

**TRIZ Advisory**



**AIR RIGHTS, LAND  
ASSEMBLAGES &  
DEVELOPMENT**

**– AABANY –  
NYC ZONING & AIR RIGHTS  
CHANGING THE FACE OF OUR CITY**

**BRIAN STROUT**

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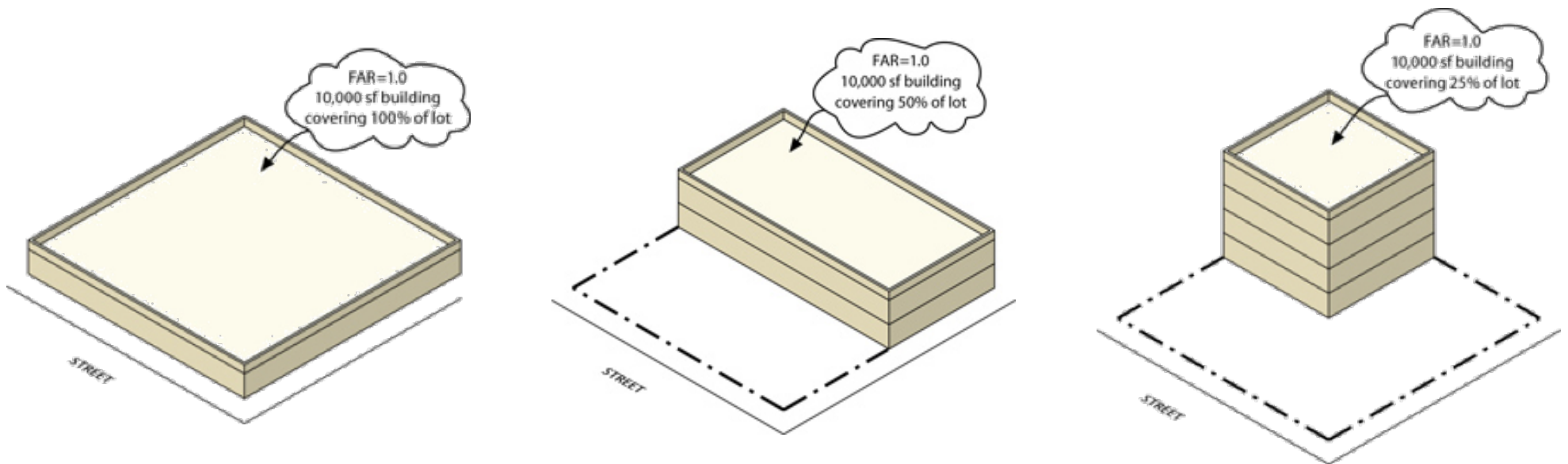
# NYC Air Rights – Discussion Outline

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- NYC Land Use Background
- TDR Transfer Mechanisms
  - Local Government (Primary Mechanisms)
    - Zoning Lot Merger – as-of-right transfer
    - Landmark Transfers – ULURP special permit approval
    - Special Districts – certification approval
    - Off-Site Inclusionary Housing (OSIH) – as-of-right transfer
  - State Government (Secondary Mechanism)
    - Enabling Legislation – TDRs from Pier 40 to St. John’s Terminal
- Additional Resources

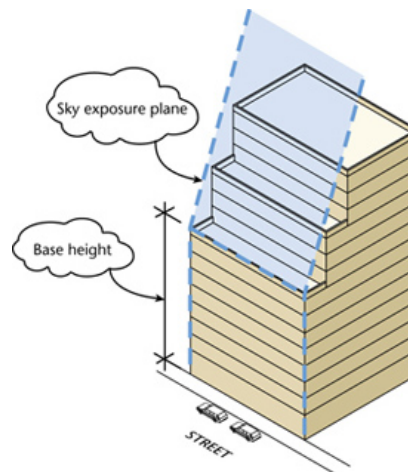
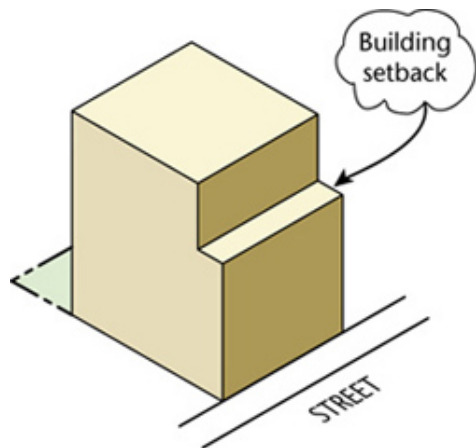
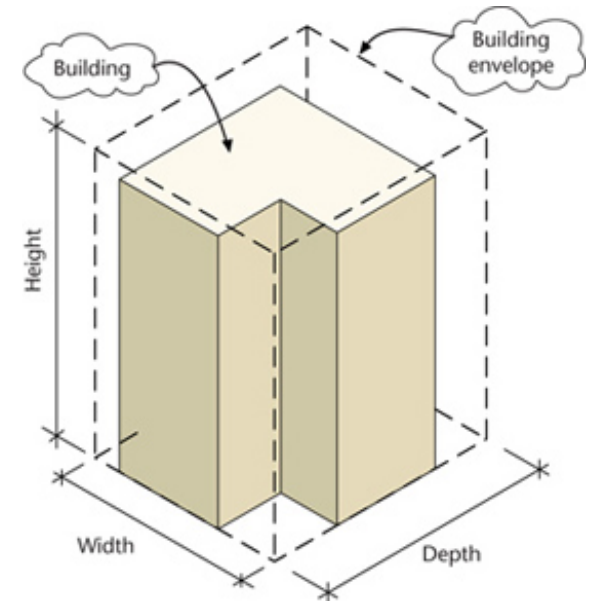
# Land Use Background

- Zoning Districts
  - Floor Area Ratio (FAR) – density based on multiplier of lot size; different FAR values for residential, commercial, and community facility are not cumulative
- NYC Zoning – max base zoning residential FAR is 10.0x
- NYS Law – limits residential FAR to 12.0x



# Land Use Background

- Zoning Districts (*continued*)
  - Building Envelop Considerations
    - Open Space or Lot Coverage
    - Setbacks – front, rear, and side yards
    - Distance between buildings
    - Height Limits or Sky Exposure Plane
    - Tower Lot Coverage
    - Cantilever



## Land Use Background (*continued*)

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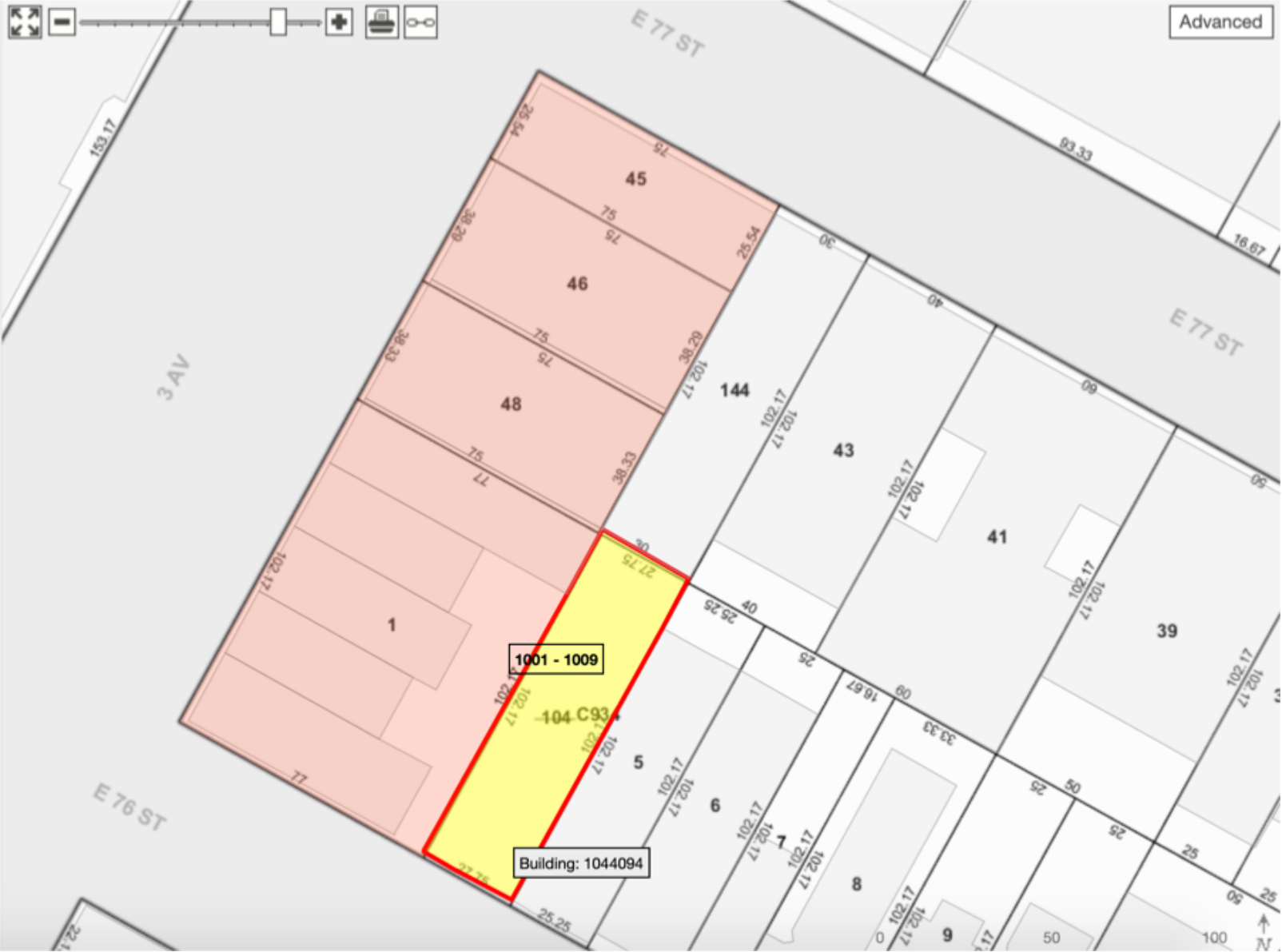
- Overlay “Special Districts” – override the provisions of the base zoning district
  - Commercial Overlay – Madison Avenue example, limits residential to a maximum of 10.0x (no 2.0x FAR OSIH bonus)
- Landmarks Preservation Commission “LPC” – individual landmarks or historic districts
- Other Considerations – allow for items not otherwise allowed by zoning or special districts
  - Variances, Special Permits, Public Space Bonuses, and Transit Bonuses

## Zoning Lot Merger – Zoning Resolution, Definitions 12-10 “Lot”

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- Tax Lot Diagram - example (see next page)
- Lot Adjacency – the generating and receiving lots, which can include interim conduit lots, must have at least 10 feet of contiguous property line
- Transfer – generally generating and receiving lots need to have the same FAR value for a certain use. As an example, a lot with 10.0x residential FAR cannot transfer TDRs to a receiving lot with a 7.52x residential FAR or visa-versa.
- Zoning Exhibits – NYC Department of Buildings (“DOB”) has issued departmental memoranda which provide “safe harbor” forms which they have accepted as evidence of compliance with the requirements for zoning lot mergers and subdivisions

# Zoning Lot Merger – Zoning Resolution, Definitions 12-10 “Lot”



## Zoning Lot Merger (*continued*)

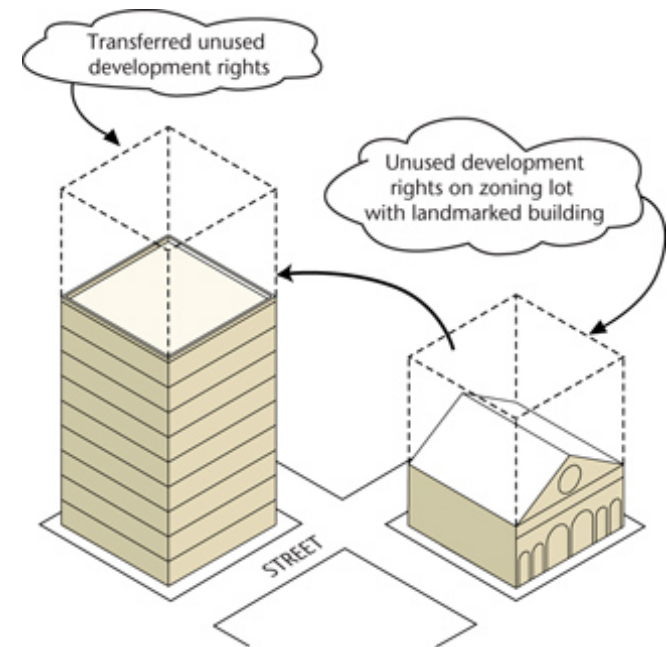
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- “Party in Interest” – any party in interest must signoff, or have previously consented, for the proposed merged lot (others include holders: easements, purchase options, liens, reversionary interests)
  - Ground Lease Tenant – yes
  - Space Lease Tenant – no due to court decision
  - Coop vs. Condo – coop much easier since owner of the real estate is the coop corporation
  
- BSA Approval – while a zoning lot merger is generally an as-of-transfer, if a lot for the proposed merged zoning lot is subject to a prior BSA variance, then the BSA needs to signoff on the proposed development resulting from the merged zoning lot



## Landmarks Transfers – Zoning Resolution § 74-79 (1968)

- City Planning Commission (“CPC”) may, by special permit, approve the transfer from a zoning lot with a landmark (but not a property in a Historic District) across a street and, in some cases, across multiple streets and blocks
- Cost & Timing – due to the cost and timing of the ULURP approval process, the landmark transfer is not commonly utilized. There have been only 6 transactions since 1990).
- 2015 List from DCP (following slide) excludes the 2 recent transactions
  - MTA to SL Green; and
  - Marble Collegiate Church to HFZ Capital



# Landmarks Transfers *(continued)*

Landmark	Granting Site	Receiving Site	Size of Transfer	Date
311 East 58th Street	311 East 58th Street	300 East 59th Street	Unknown	11/29/72
Grand Central	Grand Central Terminal	120 Park Avenue	74,655 sf	2/13/79
Amster Yard	Amster Yard	805 Third Avenue	30,701 sf	6/17/80
India House	India House	7 Hanover Square	123,857 sf	2/17/81
John Street Methodist Church	44 John Street	33 Maiden Lane	70,927 sf	6/28/82
Old Slip Police Station	100 Old Slip	30 Old Slip	38,950 sf	10/25/84
55 Wall Street	55 Wall Street	60 Wall Street	363,010 sf	6/18/85
Rockefeller Center	Rockefeller Center	745 Seventh Ave.*	506,380 sf	5/2/90
Tiffany Building	401 Fifth Avenue	400-404 Fifth Avenue	173,692 sf	9/19/07
Seagram Building	375 Park Avenue	610 Lexington Avenue	200,965 sf	7/2/08
University Club	1 West 54th Street	53 West 53rd Street	136,000 sf	9/9/09
St. Thomas Church	1 West 53 <sup>rd</sup> Street	53 West 53 <sup>rd</sup> Street	275,000 sf	9/9/09
<b>AVERAGE</b>			<b>181,285 sf</b>	*Unbuilt with transfer listed
<b>TOTAL</b>			<b>1,994,137 sf</b>	

## Special Districts or Subdistricts

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- As the name implies, each district is special, so it has its own set of rules and regulations.
  
- Various Special Districts or Subdistricts
  - Lower Manhattan (District, 1972)
  - Midtown (District, 1982)
  - Grand Central (Subdistrict, 1992)
  - Theater (Subdistrict, 1998)
  - West Chelsea (District, 2005)
  - Hudson Yards (District, 2005)
  - East Midtown (Subdistrict, 2017)

## **Inclusionary Housing – Zoning Resolution § 23-90 (1987)**

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- Generated by building or preserving affordable housing
  - Bonuses – new construction or substantial rehabilitation w/out public funding 3.50x; preservation w/out public funding 2.0x, and either scenario with public funding 1.25x
- Off-Site Inclusionary Housing (OSIH) – is when some or all of the IH generated is sold to third-party receiver sites
  - Qualified Receiver Site
    - Within the same Community Board or as long as the generating and receiving sites are within 0.5 miles radius of each other
    - Receiver must either have an R10 equivalent zoning or be in a specifically designated area

## Inclusionary Housing (*continued*)

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- Qualified Receiver Site (*continued*)
  - R10 Equivalent Zoning Bonus Amount – receiver site can receive a 20% bonus of the FAR of the merged zoning lot size
    - Residential –  $20\% \times 10.0 \text{ FAR} = 2.0x \text{ FAR}$  bonus
    - Extended Stay Hotel –  $20\% \times 15.0 \text{ FAR} = 3.0x \text{ FAR}$  bonus
  - Specifically Designated Areas – other areas beside R10, and they have other bonus criteria
  - Special Districts – IH/OSIH cannot be utilized in Midtown and is vary limited in Lower Manhattan
  - Affordable New York (new 421a property tax abatement) – prevents the utilization of OSIH

## Inclusionary Housing (*continued*)

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- OSIH Types – there are pro and cons to existing certificates versus to-be-generated certificates
  - Existing Certificates – the certificates have already been generated
  - To-be-generated Certificates – forward contracts for certificates that will be delivered at sometime in the future.

# Additional Resources

## Air Rights Reference Guide

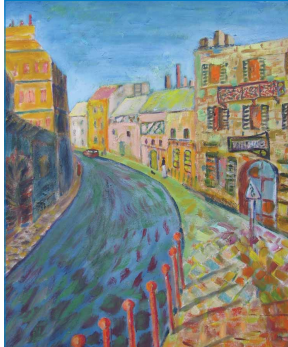
**TRIZ Advisory**

TRIZ Advisory Group, LLC  
 530 Fifth Avenue, 9th Floor  
 New York, NY 10036  
[info@trizadvisory.com](mailto:info@trizadvisory.com)

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### Inside

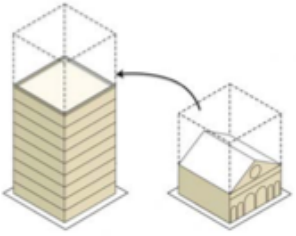
- Right to Terminate Proprietary Leases
- Statutory Short Form Power of Attorney Revised
- Development Rights
- Protecting a Subtenant from Losing Its Leasehold
- Disclosure in the New York City Housing Court
- Most Influential Commercial Lease Cases
- Selling a Co-op Back to the Borrower





## A Survey of Transferable Development Rights Mechanisms in New York City

Department of City Planning



February 26<sup>th</sup>, 2015



PLANNING DESIGN POLICY BRIEF

## Unlocking the Right to Build:

### Designing a More Flexible System for Transferring Development Rights

New York City faces a serious shortage of affordable housing. Between 2005 and 2010, median rents in the city increased by 14 percent in real dollars, while the median income of renter households actually declined slightly. That left 47 percent of low-income renter households severely rent burdened, paying more than half their income towards rent and utilities.

Addressing this shortage of affordable housing is one of the biggest challenges facing the new de Blasio administration. The city's affordable housing policy will undoubtedly require many strategies, from preserving the existing stock of affordable units to encouraging the construction of new affordable units. Over the past decades, the city has managed to reduce the development of new affordable units in part by providing developers with land the city had acquired when vacant abandoned properties or land there through tax foreclosures during the fiscal crisis of the 1970s. Almost none of that land remains available, and the high cost of privately owned land poses significant barriers to the production of new affordable housing.

In this brief, we explore the potential of one strategy the city could use to encourage the production of affordable housing despite the high cost of land: allowing the transfer of unused development rights. As we describe in further detail below, the city's zoning mechanisms currently allow owners of buildings that are underused to transfer their unused

development rights to other buildings.

A Furman Center Policy Brief. For more information on all of our research, visit [www.furmancenter.org](http://www.furmancenter.org).

www.furmancenter.org

**Pace Environmental Law Review**  
 Volume 3  
 Issue 1 1985 Article 4

9-1-1985  
**Zoning in the Fourth Dimension**  
 Peter Goodman

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PLANNING DESIGN POLICY BRIEF

## BUYING SKY:

### The Market for Transferable Development Rights in New York City

New York City's zoning code (known as the "Zoning Resolution") regulates land use in part by limiting the square footage of the building that landowners can develop on their property. Some buildings are built below the applicable limit because they are constrained by other regulations such as historic preservation rules, they were built subject to earlier, more restrictive zoning rules, or the owner chose to develop the property less intensively than the zoning allows because of market conditions or other considerations applicable when the building was built. The Zoning Resolution provides limited opportunities for an owner of land that is less than fully developed to transfer her unused development rights to other properties. This enables the recipients of these development rights (known at that point as "transferable development rights," "TDRs," or "air rights") to develop larger buildings than the Zoning Resolution otherwise permits, while the seller keeps the right to use over those rights on her own property.

www.furmancenter.org

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