



Rezoning the East River Fifties

A Bold Plan to Increase Community Diversity and Affordable Housing
Through Contextual Zoning

December 8, 2016

Introduction

Inspired by Mayor de Blasio's vision for "One New York," members of the East River Fifties community have come together to propose a zoning change that would encourage development while keeping the low-and mid-rise character of the neighborhood intact -- while increasing its diversity by adding incentives to vastly increase the amount of affordable housing.

The zoning change proposed by ERFA has the full support and endorsement of key elected officials including Manhattan Borough President Gale Brewer, New York City Councilmembers Dan Garodnick and Ben Kallos, and New York State Senator Liz Krueger.

Background

The area between 52nd Street and 59th Street east of First Avenue, is the only residential community left in New York City where mid-blocks and quiet residential streets have no height controls for buildings. In most other residential districts, the City Planning Commission has replaced the 1960s-era R10 zoning designation with contextual zoning requirements that set height limits for buildings in those neighborhoods. Likewise, other residential neighborhoods are protected by their historic district status. But in the East River Fifties, the R10 zoning designation, which sets no height limits and permits unlimited air rights purchases, remains in place.

Today, at least one developer has assembled property and air rights in the East River Fifties to take advantage of R10's lax height restrictions. In the assemblage process, the developer has removed and is demolishing affordable housing units. Using 21st century engineering technology, the developer has announced a plan to construct a 1,000-foot tall, pencil-like tower on East 58th Street. Several other "soft sites" in the neighborhood are susceptible to out-of-scale development as well.

ERFA and Its Mission

In 2015, the community group East River Fifties Alliance (ERFA) submitted a concept for one of the most sweeping community-generated residential district rezoning plans in city history to the City Planning Commission. After completing the required package of application materials, ERFA submitted its formal application in December 2016.

The catalyst for ERFA's mobilization and precedent-setting commitment was this out-of-scale development and the genuine threat of several others. In the East River Fifties, the art and science of real estate development had advanced to the point where obsolete and inappropriate zoning could not prevent the spawning of a monstrous mutation.

That was the catalyst. But the inspiration for ERFA's rezoning initiative was Mayor Bill de Blasio's mandate to make all of New York City a diverse and balanced community, made possible in large part by new affordable housing throughout the city. This vision, as implemented by the Department of City Planning and the City Planning Commission Chair Carl Weisbrod, has given ERFA a high level of confidence that its proposal will succeed.

R10 zones throughout the city only create about 4-5% affordable units with each new development. In return for this small contribution to affordability, developers receive a 20% boost in floor area. That does not meet the city's needs and gives away too much to developers for too little housing. ERFA embraces the Mayor's goal of creating affordable housing in new developments, and ERFA's new zoning plan supports that goal. Generally perceived as an enclave for the wealthy, the East River Fifties is home to families and individuals of all ages and income ranges. If fully implemented, the ERFA plan would *more than triple* the amount of affordable housing in new developments in the East River Fifties neighborhood.

Historically, most rezoning initiatives are proposed by government. During the Bloomberg administration, for example, approximately 10% of the city was rezoned through the initiative of the Department of City Planning—often to impose contextual height limits or inclusionary housing designations that increased the requirement for affordability in order to access the 20% (or more) floor area bonus. In other cases, real estate developers seek or anticipate rezoning for their projects.

But any individual or group may propose a change in a zoning designation. However, citizen-led rezoning initiatives are infrequent, owing to the enormous amounts of time and the financial resources required to support them. ERFA's aim is to stop supertowers and out-of-scale development that threaten the fabric of the community, while working with the City's existing affordable housing programs to make sure that the area remains livable for more New Yorkers.

Creating a New Zoning District in the East River Fifties

ERFA's rezoning proposal is a landmark in community-based planning. This is one of the few instances where a nonprofit, community-based organization has proposed, commissioned and financed such considerable legal, planning, environmental, zoning, urban design, and public awareness efforts for the purpose of advancing a zoning text amendment.

ERFA has been carefully working with the Department of City Planning on an application for a zoning text amendment for several months. The application has been going through the agency's internal review process – "Blue Print" – which generally requires 7 -15 months. During the "Blue Print" stage of the application process, various materials which are necessary to complete the application are prepared, and then the application is formally submitted. Once the agency certifies that it is complete, it will proceed through a formal review process involving nonbinding reviews by the community board and borough president and binding reviews by the City Planning Commission and City Council.

ERFA submitted a formal application to the New York Department of City Planning in December 2016 to rezone the East River Fifties by creating special zoning text to achieve two goals—contextual height limits and affordable housing incentives. This new zoning district would maintain the R10 zoning designation but modify it on zoning lots east of First Avenue. ERFA is proposing a contextual district that would prevent supertowers through height limits, and would

provide greater incentives for affordable housing, and design controls for wide buildings. ERFA is currently waiting for the Department's certification of the application as complete.

While ERFA expects that its proposal will evolve throughout the review process, here are the current details:

Modified R10 District

The rezoning would modify R10 regulation and allow for height limits of 210 feet for buildings with frontage on narrow streets and 235 feet for buildings with frontage on wide streets. Base FAR* for residential or community facility buildings would remain at 10.0, unchanged from the current R10 zoning.

*Floor Area Ratio, or FAR, is the ratio of a building's total floor area to the area of its zoning lot. Under the NYC Zoning Resolution, each zoning district is assigned an FAR which, when multiplied by the lot area of any zoning lot within that district, produces the maximum amount of floor area allowable for a building on that zoning lot. For example, in a district where the maximum permitted FAR is 10, a building constructed on a 10,000 sq. ft. zoning lot could contain up to 100,000 sq. ft. of floor area.

Façade Articulation

ERFA's proposal would also create façade articulation requirements in the new district for buildings wider than 80 feet. What is façade articulation? This refers to the many street frontage design elements, both horizontal and vertical, that help create a streetscape of interest. The appropriate scale for articulation is often a function of the size of the building and the adjacent public spaces including sidewalks, planting zones, and roadways. Proper façade articulation can create an environment that is friendly, safe and an integrated part of the neighborhood around it. In ERFA's rezoning plan, in order to reduce the potential development of long, flat unfriendly and inappropriate façades, a regulation would be written to require façade articulation at various intervals.

Inclusionary Housing Designated Area (IHDA)

ERFA proposes to designate the East River Fifties as an Inclusionary Housing Designated Area (IHDA), and thus provide an incentive for the voluntary construction of affordable housing. In exchange for reserving 20 percent of total units for people earning at or below 80 percent of area median income (AMI), developers would receive (a) a 3.0 FAR bonus and (b) an increased height limit to accommodate the additional FAR. ERFA thus proposes to use an existing IHDA program that has created over 3,000 affordable units since the program's creation in 2005.

The 3.0 FAR bonus would consist of 2.0 FAR of residential and 1.0 FAR of community facility for a total allowable FAR of 13.0. Should the state law limiting maximum residential development to a 12.0 FAR be amended upward, the bonus could be applied as a full 3.0 FAR of residential development. Buildings that take advantage of the IH bonus could build up to 260 feet on both narrow and wide streets.

Like the existing R10 district, the proposed new district would allow only residential uses and community uses, like day care centers and medical offices, keeping the residential and non-commercial nature of the district intact.

The Present and Continuing Threat

The Bauhouse Group, the developer who was planning to construct the 1,000 foot megatower on 58th St., defaulted on its loan payments, resulting in the lender's commencement of a foreclosure proceeding and the developer's filing of a bankruptcy petition in response. Complex litigation involving multiple parties has ensued.

The existence of that litigation does not remove the threat of a 1,000-foot-tall pencil tower on 58th Street. By agreement of both the debtor and lender, the bankruptcy court has permitted the sale of the property under the court's supervision. ERFA expects that once a buyer has been found and the sale completed, the new owner will resume the development effort.

As long as the antiquated zoning laws that allow megatowers to be constructed in the East River Fifties residential neighborhood continue to exist, the law poses a threat to the community that it is supposed to protect. New engineering technologies have made the construction of megatowers possible, and they are very profitable for developers because very wealthy people are willing to pay tens of millions of dollars per apartment on the high floors. The only viable solution for the community is to change the zoning law.

ERFA's rezoning plan, if successful, will ensure that this site and others in the East River Fifties community will no longer permit such towers.

Conclusion

Inspired and given confidence by Mayor de Blasio's vision for a diverse, unified city, the rezoning of the East River Fifties will facilitate more than three times more affordable housing development than current zoning. The ERFA proposal does not reduce or take away density (i.e., FAR). Instead it increases it up to 13 FAR for projects that meet the requirements of the affordable housing FAR bonus. The ERFA proposal restricts building height to 260 feet throughout the neighborhood, removing the threat of mega towers on the community's mid-blocks and quiet residential streets.