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Three supertall New York City skyscrapers reveal just how creative lawyers can be in gaming the city's zoning codes.

Manipulating the intricate zoning code of New York City has long been a badge of honor among a small cadre of developers.

In 1993 developer Laurence Ginsberg was required to lop 12 floors from a 31-story tower on Manhattan's Upper East Side after he conveniently failed to notice that a height limit applied to his property. For a project called Trump City, the real estate mogul who is now President claimed development rights on a site near Lincoln Center that was partially under the Hudson River. The submerged area would have contributed as much as 4.5 million developable square feet to a massive project that contemplated a 150-story tower and 13 other skyscrapers.

No market materialized for the 1989 project and it later was reconstituted without the underwater “rights” as the much smaller Trump Place (its name now removed at the request of residents) and Riverside South.

Now, in a Second Gilded Age with magnates looking to park their millions in Manhattan real estate, developers stop at little to deliver the high-status goods, which these days are calculated in height and views.

As a result, New York is facing the “mechanical void” problem. It may sound like an embarrassing medical condition, but the voids are actually just air above floors occupied by equipment (mainly heating, ventilating, and cooling systems). That air becomes extraordinarily valuable when it can boost apartments higher above view-blocking neighbors. Raising the ceiling of mechanical spaces (which usually need only 10- to 15-foot ceilings) to as high as 350 feet becomes not absurd but savvy.

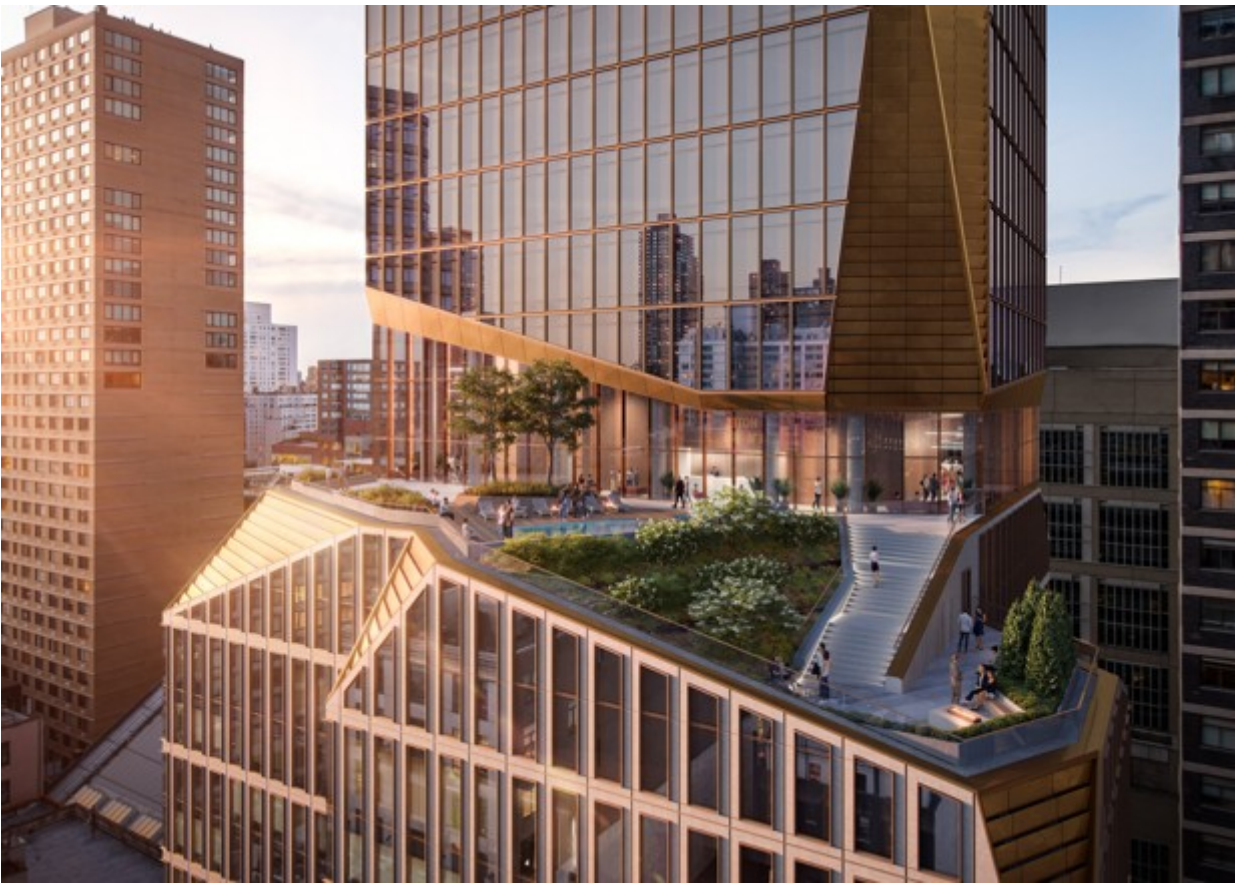
With dozens of buildings topping 900 feet springing up in Manhattan and even Brooklyn, New Yorkers have taken umbrage at empty space that exists only for the purpose of giving billionaires bragging rights.

The new towers, some pencil-thin, others chunkier, slice up the sky, cast long shadows, and plunge adjacent streets and back yards into the kind of airless gloom not encountered since the era of slum tenements in the early 1900s. The deprivation of sun and fresh air led to New York City’s 1916 Zoning Resolution, the first in the nation.

New York City does not generally limit building heights, but instead controls bulk and density by what’s called the floor area ratio (FAR). This means that a residential developer can build nine times the square feet of the lot area in an R-9 district. Depending on how the building bulk is arranged, the usual result is a building of about 15 stories.

Ridiculously tall mechanical spaces, which are not counted toward FAR, are not the only abusive (though ostensibly legal) tactic developers use to push buildings to ever greater heights. A look at three of the most brazen offenders reveals just how creative lawyers can be in gaming the city’s zoning:

50 West 66th Street



(Snøhetta/Extell)

A residential development containing 39 stories of apartments not far from the western edge of Central Park rises 775 feet, the equivalent of a 75-story tower. A project of Extell Development, founded by Gary Barnett, it relies on a 161-foot-high volume above a mechanical floor. The architecture firm Snøhetta partially swathed the void in glass to make the empty space look lived-in.

Barnett, who has made a specialty of boosting the height of apartment floors, was able to assemble a very large site by buying several low-rise buildings and merging their lots into a single parcel. He piled most of the assembled permissible square footage onto the tower, which occupies a part of the site permitting the greatest density. The tactic is called “bulk packing.” In the surrounding Upper West Side, many buildings accommodate the same number of apartments (127), but they typically rise about 15 stories.

53 West 53



(Jean Nouvel/Hines)

Hines interests used a similar but more aggressive site-assembly strategy to develop a 750,000-square-foot tower that includes a 40,000-square-foot addition to the adjacent Museum of Modern Art. It used what's called a zoning-lot merger, which unites the two sites only for zoning purposes. It paid MoMA to move unbuilt zoning square footage (called air rights) onto the development site. Hines's legal team convinced city officials that it was okay to use a rule that allows the purchase of unused air rights above adjacent historic landmarks to move those rights almost 500 feet from St. Thomas Church on Fifth Avenue through the "adjacent" MoMA site.

Through its zoning-manipulation legerdemain Hines has been able to triple the square footage the site alone would permit to surmount the MoMA space with 145 condominium apartments, reaching a total height of 73 stories at 1,050 feet. It makes the neighboring 1330 Sixth Avenue, once thought a behemoth, look like a toy.

The design is by far the most distinctive of the city's new crop of Supertalls. Its dark metal and tinted-glass facade, spiderwebbed with diagonal braces, evokes the brooding Gotham of super-hero comics. It tapers dramatically from both its 53rd and 54th street sides as it rises, reflecting successive setbacks required by the zoning from its earliest days. These "sky planes" assure that at least a minimum of daylight reaches the street. They also have the effect of capping the height once the setback lines from the two streets converge.

Central Park Tower



(Adrian Smith +Gordon Gill/Extell)

If Nouvel used the zoning envelope for expressive ends, Extell's 1,550-foot-tall colossus on West 57th Street—the street known as “Billionaire’s Row” for its oligarch-attracting supertall towers—seems to defy it. Its elaborate development-rights assembly generates a structure 32 percent larger than otherwise would have been permitted, contends the Municipal Arts Society, a development and planning advocacy group.

It not only bought air rights from the adjacent Art Students League, Chicago-based Adrian Smith + Gordon Gill Architecture daringly cantilevers a considerable amount of the tower over the Beaux Arts-style landmark to move its bulk out from behind 220 Central Park South, a limestone-clad tower, a mere 953 feet tall, that would otherwise block Extell's gold-standard views up the length of the park. Central Park tower rises about 600 feet higher than 220 Central Park South, its 179 condominiums lofted by a seven-story 300,000 square foot Nordstrom flagship store and what the Municipal Arts Society claims is 350 vertical feet of mechanical voids.

But wait. The sky planes that converged at the Nouvel tower should also have similarly limited the height of the Central Park Tower. However, a zoning wrinkle permits a tower of unlimited height in some parts of the city as long as it occupies 25 percent of the lot or less.

For years, supertall skyscrapers rose in places like Dubai, Hong Kong, and Shanghai, but were deemed in New York as arriviste assertions of ego by places that lacked self esteem. The idea that New York might be falling behind such gigantism-obsessed cities began to take hold a few years ago and led in 2017 to rezoning that actually encourages commercial supertalls in parts of the city already densely built.

One Vanderbilt



(KPF/SL Green)

The first of these is a 1,400-foot-tall office building designed by KPF for SL Green that is rising next to Grand Central Station. The developer negotiated a startling 30 FAR (21.6 being the old max) and 65 stories in trade for a \$210-million commitment from SL Green to convert street frontage to a plaza and build a tall glass-clad lobby and passageway to new platforms being built beneath the station. Because office building floors are much larger than those of residential towers, the fast-rising bulk of this tapering tower with a stepping top is more intrusive than the residential needle towers. More commercial behemoths are planned in the district.

Opponents of bloated buildings have found little support among city agencies—the Department of City Planning and the Department of Buildings—which both seem to bend over backwards to approve designs, even those of questionable legality and safety. The permit to build the Extell building on West 66th was revoked only after the development watchdog Landmark West pointed out that escapees and firefighters could be trapped if a fire stair filled with smoke. There would be no place of refuge as the stair passed through the mechanical void, equivalent to 16 stories. (After plan alterations, the permit was restored.)

Legislation is moving slowly through a divided city council that would modestly curtail the mechanical-void abuse. Zoning-lot mergers and other transfers of development rights may be addressed by pending state legislation that faces uncertain odds. Financial tools yet to be considered are also available to dampen demand for high-floor, high-value space: dramatically increased sales transaction taxes, for example.

Assuring access to daylight and natural ventilation drove the creation of zoning in the first place, and that value—in health and real-estate terms—has not declined even though we can cool buildings mechanically and light them electrically.

Just as new research underlines the mental health benefits of access to daylight and greenery, very tall buildings are going up that cut off sunlight access for hundreds of dwellings in their immediate vicinity. (Light-blocking projects also devalue older, smaller buildings, accelerating the teardown trend.) Community gardens, among the most powerful means to unite and strengthen low-income communities, increasingly find themselves pitted against developers pitching shade-throwing buildings.

Access to high-quality light and air is becoming more valuable as a tool to ameliorate climate change. Daylight allows less use of electric lights and the energy they consume. Similarly, improved natural ventilation can replace energy-intensive air conditioning for much of the year.

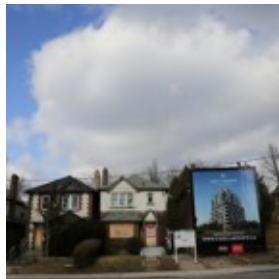
For these reasons the prospect of legislation to protect daylight and breezes may soon improve. Unfortunately the worst offenders could benefit, since they would not contend with new, light-blocking competitors.

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About the Author

James S. Russell

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James S. Russell wrote *The Agile City: Building Well Being and Wealth in an Era of Climate Change*. He was the architecture critic at Bloomberg News and blogs at www.JamesSRussell.net.
