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Mechanical Voids Used to Increase Building Heights

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Question of the Month: Can mechanical voids be used to increase building heights under existing zoning regulations?

by Christopher Wright

Can mechanical voids be used to increase building heights under existing zoning regulations?

In recent years improvements in technology and design have allowed mechanical equipment to be installed in the middle of buildings, sometimes on multiple floors. This has created a zoning controversy because zoning regulations do not set a height limit for a mechanical floor. As a result, tall buildings are utilizing oversized mechanical floors to increase the height, and therefore the value, of residential floors.
More specifically, with no set height limit, developers are installing higher than necessary mechanical floors in the middle of buildings to increase the height of the residential floors located above these mechanical floors. The most extreme proposal was 160 ft. This floor would have a 20 ft. high piece of mechanical equipment installed in a room with a 160 ft. high ceiling. Hence the term “mechanical void.”

In addition to not having a height limit, mechanical floors are also exempt from counting as zoning floor area. Buildings have a fixed amount of zoning floor area that can be used for apartments, and the square footage used for a mechanical floor does not reduce that number. This creates a very valuable exemption, since a mechanical floor can require thousands of square feet. However, this floor area exemption was designed to accommodate mechanical systems, not to directly increase residential value. Nonetheless, a mechanical void floor appears to do just that since the only function of the high mechanical ceiling is to raise the heights of residential units.
Typically, the height of a mechanical floor is approximately 20 to 25 ft. However, the heights of recently proposed mechanical floors range from 40 to 160 ft. By installing a mechanical floor, or several mechanical floors, in the middle of a building, the height of the residential floors increases correspondingly, which increases their value due to better views.

The Extell development at 36 West 66th St. (36W66 Building) has put the mechanical void issue before the courts. The original plans proposed two voids, one measuring 40 ft. and one measuring 160 ft. This was revised to provide three floors ranging from 48 to 64 ft. Either way, this resulted in the total building height to be raised by approximately 250 ft.

These proposed voids faced multiple challenges. When the NYC Department of Buildings issued

the building permits, the permits were challenged at the NYC Board Of Standards and Appeals (BSA). The BSA upheld the permits and a lawsuit was filed in 2019. The NY County Supreme Court overturned the BSA. However, the Appellate Division reversed and upheld the voids. For now, the 36W66 Building voids are valid, but other lawsuits are pending.

The Supreme Court denied the voids based on an urban planning argument. The court reasoned that the stated purpose of zoning is to limit building heights and that the zoning regulations governing the 36W66 Building were clearly designed to do just that. If properly applied, the 36W66 Building would be limited to approximately 450 ft. in height. The voids raised the height to 775 ft. In the court's view, the voids should count as zoning floor area because the sole purpose of the high ceiling was to increase residential value and was not related in any way to mechanical needs.

The Appellate Division Court disagreed and overruled the Supreme Court by applying a strict interpretation of the zoning regulations. The Appellate Court noted, correctly, that per zoning regulations mechanical floors do not have a height limit and do not count as zoning floor area, thus the use of mechanical voids was ruled to be permitted.
The 36W66 Building was not the first project to utilize mechanical voids to increase building heights, but it was the first to demonstrate that a 160 ft. high void on a single floor in the middle of a building was technologically feasible.

In response, the City Planning Commission addressed the issue. A new zoning regulation was recently adopted. This regulation states that any mechanical floor in excess of 25 ft. in height would count as zoning floor area. The assumption being that developers would never give up zoning floor area for increased height. But will that always be the case? If a developer can increase the height of the upper floors by 160 ft. (the equivalent of 16 floors), would they not consider sacrificing a single floor of zoning floor area? What is the cost-benefit trade off?

The zoning revision came too late to impact the 36W66th Building, which was deemed grandfathered. However, it remains to be seen what use future developments will make of a strategically placed 150 to 200 ft. mechanical void.

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