planning Commission (“CPC”) arrives at its decision, which is currently totally discretionary, making it virtually impossible for the public to ascertain whether the proposed modifications are indeed the minimum modifications for the proposed development.

Recommendations

Visual Simulation of Projected Build-Out

In the interest of transparency and accountability the massing studies and Daylight Evaluation calculations and daylight scores done by DCP for the projected and potential sites should be shared with the Community Boards and the public. (DCP was kind enough to share their models with us, albeit without documentation.) Further, the massing studies should be aggregated into DCP's 3D digital model of East Midtown and include

both aerial and eye level visual simulations of current and future conditions as delineated in the DEIS similar to what the ESC have done as a public service.

Multiple Daylighting Standards

First, it should be acknowledged by DCP that the current average 75% of the sky left open above the typical street wall height (70°) in East Midtown – the micro view – is in fact the daylighting standard, and *that the 66% daylight score is the average minimum daylighting score for East Midtown.*

Second, it is critical that the profile penalty area – the macro view – be retained in some form for qualifying sites and sites within the Grand Central Core Area in order to prevent the conditions, particularly along Madison Avenue where tall shear or almost shear buildings create a canyon effect.

And, third it is unclear why there are different daylight standards and methodology for “qualifying sites” and those in the Grand Central Core Area and the remainder of East Midtown, and between East and West Midtown.

Grand Central Core Area

It should come as no surprise that One Vanderbilt Avenue scores only 24% even with the elimination of the profile penalty area and lowering the overall passing score to 66% from 75%, and raising the exempt area from 70° to 150 ft. on narrow streets where there is no precedent in either the 1916, 1961, and current Special Midtown District regulations. The 150 ft. should be eliminated for narrow street frontages and revert back to 70°. Eliminating the profile penalty area will, as noted above, create a canyon effect in the macro view. And finally, there should be a minimum daylight standard of 55% for any street frontage to mitigate the canyon effect.

TDR from a Landmark

For qualifying sites and sites within the Grand Central Core Area there should be a distinction between dispensation given to TDRs from a landmark and those sites which are not receiving lots. Further, the DCP certification should address the issue of what is the minimum modification of the Height and Setback daylighting regulations by requiring the applicant to present a complying building which will then be compared with a non-complying building needing Height and Setback modifications and a clear explanation from the applicant explaining why the modifications are necessary and that they are the minimum required. The analyses should be done only using Daylight Evaluation as it gives comparative information, e.g., total score, score by street frontage, and profile penalty providing a basis of informed discussion.

Summation

I urge the Commission to strengthen the proposed text as suggested above to add accountability and transparency and a more nuanced approach. The proposed changes to Midtown's Height and Setback daylighting regulations are not, as presented by DCP, minor. The changes will diminish the environmental quality of Midtown public streets and the pedestrian's experience.

Midtown zoning's performance-based Height and Setback daylighting regulations, with their historically derived daylight standards, have served the City well for almost 35 years resulting in as-of-right development which has added to the environmental quality of Midtown. I urge the Commission to maintain these standards and when they can't be met, to provide the public with concrete reasons as to why a development cannot feasibly comply – balancing the environmental quality of Midtown with other perceived "goods."

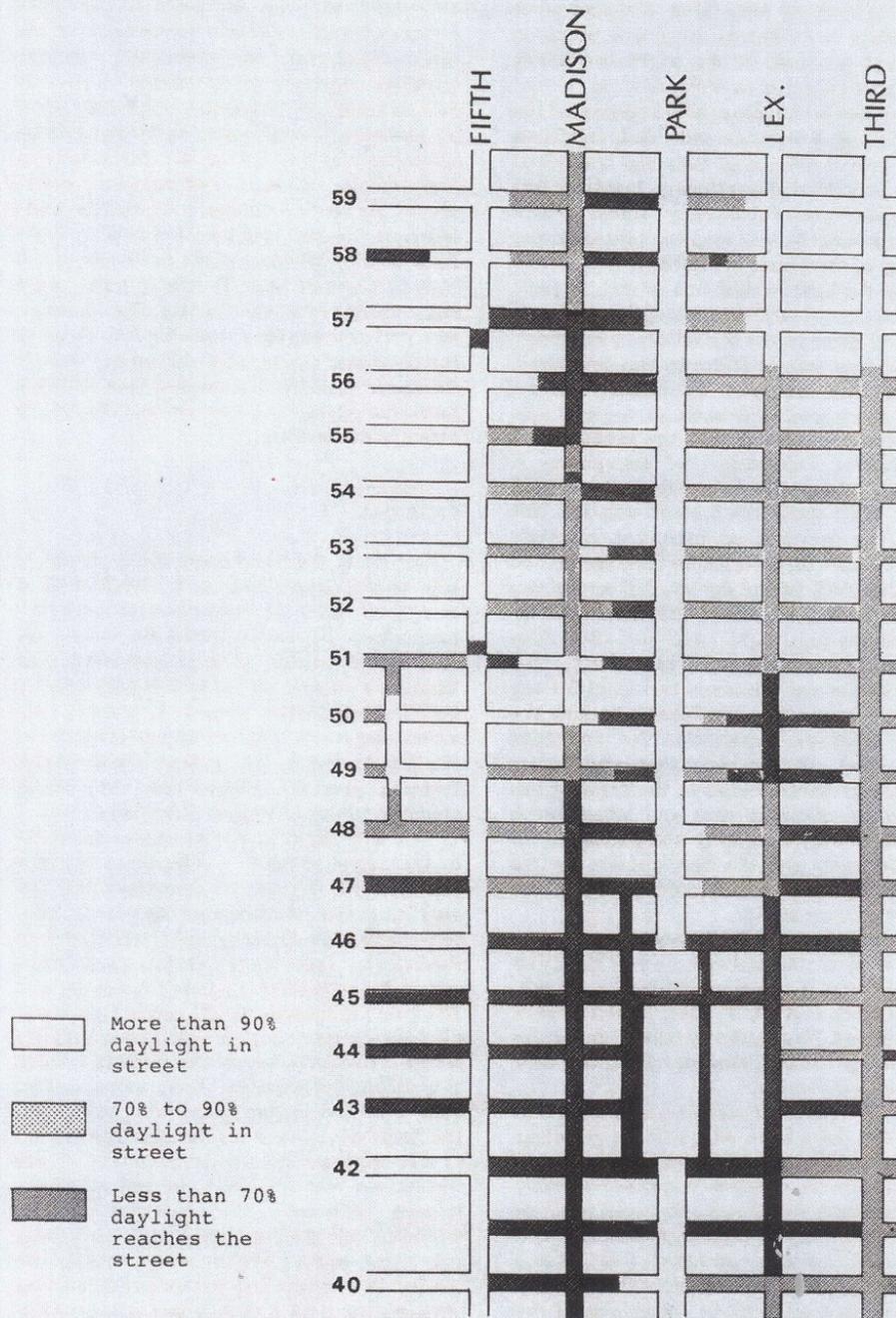


Fig. 11. Daylight evaluation of Midtown by building types using the Daylight Evaluation Chart.

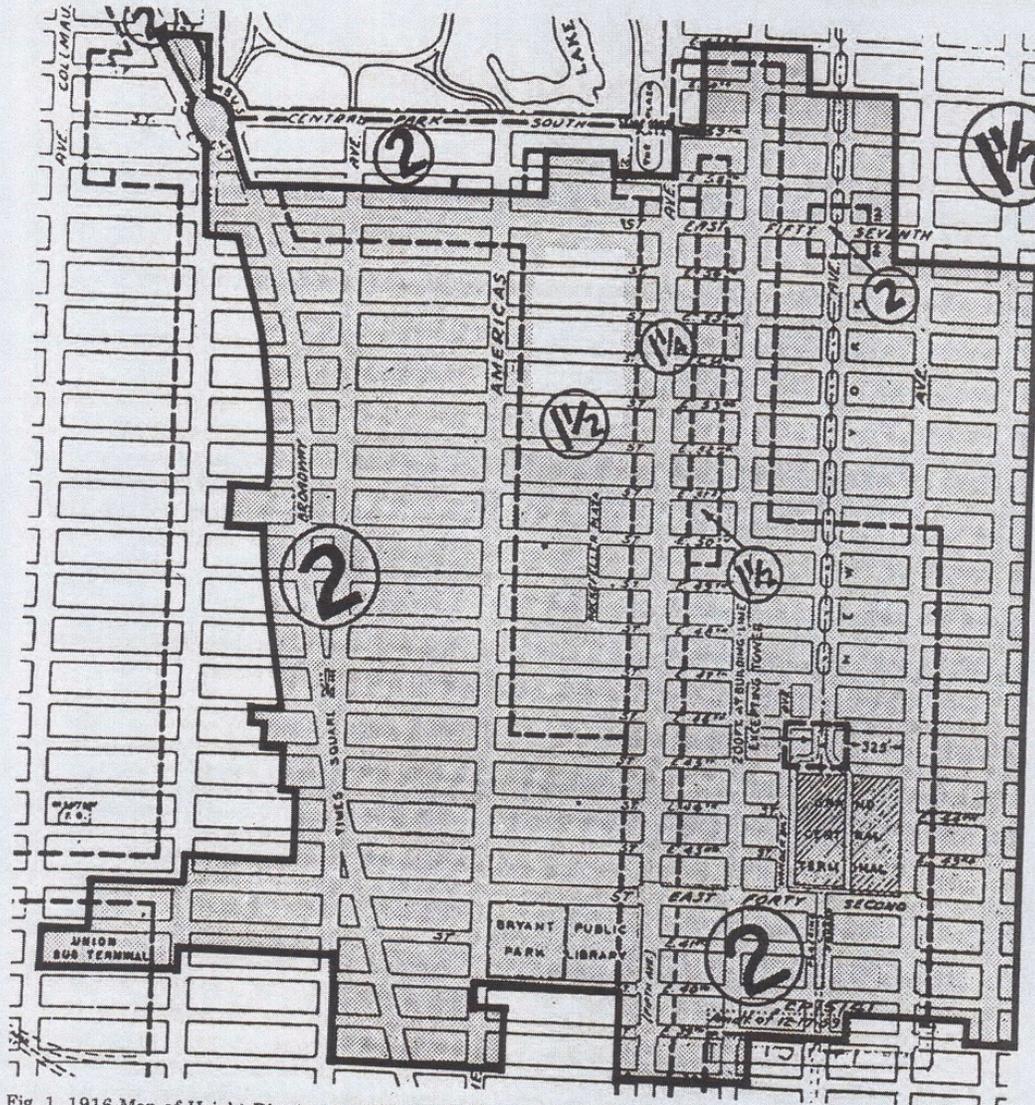


Fig. 1. 1916 Map of Height Districts for Midtown. Courtesy New York City Department of City Planning.

the amount of daylight available in the public space of the street and to the commercial building interiors. Up to the end of World War Two, the majority of office buildings used daylight as an organizing and form giving criterion by adhering to the general rule that whenever possible no desk should be more than 10.67 m (35 ft) from a window.

Subsequent amendments to the 1916 Zoning Resolution, (including the omnibus 1961 [2] amendments which fostered the

tower/slab and plaza schema of development) held true to the daylighting expectation incorporated in the original resolutions. Because the combined effects of the as-of-right building bulk regulations of the 1916 and 1961 ordinances represent more than sixty years of building activity, they have created an uninterrupted record of community expectations regarding daylighting in Midtown, upon which the public and property owners relied.