

NYC's Mayor Adams Finally Faces Housing Crisis with Major Reforms

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Executive Summary

In September 2023, New York City Mayor Eric Adams proposed “Zoning for Housing Opportunity,” an ambitious set of changes to the city’s Zoning Resolution, intended to facilitate increased housing production. The proposal, which incorporates zoning liberalizations widely adopted by other U.S. state legislatures and local governments, aims to distribute moderate housing growth widely in every one of the city’s 59 community districts.

The proposed changes overturn, in part, the effects of the city’s 1961 comprehensive rezoning, which increased zoned densities in parts of Manhattan but greatly diminished the amount of new housing allowed in the other four boroughs. The changes are also a direct repudiation of the policies of recent past mayoral administrations, in which affluent, high-opportunity neighborhoods were “downzoned” (reduced in terms of permitted built densities) and new housing construction was focused on a handful of neighborhoods, mostly onetime industrial areas or commercial districts with little legacy population. In introducing the proposal, Adams emphasized the need to overcome the racially discriminatory effect, and perhaps intent, of decades of restrictive zoning. These zoning restrictions occurred just as African American, Hispanic, and Asian American groups were becoming most of the city’s population.

This report’s analysis finds the proposed changes an appropriate response to the city’s ongoing housing-supply crisis. Many changes are likely to be effective in increasing the housing stock. For example, eliminating off-street parking requirements will unlock housing growth in currently commercial areas where high parking requirements make such developments prohibitively

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expensive to build. Allowing accessory dwelling units (ADUs) and increased floor area while reducing minimum lot size in “low density” neighborhoods, characterized by small homes and walkup apartment buildings, can lead to a substantial increment of unit density on redeveloped lots.

However, the report finds ways in which the proposal can be improved. A proposed floor area increase for new buildings that include affordable housing admittedly would be effective only with state legislation to reinstate a property-tax exemption, called Section 421a, that compensates developers for the cost of constructing below-market rental units. In the absence of tax benefits, property owners in areas with strong housing markets could still build market-rate condominiums, albeit without the floor area increment.

However, the current proposal fails to clarify the relation of the new affordable housing incentive to a past policy, which has continued under Adams, mandating that a portion of units in new buildings in rezoned areas be provided at below-market rents. Properties ensnared by that policy are entirely dependent on tax incentives that do not currently exist. These properties should also have the development flexibility afforded by the proposed affordable housing floor area incentive.

Another issue relates to the proposal to allow more housing to be built in low-density neighborhoods. These areas are characterized by high levels of car ownership per household, and planners justified earlier downzonings as necessary to ensure that communities were not overwhelmed by parked cars. The plan needs to include simple site-design provisions that preserve on-street parking spaces and locate parking in the rear of the lot, as well as measures to encourage households to own fewer cars. These measures include zoning changes to allow more services within walking or bicycling distance and improved public transit frequency and reliability.

Whether the New York City Council will adopt the Adams administration’s proposals is uncertain. The plan takes on many issues that have been highly controversial in the past. However, the council has been receptive to past legislative proposals that are justified as remedying past discrimination against nonwhite New Yorkers. If the administration can succeed in making a similar case, it will have achieved meaningful progress toward the mayor’s stated “moon shot” goal of producing 500,000 new housing units over a decade.

Introduction

Summer’s end this year brought welcome news of “Zoning for Housing Opportunity,” an aggressive proposal by the administration of New York City mayor Eric Adams to reform zoning, with the objective of boosting housing construction. The proposed zoning changes—which were first announced in general terms in a September speech by Adams,¹ and then in greater detail in a document posted online by the Department of City Planning (DCP)²—represent the city’s first attempt since 2016 at changing the text of the city’s Zoning Resolution to spur housing construction.³ Since 2016, the long-term trend of housing scarcity and rising market rents and sales prices continued, with a short interruption during the worst of the Covid-19 pandemic, when the city suffered a population outflow. With economic recovery, the housing crisis is back—and worse than before.

The city’s proposed changes, if approved by the City Planning Commission and city council, have the potential to produce a meaningful uptick in housing construction. These zoning amendments also represent a significant ideological change. During the eight-year mayoral administration of Bill de Blasio, the city took the position that private housing investment should serve public purposes—namely, the production of new housing at below-market rent—and be dependent on public subsidies to address those public purposes. That policy could never work: first, because the

city does not have the fiscal capacity to supply enough funding to meet housing's vast capital needs; and second, because the success of the city's housing policies depended on the reauthorization by a recalcitrant state legislature of a lapsed—but key—property-tax-exemption program. Furthermore, the policy constrained overall housing production because developments that did not achieve financial feasibility under the city's complicated system of affordable housing requirements and compensating subsidies simply would not get built. Moreover, potential housing developers who had access to capital but didn't want to be in the affordable housing business would take their investments elsewhere.

The city now proposes zoning changes that, in some cases, would benefit private developers but leave them control over the rents, sales prices, and occupancy of their own development projects. Other changes still anticipate new housing that includes affordable units but on a voluntary basis, leaving property owners with a market-rate alternative if tax incentives are not reinstated. These changes would help the city make progress toward the “moon shot” goal that Adams set in December 2022 of producing 500,000 new housing units in a decade.⁴

This report describes the effects of the proposed changes, and how the proposal can be improved. The Adams administration deserves praise for what it wants to do, but also a caution that true housing abundance requires more.

The proposed zoning amendments are now subject to preparation of an Environmental Impact Statement, and the city's seven-month public review process kicks off in the spring of 2024. The following year, 2025, has a mayoral election, meaning that nothing controversial is likely to be proposed. Sadly, the process of conceiving, and securing approval of, complex citywide zoning text amendments is so time-consuming that the next phase (after this new Zoning for Housing Opportunity proposal) of NYC zoning reform must wait for the next four-year mayoral term, starting in 2026.

The Origins of NYC's Housing Shortage: Zoning and Regulations Since the 1960s

In his September speech, Adams looked back to the city's 1961 comprehensive zoning amendment for the origins of today's crisis: “The 1961 Zoning Resolution drastically changed the way our city would build housing ... for decades to come, and those changes were not for the better. ... [T]he 1961 code ... limited growth rather than encouraging it—ultimately, leading to a massive housing shortage, one that we are still reckoning with 62 years later.” There is a lot of truth in this.

As I have written,⁵ NYC had abundant and affordable housing by the early 1960s, under the relatively permissive zoning system created by the city's first Zoning Resolution, enacted in 1916. In that era, zoning allowed six-story semi-fireproof apartment buildings almost everywhere, and any spike in housing demand led to construction of more of these ubiquitous residential buildings. In support of its permissive zoning policies, the city built and continually expanded its subway system out to its edges. That enabled the growing city to function at relatively high built densities. In the post–World War II period, the subways saw ongoing improvements: the completion of the Queens IND line to Hillside Avenue and 179th Street in Jamaica, construction of the Rockaway branch, the connection of the Dyre Avenue line in the northeast Bronx (originally commuter rail)

to the rest of the subway system, and the union of the IND and BMT rail networks. The most important portion of that last project, known as the Chrystie Street connection, which greatly improved subway service between Brooklyn and Manhattan, was completed in 1967.⁶

The 1961 Zoning Resolution eliminated the ability of the city's housing production to respond rapidly to surges in housing demand. The political deal underpinning the new zoning traded a massive reduction in zoned densities in the Bronx, Brooklyn, Queens, and Staten Island for an increase in effective zoned densities in parts of Manhattan south of 96th Street, both for commercial and for residential buildings. While Manhattan boomed, and vacant land on Staten Island continued to see the construction of small homes, overall new housing construction was stifled dramatically.

At the same time, the creation of the Metropolitan Transportation Authority (MTA) in 1968, which combined NYC's transit system with commuter railroads and tolled road bridges and tunnels, largely led to the end of subway expansion. It was not supposed to be that way: MTA published, at its formation, an exciting "Program for Action" with many new and expanded lines.⁷ However, little of this planned system has been built. Substantial portions of the boroughs outside Manhattan are left without subway service within walking distance. The one line in Staten Island connects only to the St. George ferry terminal.

Adams stated in his speech that the 1961 zoning has "barely changed" in the years since. That is not true, as indicated by the table of housing completions provided in the Rent Guidelines Board's annual Housing Supply Report.⁸ In 1964, there were nearly 52,000 new housing units completed as buildings continued to be built under the old zoning rules.⁹ But by the late 1960s, completions had fallen off sharply. In 1980, in an economically weakened city, and amid sharp reductions in city, state, and federal funding for affordable housing, completions were under 9,000 units. Most new units were located in Manhattan and on Staten Island.

In 1987, the city adopted Quality Housing, a major zoning reform that partially reversed the 1961 downzoning, or zoning to permit less density.¹⁰ That change took a long time to pay off, as the city's economy became strong enough to support a significant volume of private housing investment only in about 2000. Around that time, completions began to show notable growth, particularly in Brooklyn and Queens. These data also show the effect of localized zoning map changes that allowed growth in locations where the housing market had been suppressed, including downtown Brooklyn and Greenpoint-Williamsburg in Brooklyn and Long Island City and Downtown Flushing in Queens. By 2007, new housing completions were approaching 26,500.

Downzoning and Attempts at Urban Renewal

That was not all that was happening in NYC zoning. There was further downzoning, curtailing new housing construction in many neighborhoods.

Any discussion of downzoning in the city must grapple with exclusionary intent. Adams, in his speech, said, "We can never lose sight of the fact that many ... who pushed for the 1961 Zoning Code aimed to promote ... segregation." The reality is perhaps more nuanced. The best source of information that we have about what the 1961 zoning was intended to do is an oral history transcript from Edwin Friedman, one of the planners who worked on it.¹¹ Friedman states:

The single most important objective of residential recommendations was to effectuate more evenly distributed residential densities without impinging upon individual freedom of locational choices. This objective resulted from the conclusion that overbuilding in some parts of the City was only at the expense of the sterilization of other parts.

The 1961 zoning took place during the urban renewal era, when public officials like Robert Moses used medicalized language describing urban “blight” as a “cancer” that had to be “excised.”¹² By this time, large numbers of poor African Americans from the South and Puerto Ricans were migrating into some of NYC’s oldest and most run-down neighborhoods—the neighborhoods that were then targeted for urban renewal. For example, in the 1940s and 1950s, the city cleared tenements from the previous century and built several high-rise public housing developments in East Harlem in Manhattan and elsewhere, which seem intended to prevent the spread of these newer populations.¹³

Faced with the flight of better-off whites to the suburbs, city planners wanted to keep the working-class white population in declining inner-city areas like the South Bronx and central Brooklyn, rather than seeing them move to new apartment buildings in outlying city neighborhoods. That would help stop the spreading “blight” represented by racial and ethnic change. Planners viewed this policy as neighborhood stabilization, but the upshot would be that the incoming poor nonwhite migrants were constrained in their housing choices to a small number of overcrowded neighborhoods.

That attempted social engineering was undercut by the city’s own policies, shaped by ongoing political pressures. High levels of housing construction continued through the grace period in the downzoned neighborhoods, and city and state officials continued to approve large publicly subsidized developments, such as Co-op City in the Bronx and Starrett City in Brooklyn, that emptied inner-city neighborhoods of their remaining white residents. Neighborhood racial and ethnic change became commonplace. Meanwhile, urban renewal became discredited through the writings of critics such as Jane Jacobs, whose *Death and Life of Great American Cities* was published in 1961. City officials ultimately understood by the early 1980s that blight could be remediated much more humanely by housing rehabilitation rather than clearance, avoiding the displacement of neighborhood residents.

However, the city did not, in that more enlightened era, forswear further downzoning. In 1973, zoning had been amended to create “infill” zoning, which allowed larger walkup multifamily residential buildings in certain zoning districts where new housing had been severely curtailed in 1961.¹⁴ By the 1980s, the change had been modestly successful in facilitating teardowns of older homes and the construction of larger new residential buildings. The new buildings often had two legal units and a third carved illegally out of the ground floor, in order to avoid implicating the requirements of the state Multiple Dwelling Law (MDL), which applied to buildings of three or more units. By 1987, the zoning provision had become unpopular enough in Queens to induce a new zoning amendment to curtail its applicability.¹⁵

“New Urbanist” Reactions to Car-Centric Housing Growth

Another zoning change important for understanding the historical background of Adams’s Zoning for Housing Opportunity is Lower Density Contextual Zoning (LDCZ), enacted in 1989.¹⁶ This zoning text amendment rewrote the rules for zoning districts widely mapped in low-density areas, mostly auto-dependent neighborhoods where the characteristic housing development consists of one- and two-family homes and small walkup multiple dwellings.

LDCZ was drafted in response to a widespread perception among planners, community activists, and elected officials that the zoning then in effect was encouraging the construction of new buildings with illegal basement units in small homes, and that these units in turn were flooding neighborhoods with parked cars, leading to the widespread paving of front yards, continuous curb cuts, and the loss of on-street parking. Zoning, at that time, exempted the lower floor of each house containing a garage and a “recreation room” from the calculation of floor area. That space could be converted into an additional apartment.

As an illustration of this problem, the NYC DCP study¹⁷ and presentation materials used a group of five, ostensibly two-family homes at 371-81 Bradley Avenue in the Manor Heights neighborhood of Staten Island (**Figure 1**). Three electric meters are visible from the street for some of the buildings, and the development may contain as many as 15 units. The front yard effectively was converted into a large parking lot, eliminating all on-street parking that otherwise might be available to nonresidents, and creating an aesthetically unappealing streetscape.

Figure 1

Low-Density, Auto-Dependent Zoning: 371–81 Bradley Avenue, Manor Heights, Staten Island



Source: NYC DCP, Zoning and Land Use Map, Cyclomedia Street View

LDCZ incorporated “New Urbanist” principles as planners essentially rediscovered site-planning practices that architects of previous decades had understood well. These principles had been incorporated into well-publicized communities, such as Seaside and Celebration in Florida.¹⁸ One of the most important principles was to move off-street parking out of the front yard. Older one- and two-family homes typically had parking located in a garage in the rear yard, accessed through a side-yard driveway. That simple design change preserved on-street parking and made front-yard planting much more likely (**Figure 2**).

Figure 2

Rear-Yard Parking: 1738 Bay Ridge Parkway, Brooklyn



Source: NYC DCP, Zoning and Land Use Map, Cyclomedia Street View

In addition to curtailing the ground-floor floor area exemption and incorporating New Urbanist design principles, LDCZ created “contextual” zoning districts that could be (and were) used to fit zoning to a neighborhood’s built context and forestall physical change in the neighborhood.

Vehicle Ownership vs. Transit Access

A long list of downzoning actions followed, intended to curtail growth in the lower-density parts of the city, which continued through the mayoral administration of Michael Bloomberg, who left office at the end of 2013. Hostility to racial and ethnic change was often present in communities that organized to demand restrictive zoning.¹⁹ However, bona fide land-use concerns also existed. Many areas that were downzoned had high levels of car ownership and were seemingly flooded with parked cars. A 2009 NYC DCP study found that in “outer ring” community districts in the Bronx, Brooklyn, and Queens—corresponding to an area over 8 miles from Times Square where many of the downzonings took place—the average car ownership in new one- and two-family housing was 1.45 per household.²⁰ These are, in many cases, the neighborhoods that the subway never reached. Almost every neighborhood has bus service within walking distance, but residents did not perceive the available service as an adequate substitute for car ownership. As a result, street parking and homes’ onsite open spaces were overutilized to store vehicles.

A more vehement demand for downzoning swept Staten Island, encouraged by local elected officials, in the early 2000s. Unlike in the Bronx, Brooklyn, and Queens, where DCP negotiated with city council members to “trade” downzonings in low-density areas for upzonings in areas better served by transit, on Staten Island the trade was for political support for relatively pro-growth mayors (if that growth did not happen on the island).

Staten Island is even more heavily affected by auto dependency, high vehicle ownership per household, and the conflicts between even modest levels of built density and the amount of land needed to store motor vehicles. An analysis of five-year (2012–17) American Community Survey data found that the average number of vehicles per household in the borough was 1.49. This figure increased as one moved from north to south among the borough's three community districts. For Community District 3, in the southern part of the borough, the average number of vehicles per household was 1.75. That compares with averages of 0.58 for Brooklyn and 0.92 for Queens.²¹

The housing completions data demonstrate the effect of downzoning: Staten Island had nearly 3,500 new housing units completed in 2003, but those totals fell off rapidly, reaching a low of 463 in 2022.

Still, NYC could perhaps have tolerated these downzonings in small-home areas, and still retained a relatively fluid housing market, as long as the policies did not affect housing locations better served by transit and less impacted by auto dependency.

However, another variety of downzoning also took place. In Manhattan, particularly, but also in increasingly affluent residential neighborhoods surrounding downtown Brooklyn, residents organized to ensure that they would have few new neighbors. Local groups lobbied for both the creation of new historic districts, effectively stopping development, and downzonings. Consequently, housing construction has fallen dramatically in Manhattan, the most affluent and best transit-served borough. Between 2001 and 2011, an 11-year period, Manhattan housing completions fell below 5,000 units in only one year, 2003, when 4,718 units were completed. But from 2012 to 2022, Manhattan housing completions fell below 5,000 in nine of those 11 years. The focus of the city's housing construction has shifted to Brooklyn, where, in recent years, the number of completed housing units has sometimes been more than double Manhattan's.

Much of the Manhattan downzoning took place in the 1980s and early 1990s. For much of this period, the final decision-maker on zoning was the Board of Estimate, in which the mayor, city council president, and comptroller each had two votes, and each borough president had one. This structure overrepresented Manhattan, since the mayor and often one or both other citywide officials, as well as the borough president, were Manhattan residents. As a consequence, today Manhattan has limited zoned capacity for new housing.

Outdated Manufacturing Zones

An additional, deleterious set of policies relates to the ongoing retention of manufacturing zones where new housing is prohibited. Here, a sound idea is undermined by a lack of attention to changes in land-use conditions over time. There exist land uses that should be separated from residences. While the city no longer has a large presence of manufacturing, it does have a large and, until recently, growing distribution sector that depends on the movement of large trucks at all hours. Sites also need to be found for land uses such as bus garages and recycling facilities that should not be located close to housing.

The city retains many manufacturing zones, however, that do not include such land uses and where housing is desirable. In 2001, for example, MTA completed the subway connection to the 63rd Street tunnel, part of the Program for Action, resulting in frequent service from the 21st Street-Queensbridge station in Long Island City, Queens, to midtown Manhattan. However, the city failed to rezone the large manufacturing zone near the station to permit housing, an obviously desirable land use given the transit access. Seizing what opportunity existed, real-estate developers constructed large numbers of hotels in the area, ending any meaningful possibility of industrial investment. Yet the antiquated housing restrictions remain.²²

High Rents, High Sale Prices: NYC's Housing Shortage Today

Despite these ill-considered zoning policies, the city has prospered, which means that it has been consistently unable to house its own labor force. As NYC DCP's "City of Yes for Housing Opportunity" online presentation points out, jobs have increased much faster than housing supply.²³ To close this gap, the city has relied, to some extent, on high housing production in northern New Jersey;²⁴ but it has also experienced a rent squeeze on newcomers who lack access to rent-regulated apartments and who seek housing in the unregulated market. In July 2023, average and median Manhattan market rents, as well as rental price per square foot, were at a record high.²⁵ Manhattan rents act as a pacesetter, pulling up rents throughout the city. While there were no new Manhattan rent records in August, Brooklyn and northwest Queens set new highs for average market rents and rental price per square foot, and northwest Queens also set a new high for median rent.²⁶

High rents in the city's strongest-market neighborhoods cause prospective renters to look elsewhere and put pressure on unregulated rents throughout the city. The rent squeeze discourages all but the best-paid workers from taking jobs in NYC and encourages young-adult high school and college graduates to take jobs in other cities where housing is more affordable, even at lower levels of pay.

High rents also influence housing prices, since homeownership is an alternative to renting. However, the transmission of these rent pressures to housing prices is affected by rising mortgage interest rates, which exert pressure on prices in the opposite direction. The median co-op and condominium sales price in the third quarter of 2023 in Manhattan fell somewhat from its 2022 peak but remains well above pre-pandemic levels.²⁷ In Brooklyn, the median sales price for co-ops, condominiums and one- to three-family houses in Q2 2023 was below the record set in Q2 2022, but also well above pre-pandemic levels.²⁸ Queens in Q2 2023 was much the same, although median sales price peaked at the end of 2021 in that borough.²⁹

NYC's Proposed Zoning Changes: A Necessary Political Gamble

The city's proposal represents a repudiation of much of the zoning enacted in the City Planning Commission's 85-year history. Even preceding the 1961 zoning, detached-single-family residence districts were created in a 1938 amendment, and residential off-street parking requirements were instituted in 1950.³⁰ These are now proposed to be cast aside. The proposed amendments also reverse, in whole or in part, some of the residential downzonings of 1961 and subsequent years. NYC zoning has long been responsive to the perceived needs of homeowners and the well-off. Now, these same entrenched interests are, in effect, being told that in the name of equity, the needs of renters, as well as households at a broad range of incomes that are currently shut out of the city's housing market, will take precedence. It's a breathtaking political gamble by the mayor.

The proposal can be characterized as: (1) changes that affect medium- and high-density districts; (2) changes that affect low-density districts; and (3) changes with citywide effect. These categories are discussed below.

Medium- and High-Density Districts

These zoning districts³¹ encompass most of the city's apartment buildings of four stories or more, ranging up to the high-rises found in Manhattan, downtown Brooklyn, Williamsburg, Greenpoint, Long Island City, and Mott Haven in the Bronx. Because of the sheer size of the new buildings permitted, and the close relationship between where medium- and high-density districts are mapped and the subway system, these districts have historically accounted for most of the city's new housing production. It is not likely that Zoning for Housing Opportunity will have its greatest housing production effect in these districts, for two reasons.

First, housing is inherently cheaper to construct in low-density districts, where many new housing units would be at ground level or walkups, so, elevators would be unnecessary. That creates the potential for a larger range of incomes to be served, without needing to tap the city's limited subsidy resources. Second, small residential buildings of 10 units or fewer are favorably treated in the property-tax system. Rental buildings of more than 10 units are unfavorably taxed. Changing that requires action of the state legislature, which is unlikely because the tax burden would need to be shifted to homeowners, the very constituency that has dominated local politics for decades.³² Because the tax problem seems permanent, new housing construction in medium- and high-density districts has become very dependent on a property tax-exemption program, known as Section 421a, that lapsed in June 2022.

This dependence became even more marked after 2016, when the city instituted Mandatory Inclusionary Housing (MIH), a policy of requiring new residential buildings to include specified, large percentages of well-below-market "affordable" units after a rezoning.³³ MIH imposed such a sizable exaction on new housing, that it was economically feasible (without additional public subsidies such as federal low-income housing tax credits or city capital budget funding) only in areas with very high market rents—and even then, only if those buildings were eligible for Section 421a tax benefits.³⁴ While condominiums are under a more favorable underlying property tax regime, they generally did not qualify for the 421a benefit, which made such buildings infeasible in any rezoned area subject to MIH. Because 421a has lapsed, MIH is generally not feasible for privately financed mixed-income housing in any neighborhood.

The mayoral administration of Michael Bloomberg (2002–13) instituted another zoning device to encourage inclusion of below-market-rent units in new housing. That device, called the Inclusionary Housing Program (later known as Voluntary Inclusionary Housing, or VIH) provided increased floor area for developers that voluntarily provided "affordable" units. It worked well where it was effectively coordinated with Section 421a benefits, in the form that existed during much of Bloomberg's tenure. That version of 421a, which lapsed in 2015, created a Geographic Exclusion Area where no tax benefits were available without the provision of units at below-market rents. While the VIH mechanism continued to exist after 2015, it was less effective because tax benefits were no longer as well coordinated with the geography in which the program operated.³⁵

That background is important in understanding the city's proposal in medium- and high-density districts. The city's flagship change is to create a floor area increment, citywide, for buildings that are wholly or partially affordable or supportive housing.³⁶ In an R6A district, for example, which allows new apartment buildings of about six or seven stories, the floor area increment would be 30%—a floor area ratio (FAR)³⁷ of 3.0 to FAR of 3.9—adding roughly two more stories.

The floor area increments would vary by zoning district, based on similar increments for senior housing, created in 2016.³⁸ Districts that did not then have floor area increments for senior housing would now have them, and the new citywide incentive would replace the Bloomberg-era VIH floor area bonuses, which applied only in designated areas.

Because of fair housing law, senior housing is developed only in buildings entirely dedicated to that use.³⁹ The 2016 zoning amendment has been effective in allowing the city to expand the city's stock of affordable senior housing, using tax-exempt bonds, federal low-income housing tax credits, and other subsidy sources.⁴⁰ The rationale for the floor area increment enacted in 2016 was first, that affordable senior housing was in high demand, with the aging of the population and the large numbers of New Yorkers living in walkups and other types of housing unsuitable for frail seniors; and second, that senior housing has fewer land-use impacts than family housing, since low-income seniors generally do not own cars or place other demands on public infrastructure, such as schools or transit. Thus, larger buildings would house more seniors and not create any adverse land-use impacts.

The new amendment would extend this logic to other types of affordable housing. These are equally in high demand, given the supply constraints that push up the rents or sales prices of the few available units. While low-income residents own few cars, they do use public infrastructure. Here, the new amendment's argument is that by concentrating new affordable housing in the city's most transit-served neighborhoods, the city can take advantage of transit capacity that was freed up by pandemic-induced ridership declines and school capacity freed up by enrollment declines.⁴¹ Unlike senior housing, however, family affordable housing can be in mixed-income buildings. For example, in the R6A example above, up to 3.0 FAR of floor area can be used for market-rate housing, and only the 0.9 FAR increment must be used for affordable housing.

As with the Bloomberg-era VIH, the production of affordable units depends on the reinstatement of 421a, or an equally effective tax incentive, drafted so that the tax exemption is available only to buildings that utilize the floor area increment. In the absence of such an incentive, the floor area increment will be used only for heavily subsidized, 100%-affordable buildings, which qualify for tax exemptions under other provisions of law that do not expire.

Another notable proposal would make changes to "tower-on-a-base" rules in the city's highest-density districts. These rules require a specific design configuration in which a "base," covering most of the lot, sits below a "tower," the narrower, high-rise building structure on the base. In 2022, I noted that in Community District 8, Manhattan (Upper East Side), "tower-on-a-base" was one of the devices that the city had adopted over time to suppress new housing construction, because it limits the size of new residential buildings. I recommended repealing these rules.⁴² While the city's proposal does not go as far as I would, it does achieve a small liberalization, which might result in construction of a few more new housing units in one of the city's most affluent neighborhoods.⁴³

Low-Density Districts

Zoning for Housing Opportunity aggressively seeks to increase the amount of housing produced in low-density zoning districts.⁴⁴ These areas, which are characterized by small homes and low-scale apartment buildings, have been continuously downzoned for decades, and today produce very little new housing.

The city's newfound aggressiveness has two causes. First, the Adams administration has set a goal of spreading housing growth to every community district, including those that have little or no medium- and high-density zoning. Second, the uncertainty about the reinstatement of the Section 421a tax exemption causes the city to emphasize opportunities in low-density areas where new buildings would be characteristically small. Rental buildings of 10 units or fewer are taxed at a much lower percentage of market value than larger rentals.



Floor Area Increases

The city's proposal would increase the permitted FAR in most low-density districts by about 10, to as much as 50%.⁴⁵ Combined with changes to other restrictive provisions such as height, lot coverage, lot size, and required yards, this would increase the amount of housing that can be built and make teardowns of older housing more likely.

We can see the effects via an example of a 4,000 square foot, 40' x 100' lot in an R3-1 district. This district permits detached and semidetached (i.e., attached to another house on only one side) one- and two-unit homes.⁴⁶ Current zoning permits 0.6 FAR, or 2,400 square feet of floor area. This floor area would likely be developed in a detached two-story, two-family home, with one unit above the other. **Figure 3** shows an example of such a house, located in an R3-1 district in Mill Basin, Brooklyn.

Figure 3

Floor Area Increase Example: 2546 East 65th Street, Mill Basin, Brooklyn



Source: NYC DCP, Zoning and Land Use Map, Cyclomedia Street View

Side-by-side homes would be allowed, but because eight-foot side yards are required, the homes could be only 12 feet wide each, resulting in cramped interior spaces.

The city now proposes to increase the FAR to 0.75, or 3,000 square feet, a 25% increase. Side yards are reduced to five feet, meaning that two side-by-side homes could each be 15 feet wide, permitting a better interior layout. Moreover, with each side-by-side home having 1,500 square feet of floor area, each could have two units, one above the other. Thus, two units potentially become four. That might make tearing down an existing home more worthwhile to a developer.

Qualifying Sites

In the Greater Transit-Oriented Development Area, a subset of low-density districts that are relatively well served by transit (either subway or commuter rail),⁴⁷ the Adams administration’s proposals go further, making teardowns more likely. Floor area increases would be larger for “qualifying sites” of over 5,000 square feet.⁴⁸

The city’s explanatory document describes these changes as introducing “missing middle housing,” a term much in vogue in U.S. planning circles these days. Missing middle housing is seen as a way to introduce moderate density increases in neighborhoods that were previously zoned exclusively, or primarily, for single-family homes.

Take a different R3-1 district example, where two semi-detached single-family homes sit side by side on two lots, each 25’ x 100’, or 2,500 square feet each, which together meet the threshold. **Figure 4** shows a typical pair of houses in Bayside, Queens, built in the 1950s. The current homes have FAR just below 0.5, and 0.6 is permitted.

Figure 4

Greater Transit-Oriented Development Area Example: 206-07 and 206-09 46th Avenue, Bayside, Queens



Source: NYC DCP, Zoning and Land Use Map, Cyclomedia Street View

The FAR would be increased to 1.0, a 67% increase in the permitted maximum. Two new houses could be 2,500 square feet each, a doubling in size. Moreover, the two-unit cap on each lot would be lifted. Two side-by-side houses could each have three units. Thus, the two units at present could become six.

Low-Density Commercial Districts

In low-density commercial districts,⁴⁹ even larger floor area increments would be permitted, ranging from 1.5 to 2.5 FAR, including ground-floor commercial space.⁵⁰ This change would produce large numbers of mixed-use buildings (apartments over ground-floor commercial), likely ranging from three to five stories on lots that currently are occupied by low-rise commercial buildings.⁵¹

New housing in low-density commercial districts is likely to generate somewhat lower car ownership per household, compared with both the low-density sites affected by the proposed new base FARs and the “qualifying sites” with enhanced FARs. This is because many services will be within walking distance, and low-density commercial streets often have frequent bus service or, more rarely, are close to subways or commuter rail. Moreover, many of these areas already have apartment buildings, usually predating the 1961 zoning, so introducing new ones does not represent as dramatic a change in neighborhood character as such buildings would create on side streets characterized by small homes.

Lot Area and Lot Width

In NYC zoning, minimum lot area and minimum lot width provisions determine whether a given lot can be subdivided. Lot subdivisions are a way to increase housing-unit density without changing the permitted types of residential buildings. In a zoning district permitting only single-family homes, changing the rules to allow lot subdivisions would allow one house to be demolished, and replaced by two. The new proposal⁵² would reduce minimum lot area and lot width in many districts but would have its greatest effect in districts currently permitting only single-family detached homes.⁵³ In the widely mapped R2 district, minimum lot width, and lot size, currently 40 feet and 3,800 square feet, respectively, would change to 30 feet and 2,850 square feet. A 60-foot-wide, 6,000-square-foot lot is not currently subdividable; with this change, it would be.

In other low-density districts, semi-detached and attached houses are allowed with a small minimum lot size that already facilitates lot subdivisions. Single-family detached neighborhoods are among the city's most affluent, and homeowners with large lots, in some cases, can subdivide under current zoning but choose not to do so. The proposed change would increase the number of lots where a home for sale could be acquired by a developer that intends to subdivide.

Accessory Dwelling Units

The proposal would allow an additional dwelling unit, defined as an “Accessory Dwelling Unit” (ADU), on lots that have single- and two-family residences.⁵⁴ Combined with the lot area and lot width changes just described, this change could transform a lot that is now allowed to have only a single-family residence into as many as four units.

ADUs could be within the same building as other dwelling units on the lot, attached to that building, or located separately in the rear yard. The city will seek legislation exempting ADUs located in the same building as two existing units from triggering the requirements of the state MDL. The ADU provision, with the accompanying state legislation, would permit the legalization of existing apartments that have been carved out of basement garages and recreation rooms.

ADU liberalization is widely viewed by U.S. state and local governments as a means of boosting housing production while respecting the built context of low-density neighborhoods. In Los Angeles, for example, ADUs permitted by state law have become an important source of housing production.⁵⁵ ADU construction allows homeowners an income-producing rental property investment. Since market rents will be relatively high in high-income, single-family-home neighborhoods, this can

be attractive, provided local governments do not attach undue restrictions. NYC would limit the size of an ADU to 800 square feet, but is not proposing other potentially problematic restrictions, such as owner-occupancy, required off-street parking, or discretionary review.⁵⁶

Citywide Changes

Eliminate or Liberalize Unit-Density Controls

The new proposal also addresses unit-density controls, which are regulations that generally control the number of dwelling units in a building by requiring a specified average floor area per dwelling unit (also called the “dwelling unit factor”).⁵⁷ The proposal eliminates unit-density controls over a large area of the city defined as the “Inner Transit-Oriented Development Area,” which generally encompasses the areas of the city with good subway access.⁵⁸ Unit-density controls would also be eliminated for zoning districts permitting only one- or two-unit homes, allowing a two-family home to divide the permitted floor area with units of any size, provided that the maximum floor area for the lot is not exceeded. In other areas, the controls are relaxed.

This change would allow for more units in a new building relative to floor area, with a smaller average size. This enables developers to be more responsive to market demand for smaller units, reflecting the needs of an aging or unmarried population, where more people are living alone, or with just one other person.⁵⁹

In a brief earlier this year, I discussed how unit-density controls reflected zoning’s tendency to impose excessive controls on development, overestimating planners’ capacity to engineer specific sociodemographic outcomes—in this case, the promotion of neighborhoods characterized by families, rather than singles.⁶⁰ This proposed change is a helpful deregulation that increases the availability of small housing units.

Shared Housing

The city also proposes to eliminate zoning restrictions on shared housing units—units without full kitchens and baths.⁶¹ Zoning, interacting with other laws, currently restricts new shared units to community facilities—dormitories and nonprofit institutions with sleeping accommodations. New private, for-profit shared housing is currently prohibited by the city’s Housing Maintenance Code (unless it is built with substantial city assistance). Zoning changes combined with changes to that law, which would need to be approved by the city council, could lead to the construction of for-profit shared housing for working adults resembling college dormitories, with lockable bedrooms and shared kitchens and baths.⁶²

Conversions of Nonresidential Buildings

The proposal would allow nonresidential buildings in zoning districts that allow residences to be converted to housing, even if such buildings do not comply with zoning rules such as maximum FAR and the required dimensions of yards and courts. Such buildings could be converted if they existed in 1990, a cutoff intended to preserve relatively recently constructed buildings for business or institutional uses. Currently, conversions of “noncomplying” (as to restrictions on size and massing) buildings are limited to specified parts of the city.⁶³

Residential conversions of non-residential buildings are currently governed by NYC zoning or the state MDL, whichever is more restrictive. Some changes that the city wants to make won’t become effective without corresponding state legislation. The special, more permissive state law provisions for conversions apply only to buildings that existed on January 1, 1977.⁶⁴ Buildings that were built after that date, in the absence of state legislation, will need to comply with the underlying provisions of MDL, including a cap on residential FAR of 12.

The main effect of the proposed change will be to facilitate the residential conversion of large office buildings in midtown Manhattan and downtown Brooklyn, constructed between 1961 and 1977 (the 1977 date already applies in lower Manhattan). Allowing more conversions could mitigate some of the spreading financial distress among Manhattan office properties.⁶⁵ Importantly, the proposal does not require that affordable units be included in residentially converted buildings, absent state legislative approval of new tax incentives (and office-to-residential conversions are quite costly to begin with). With a state MDL change, this zoning proposal would facilitate the conversion of large office buildings in all the city's major business districts built between 1977 and 1990, which would have a big impact.

The city's zoning proposal would also enable conversion of commercial or institutional buildings outside the city's major business areas that are not currently eligible for the special conversion rules. Some of these buildings may be partly or wholly vacant above a retail ground floor because of lack of demand for the space. Because many of these buildings are small, the housing production impact would be modest.

Off-Street Parking

The new proposal would eliminate required off-street parking for new housing citywide.⁶⁶ Currently, no off-street parking is required in the Manhattan core (Community Districts 1–8) and Long Island City⁶⁷ and under some conditions in other areas. As I discussed in January of this year, the case against off-street parking requirements is straightforward; the only reason to have them is to make parking cheaper than it would be if provided only in response to market demand. Thus, such requirements encourage car ownership and use.⁶⁸ That unduly privileges the relatively affluent households that own cars and runs counter to the city's environmental objectives, which seek to encourage transit use, walking, and bicycling.

To avoid making political opponents of car owners who currently enjoy low-priced parking, existing required off-street parking for residences would remain required. However, such requirements could be waived by discretionary action.

In addition to eliminating off-street parking requirements for residences, requirements would be eliminated or reduced for commercial portions of mixed-use buildings. In the Manhattan core and Long Island City and certain other zoning districts, no off-street parking is currently required for commercial uses; in some other areas, it is waived under specific conditions. Under the proposal, regardless of the underlying commercial zoning district, no parking would be required for commercial space in new mixed-use buildings in the Inner Transit-Oriented Development Area. The same would be true of lots of up to 10,000 square feet in the Outer Transit-Oriented Development Area and lots of up to 5,000 square feet in the portions of the city outside the two transit-oriented development areas.

The elimination of off-street parking requirements for new residential and mixed-use buildings will have its greatest effect in areas where apartment buildings with ground-floor commercial space are allowed but infeasible because of the amount of required off-street parking. One such area is Queens Boulevard in Rego Park and Forest Hills, Queens, which I wrote about in 2022.⁶⁹ The elimination of all parking requirements should lead to the construction of new mixed-use apartment buildings on sites currently occupied by one- or two-story commercial buildings.

Railroad Rights-of-Way

MTA and Amtrak control substantial railroad rights-of-way and yards within NYC that could feasibly be covered by platforms, providing sites for new housing and bringing revenue into cash-strapped transportation agencies. In most parts of the city, such developments are regulated by a costly discretionary review process, intended to ensure that any platform allows continued railroad

operations and does not unduly scoop up large amounts of floor area from a large or irregularly shaped right-of-way segment, resulting in a much larger building than can typically be built in the applicable zoning district. Zoning for Housing Opportunity recognizes that these issues can be addressed by less cumbersome and costly controls.⁷⁰ While NYC Planning’s published document is vague about how this would work, the proposal creates a basis for a fruitful collaborative effort with the transportation agencies.

An example is a 60-foot-wide Long Island Rail Road right-of-way between 149th Place and 149th Street (a distance of 254 feet) in Flushing, Queens, immediately west of the Murray Hill station (**Figure 5**). The site, zoned R5 in a commercial district, would be allowed, under the proposal, four residential stories above ground-floor commercial space on a platform at each street frontage. Since MTA would be the land seller, it could presumably set suitable conditions to ensure continued rail operations. There are no land-use issues requiring further discretionary review by the city.

Figure 5

**Railroad Right-of-Way Platform Construction
Example: 149th Place, Flushing, Queens**



Source: NYC DCP, Zoning and Land Use Map, Cyclomedia Street View

Landmark Transfers

NYC DCP is using Zoning for Housing Opportunity as a vehicle to advance a long-studied proposal to enhance transfers of development rights from designated landmarks. Historic preservation laws have always faced concerns that imposing a preservation obligation upon a private property owner who otherwise could take full advantage of zoning is unfair, and perhaps unlawful. NYC tried to compensate owners of designated landmarks with a mechanism to permit unused development rights to be transferred to development on a nearby lot, either adjacent or across a street. The transfers, which provided no relief to property owners in historic districts, required a costly discretionary review process and were relatively rare.

The current proposal would increase the radius within which development rights could be transferred, make buildings in historic districts and buildings in lower-density zoning districts eligible, and simplify the transfer process for many applications.⁷¹ All such applications require a plan to preserve the landmarked building. While these changes are not likely to have a large impact on housing production, they will make landmark designation less of a burden for private property owners and free up some “stranded” development rights.

Evaluating the Proposed Changes

Many of the proposed changes are sound and should be approved by the City Planning Commission and the city council. Some raise issues, which are discussed below.

Medium- and High-Density Districts

The proposed floor area increments for affordable housing raise issues. First is how the affordable housing within the proposed floor area increment will be financed. Below-market-rent housing units do not pay for their own construction costs, but real-estate developers still demand a competitive return on their investment. If there is no external source of financing, new buildings will not utilize the floor area increase.

The city has historically tried to reconcile its desire for mixed-income housing with the realities of development economics by making tax exemptions available to the entire building through the Section 421a program. The developer evaluates whether the net present value of the tax savings provides an acceptable return on the investment in affordable housing. If it does, the zoning change will be successful in encouraging mixed-income construction. However, the 421a program has lapsed. Without reinstatement of a workable tax incentive by the state legislature, this proposed floor area increment will be used only for deeply subsidized, 100% affordable housing, a much smaller stream of new affordable units than a revived 421a incentive can produce.

Second, the relationship of this proposal to the de Blasio MIH needs to be clarified. MIH worked economically (with tax exemptions but not additional subsidies) only in a relatively small area of the city with very high market rents, which could cross-subsidize the required percentage of affordable units and make the property-tax exemption more valuable. In middle-income neighborhoods in other parts of the city, new apartment buildings were routinely constructed under zoning in effect prior to 2014, when de Blasio took office.⁷² However, land rezoned at medium and high densities with MIH were infeasible to develop without additional public subsidies. Many potential private applicants for zoning-district map changes were deterred because there was no viable option to profit from a rezoning.

The new proposal offers real estate developers two options if 421a is renewed: they can build condominium units at the “base” FAR (in our R6A example, 3.0); or they can build a rental building at the “incremental” FAR with 421a benefits and the required number of affordable units. In comparison with the economics of MIH, these two options greatly increase the area of the city where new medium- and high-density apartment buildings might be built without additional public subsidies (beyond the potential 421a replacement), provided such opportunities are made available.

It is unclear, however, whether DCP will allow private property owners to apply for a zoning map change under the new option, rather than requiring that they apply for a change with the economically less attractive MIH restrictions instead.⁷³

Furthermore, the City Planning Commission and city council would need to be willing to approve such private applications. If the new proposal is insufficiently flexible, it creates a seemingly arbitrary category of grandfathered-in land that had medium- and high-density zoning prior to de Blasio's inauguration in 2014 (this is the cutoff year because subsequent zoning map changes have had MIH restrictions attached). These grandfathered lots can be developed more profitably and will be sold at a premium, offsetting some of the benefits of any revived tax exemption.

On the other hand, if the city is willing to entertain rezoning applications under these new rules, other issues arise. A significant number of residentially rezoned sites now exist in MIH limbo—not buildable unless the 421a tax exemption is renewed, and, in some cases, not even then, unless additional public subsidy is provided. Moreover, the city is proceeding with areawide MIH rezonings, in the face of uncertainty about whether these rezonings can feasibly produce new housing.⁷⁴

The city should acknowledge—not *sotto voce*, as in the present proposal but frankly, that all affordable housing is subsidy-dependent. MIH is not, and has never been, some sort of free lunch. If the backdoor subsidy through the tax system is attractive enough, developers will build mixed-income housing. If it is not, they should be allowed to build market-rate condos, albeit at a lower FAR, no matter when the site was rezoned. The city should discontinue MIH affordability mandates and allow the proposed floor area increment, with voluntary provision of affordable housing in exchange for tax incentives, to apply citywide in medium- and high-density districts. That would help get rezoned sites in less strong market locations out of limbo and partially mitigate the effects of a continued legislative standoff over 421a reinstatement. It would also help ensure housing construction continues, even if new legislation continues the practice of “sunsetting” tax benefits after a brief period of eligibility.

Low-Density Districts

The proposed floor area increases in purely residential areas would allow more unit density, particularly on “qualifying sites,” but also on the great majority of small-home lots subject to the underlying zoning rules. This raises several issues. Because the existing zoning districts were generally mapped based on substantial compliance for existing homes, allowing much more floor area and many more units would result in widespread teardowns. Whether one thinks this is good or bad, of course, depends on one’s perspective. It’s likely that many people who live in affected neighborhoods bought into them expecting that they were protected from change. On the other hand, as discussed above, uncertainty about the future course of Section 421a benefits makes low-density areas important to a citywide housing solution. Moreover, homeowners potentially benefit economically as their lots become more valuable, and many residents will understand the need to make housing more available and affordable, so that their children or aging parents can also find homes in the neighborhood.

NYC Planning’s 2009 *Residential Parking Study* found that in the “outer ring” neighborhoods, where many affected low-density districts are located, average car ownership per household for new one- and two-family homes was 1.45; for three- and four-family homes, 0.89; and for larger multifamily buildings, 0.53.⁷⁵ Households select neighborhoods based, in part, on their lifestyle and expectations about the availability of on-street or off-street parking. Such expectations can be upended by rapid growth in the housing stock, particularly since off-street parking is often monopolized by the owner of a two- or three-unit home and renters rely on the street. Moreover, the new mixed-use buildings on commercial streets would likely not provide any parking but would still generate car ownership.

NYC DCP needs to consider urban design provisions that can alleviate the effects of higher density on the streetscape. In addition, planners need to determine whether the geographic range of the proposed FAR changes is optimal. Perhaps fewer community impacts are possible if more density is concentrated closer to neighborhood commercial streets, and this is combined with aggressive efforts to improve neighborhood services and increase the speed and frequency of transit service. Moreover, pumping up growth in low-density districts should not be seen as a way of evading the shortcomings of MIH and the implications of the uncertain future of the Section 421a tax exemption. Because MIH does not apply to low-density districts, facilitating new five-story condominiums in R5 commercial districts may seem somehow more acceptable than allowing seven-story condominiums on rezoned sites in R6A districts. This makes little sense, particularly because the medium- and high-density districts are mostly much better served

by transit and exhibit much lower car ownership. In fact, a sensible option under this proposal for hapless property owners in an MIH area would be to downzone their property to R5 with a commercial overlay. At least then, they would have a viable development option. Each of these issues is addressed below.

Urban Design and Streetscape

The proposed FAR changes alter the look and feel of neighborhoods in ways that other changes, such as allowing backyard ADUs, do not. Moreover, the changes create the potential for genuine land-use impacts, particularly the problem of overutilizing land to store motor vehicles. The proposed underlying rules would result in less off-street parking overall in new buildings, since none would be required. Additionally, the proposal would result in less on-street parking because the revised zoning would lift restrictions on front-yard garages, leading to potential curb cuts in locations that eliminate curbside spaces. Front-yard driveways reduce or eliminate landscaping and, in general, create an unattractive streetscape.

NYC's lower-density neighborhoods are by and large pleasant places to live, and city planners should want to keep it that way. Increased density and good urban design should be partners. An important resource for advocates of missing middle housing is Daniel Parolek's book, with Arthur C. Nelson, *Missing Middle Housing: Thinking Big and Building Small to Respond to Today's Housing Crisis*.⁷⁶ Parolek's firm, Opticos Design, maintains a "Missing Middle Housing" information website.⁷⁷

Parolek's prototypes are largely drawn from pre-World War II-era building types. He writes:

Missing Middle Housing is about house-scale buildings that happen to have more than one unit within them. House scale has a maximum width, depth, and height. ...

When communicating about Missing Middle Housing ... it is important to emphasize the form and scale parameters of these housing types because it can help build support from community members to allow more housing, but doing so without introducing large buildings into sensitive contexts. It is also this middle scale that allows the buildings to be built more cost efficiently to deliver attainability by design.⁷⁸

Parolek's missing middle prototypes⁷⁹ are notable for a few reasons, in relation to the city's proposal. First, either the buildings have no off-street parking, or the parking is shifted to the rear of the house, away from the street, and accessed (where no through-block alleys exist, as in most of NYC) from a side-yard driveway. That makes front-yard planting more likely and preserves on-street spaces.

A second characteristic of these prototypes is the limitation on building width, or, at least, the width of the portion of a building accessed from a single entryway. These missing middle types do not have long corridors providing entry to many apartments. That helps maintain the low-density scale and perception, despite the introduction of many more housing units.

The missing middle housing prototypes cited by Parolek are uncommon in NYC, but, in such a diverse city, they can be found. For example, two fourplexes dating from the early 20th century stand at 27 and 31 Franklin Avenue in the New Brighton section of Staten Island (**Figure 6**). Each sits on a lot of about 5,000 square feet and has a FAR of about 1.2.

Figure 6

Missing Middle Housing: 27 and 31 Franklin Avenue, New Brighton, Staten Island



Source: NYC DCP, Zoning and Land Use Map, Cyclomedia Street View

Parolek’s concepts should influence the city’s zoning proposal. More effort needs to be put into thinking about how simple building-form controls can improve the streetscape as older homes get redeveloped.

“Missing middle housing,” Parolek writes, is intended to “generate average densities ... needed to create a supportive environment for public transportation and also much desired neighborhood serving main streets that provide services and amenities that more and more buyers and renters are looking for within walking distance of their homes.”⁸⁰ This quote highlights that the city’s plan needs more than zoning reforms. There should also be components addressing walkable access to services and improving transit, particularly in those areas that do not have subway service. These components help reduce low-density neighborhood residents’ perception that they need to own and park cars.

Walkable Access to Services

Many neighborhood commercial streets in low-density areas have extremely high off-street parking requirements, making the redevelopment of sites that currently have parking difficult, even where there is increased population nearby and more demand for services from customers who are walking from nearby homes. This proposal would eliminate off-street parking requirements for ground-floor commercial space in new mixed-use buildings, but retain them for freestanding commercial space. That means, for example, that a business with a parking lot could not redevelop that site with an expanded commercial building, if parking is required.⁸¹

Figure 7 shows a bank building in Forest Hills, Queens, built in 2004.⁸² Under the proposal, the owner could redevelop the parking lot as mixed-income housing at 1.5 FAR, with no parking. However, the owner cannot build more commercial space on the parking lot because, in that case,

parking continues to be required. The city should consider waiving required off-street parking for commercial buildings in low-density commercial districts for all but the largest sites that are obviously drawing customers from a wide geographic area.

Figure 7

**Example of One-Story Commercial Building with Parking:
101-10 Metropolitan Avenue, Forest Hills, Queens**



Source: NYC DCP, Zoning and Land Use Map, Cyclomedia Street View

In a separate proposed zoning text amendment, Zoning for Economic Opportunity, NYC DCP is proposing to allow corner stores in residential areas with approval of the City Planning Commission. City council approval would not be needed. Such stores would be limited to 2,500 square feet.⁸³ That is quite small for a neighborhood store, and it’s unlikely that there would be many applicants. Nonetheless, the proposal is reportedly controversial and may not survive the public review process. The travails of the corner-store proposal highlight the need to be more permissive on neighborhood commercial streets.

Improved Transit

The low-density neighborhoods affected by this proposal largely comprise portions of the city subway construction never reached. NYC DCP’s proposed Outer Transit-Oriented Development Area includes neighborhoods in eastern Queens served by the Long Island Rail Road. This service, however, is expensive and infrequent during the non-rush hours. These same areas are served by limited-stop bus routes to the subway stations in Jamaica and Flushing. These routes are hindered by traffic conflicts, although the city has tried to alleviate them by creating busways during prime commuting hours near some subway stops.⁸⁴

The Outer Transit-Oriented Development Area also includes areas served by MTA Staten Island Railway. That service is oriented to Manhattan ferry commuters, and Staten Islanders trying to move around the island without cars depend on buses that move slowly in traffic. In the peripheral areas where the new, denser underlying zoning rules would apply, public transit users are also reliant on buses.

The city’s zoning plan should be complemented with a collaborative effort between the city and MTA to upgrade transit serving the city’s lower-density neighborhoods. In the fall of 2022, MTA released its 20-year capital needs assessment for the 2025–44 period, a good starting point for the discussion.⁸⁵

The report notes:

With the region projected to grow by nearly 1 million jobs over the next two decades, some of the fastest growing industries, such as health care, accommodation, and food services, require travel at all times of day and an in-person workforce. New Yorkers are increasingly taking subways and buses during off-peak hours for health care, shopping, social gatherings, and recreational trips. ... It is more important than ever to ... provide the services that our riders need, when they need it, to keep the region on its path toward growth.⁸⁶

Furthermore, the report promises to support regional sustainability goals:

We look forward to partnerships with local ... governments that bolster transit ridership by supporting new construction around transit stops ... and improving adjacent properties and roadways for sustainable transportation, including exceptional bus service.

The city should seize the opportunity to work with MTA to facilitate dispersed public transit use, both geographically and temporally. Some of the impediments are well known. Commuter rail can't run frequent daytime service because of its high operating costs, and those costs can't be brought down without staffing reforms that are resisted by labor unions.⁸⁷ MTA has failed to implement all-door boarding, which would speed up buses.⁸⁸ Adams, for his part, has opposed taking street priority away from cars, and giving it to buses instead.⁸⁹

All this needs to change. Adams has recognized the inequity of a legacy zoning framework designed to favor affluent homeowners, and courageously proposed far-reaching changes. But the transit services that new residents need are impeded by long-standing favors to well-off insiders. Commuter rail in the city should not be run as a premium service for suburban commuters, even if this supports jobs that technology has made unnecessary. Street management should prioritize people (in buses) over cars, just as zoning should. Bus operations should use technology to improve service. The apparent inability to improve transit to achieve global best practices feeds the public's suspicions that housing growth will just make their lives worse.

Reconsidering the Potential of Commercial Districts

Upgrading transit also provides an opportunity to review the proposed changes for low-density commercial districts. In May 2023, I wrote about the housing opportunities represented by commercial frontages on Northern Boulevard in Flushing, Queens, east of 150th Place.⁹⁰ As evidenced by new apartment buildings built in the more permissively zoned portion of the boulevard to the west, the neighborhood has a strong market for new condominium units. Zoning for Housing Opportunity would allow five-story apartment buildings with ground-floor commercial space. This is a big improvement over the current zoning but is still less dense than the western area, and less dense than the six-story apartment buildings built under the zoning in effect prior to 1961. Once these sites are redeveloped, that housing will continue to exist for decades. The land's potential should be maximized. With upgraded transit, housing densities at least comparable with those existing buildings should be possible in this and other low-density commercial segments in the Inner and Outer Transit-Oriented Development Areas.

The proposals for low-density commercial districts omit C4-1 districts, which are mostly mapped over large regional shopping centers with outdoor parking lots. However, housing is also allowed, and the applicable residence district, R5, would get 2.5 FAR and five stories in a mixed-use building, were it in a commercial overlay district. In May 2022, I pointed out the housing potential of the open parking lot at the Staten Island Mall, zoned C4-1 (**Figure 8**).⁹¹ As a regional facility, the mall needs parking, but not necessarily in an open lot. Shopping malls are job centers and often well accessed by public transit. Zoning for Housing Opportunity should allow them to take advantage of their mixed-use potential.

Figure 8

Mixed-Use Potential: Staten Island Mall



Source: NYC DCP, Zoning and Land Use Map, Cyclomedia Street View

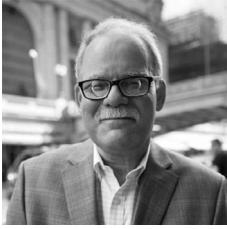
Conclusion

Zoning for Housing Opportunity is a generally strong proposal that can be improved, as outlined in this report. I have been critical of past housing initiatives, like MIH, that are marketed with progressive, equity-focused rhetoric but effectively suppress housing construction, harming the low-income population they purport to help. In contrast, this proposal would genuinely stimulate housing production and help address the city’s chronic housing shortage. Combined with a good replacement at the state legislature for the Section 421a tax exemption, it could facilitate construction of mixed-income housing while reducing pressure on rents in older housing from higher-income households frozen out of the neighborhoods that they really want to live in by static zoning.

Whether the New York City Council will adopt this proposal remains to be seen. The proposal is practically a catalog of third-rail zoning issues previously thought intractable: increasing building height, tearing down small houses, taking away required parking. However, democratic politics often seem intractable, until suddenly change becomes possible.

For example, for decades, NYC had a Cabaret Law, which required a city license for any establishment that allowed dancing. Because the law made opening nightclubs difficult, getting rid of it seemed impossible, much as local officials wanted to let people dance where they wished. Then, one year, the city council was convinced that the law’s origins predominantly related to the desire to clamp down on African American entertainers. That understanding sealed the law’s fate.⁹²

Adams may be able to make a similar case to the council and argue that this zoning amendment sets right the past wrongs founded on racial and ethnic exclusion. Understanding zoning laws in this light and passing legislation that would finally address the housing shortage would restore New York City to its rightful place as a leader, not a laggard, in a nationwide movement of zoning reform.



About the Author

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Endnotes

- ¹ New York City (NYC) Office of the Mayor, “Transcript: Mayor Adams Delivers Address on Future of Housing in NYC and Holds In-Person Media Availability,” Sept. 21, 2023.
- ² NYC Dept. of City Planning (DCP), “City of Yes for Housing Opportunity: Draft Scope of Work in Preparation of a Draft Environmental Impact Statement (Draft Scope of Work),” Sept. 26, 2023.
- ³ In June 2016, the New York City Council approved “Zoning for Quality and Affordability,” a citywide zoning text amendment that is described at NYC DCP, “Zoning for Quality and Affordability,” 2016.
- ⁴ NYC Office of the Mayor, “Mayor Adams Unveils ‘Get Stuff Built,’ Bold Three-Pronged Strategy to Tackle Affordable Housing Crisis, Sets ‘Moonshot’ Goal of 500,000 New Homes,” Dec. 8, 2022.
- ⁵ Eric Kober, “Zoning That Works,” *City Journal*, Oct. 1, 2020.
- ⁶ The NYC subway is now operated as the A Division (numbered trains), once known as the IRT; and the B Division (lettered trains), once known as the IND and BMT.
- ⁷ The Program for Action is described in Mark S. Feinman, “The New York Transit Authority in the 1970s,” 2002.
- ⁸ The most recent such report is NYC Rent Guidelines Board, *2023 Housing Supply Report*, May 25, 2023. A table of new housing completions from 1964 to 2022 is found on p. 20.
- ⁹ The 1961 zoning specified a grace period during which developments with permits issued before its effective date were allowed to proceed to completion.
- ¹⁰ Bruce Lambert, “New York City Agrees to Allow Building of Bulkier Apartments,” *New York Times*, Aug. 15, 1987.
- ¹¹ The transcript is online at <https://archive.org/details/1961zoning00frie>. The last page is missing, as it is in the original in DCP’s files.
- ¹² See, e.g., Hilary Ballon, “Robert Moses and Urban Renewal,” in *Robert Moses and the Modern City*, ed. Hilary Ballon and Kenneth T. Jackson (New York: W. W. Norton, 2007), 96.
- ¹³ The city also built high-rise public buildings along the continuation of the Third Avenue corridor in the Mott Haven neighborhood of the Bronx. These neighborhoods had seen an influx of poor African American and Puerto Rican migrants. This public investment in eradicating “slums” seems intended to prevent the spread of “blight” to Yorkville south of 96th Street (not then the affluent neighborhood that it is today, and the home base of Robert F. Wagner, Sr., mayor from 1954 to 1965) and the Grand Concourse corridor north of 149th Street in the Bronx. The East Harlem public housing was treated as a relocation resource for displaced households from Title I urban renewal projects in more marketable parts of Manhattan, where little or no replacement low-income housing had been constructed. This, in turn, limited relocation options for the East Harlem displaced households and exacerbated pressure on the remaining tenements.

The contradictions of the city's various planning motivations could perhaps have been reconciled by rebuilding East Harlem and Mott Haven at greater densities than had existed before, but that would have contradicted the design precepts inspired by the French architect Le Corbusier, who called for using urban redevelopment of towers surrounded by open space as a means of reducing density in cities. These precepts were reflected in urban renewal plans and the 1961 zoning. For more discussion of Title I and East Harlem urban renewal, see Ballon, "Robert Moses and Urban Renewal," and Samuel Zipp, *Manhattan Projects: The Rise and Fall of Urban Renewal in Cold War New York* (Oxford: Oxford University Press, 2010).

- 14 These rules became known as R4 and R5 Infill. Max H. Siegel, "Estimate Board Approves Infill Zoning Plan to Spur 2-and 3-Family Home Building," *New York Times*, Mar. 11, 1973.
- 15 City Planning Commission, N880172ZRY, Oct. 21, 1987.
- 16 See Alan Oser, "Perspectives: Lower-Density Zoning: Changing the Rules for Attached Housing," *New York Times*, Apr. 30, 1989. The City Planning Commission's report adopting the zoning amendments (N890552ZRY, June 7, 1989) is found at <https://www.nyc.gov/assets/planning/download/pdf/about/cpc/890552.pdf>.
- 17 NYC DCP, *Lower Density Contextual Zoning Study*, 1989. The study is available at NYC area libraries, but apparently not online.
- 18 Another important reference was James W. Wentling and Lloyd W. Bookout, *Density by Design* (Washington, D.C.: Urban Land Institute, 1988).
- 19 I can say this from personal experience at community meetings, having worked at NYC DCP from 1980 to 2017.
- 20 NYC DCP, "Residential Parking Study," March 2009, fig. 12, p. 29; table 6, p. 32.
- 21 NYC DCP, "Car Ownership in NYC" database, DCP Transportation.
- 22 See Eric Kober, "Long Island City, Without Amazon," *City Journal*, Autumn 2019.
- 23 NYC DCP, "City of Yes for Housing Opportunity?"
- 24 See Eric Kober, "Can't Keep a Great City Down: What the 2020 Census Tells Us About New York," Manhattan Institute, November 2021.
- 25 Robert Frank, "The Average Manhattan Rent Just Hit a New Record of \$5,588 a Month," CNBC, Aug. 10, 2023.
- 26 Douglas Elliman, "Elliman Report: Manhattan, Brooklyn and Queens Rentals," August 2023.
- 27 Douglas Elliman, "Elliman Report: Q3-2023 Manhattan, NY Sales," 2023.
- 28 Douglas Elliman, "Elliman Report: Q2-2023 Brooklyn, NY Sales," 2023.
- 29 Douglas Elliman, "Elliman Report: Q2-2023 Queens, NY Sales," 2023.

- ³⁰ The City Planning Commission began operation on Jan. 1, 1938. The effective date of the amendment to the 1916 Zoning Resolution adding §16-B (G District, a single-family district) was July 6, 1938. The effective date of §19-B (Parking Facilities for Dwellings) was July 20, 1950. See City Planning Commission, “Zoning Resolution, City of New York,” Department of City Planning, Nov. 1, 1960.
- ³¹ In zoning parlance, the residence districts with the prefixes R6 through R10, and commercial districts where residences must be built in accordance with these districts’ rules. A map of such districts appears in NYC DCP, “Draft Scope of Work,” fig. 3, p. 11.
- ³² I discussed the property-tax issue in Eric Kober, “NYC’s Housing Crisis: Next Steps After ‘New York Housing Compact’ Fails,” Manhattan Institute, May 18, 2023.
- ³³ NYC DCP, “Mandatory Inclusionary Housing.”
- ³⁴ I discussed the shortcomings of Mandatory Inclusionary Housing in Eric Kober, “De Blasio’s Mandatory Inclusionary Housing Program: What Is Wrong, and How It Can Be Made Right,” Manhattan Institute, Jan. 16, 2020.
- ³⁵ I wrote about this history in Eric Kober, “Zoning, Taxes, and Affordable Housing: Lessons from Bloomberg’s Final Term,” Manhattan Institute, May 20, 2020. Prior to 2015, tax exemptions were available only for buildings that included low-income units in a Geographic Exclusion Area that covered Manhattan and swathes of Brooklyn and Queens, which facilitated strong take-up of VIH floor area incentives. After 2016, this situation prevailed only in Manhattan south of 96th Street. In the rest of the city, under 421a’s Option C, generous tax incentives were available to new buildings that included affordable units targeted to much higher incomes than VIH would allow. Developers left the bonus floor area unused. This poor coordination of incentives cost the city large numbers of both low-income and market-rate housing units.
- ³⁶ A map of such districts appears in NYC DCP, “Draft Scope of Work,” fig. 3, p. 11.
- ³⁷ The floor area ratio (FAR) sets the permitted floor area of a building as a multiple of the lot area. On a 10,000-square-foot lot, FAR of 3.9 would permit 39,000 square feet of floor area.
- ³⁸ See NYC DCP, “Zoning for Quality and Affordability.”
- ³⁹ Senior housing, which inherently discriminates based on age, is exempted from the requirements of the Fair Housing Act, but only in a separate building.
- ⁴⁰ See NYC Dept. of Housing Preservation and Development (HPD), “New Construction Financing: Senior Affordable Rental Apartments.”
- ⁴¹ On Oct. 2, 2023, NYC subways were at 64% of pre-pandemic ridership, and buses at 53%. See “MTA Daily Ridership Data: Beginning 2020.” For school enrollment, see Julian Shen-Berro, “NYC School Enrollment Projected to Remain Steady After Steep Pandemic Losses,” *Chalkbeat*, May 8, 2023.
- ⁴² Eric Kober, “How to Solve New York City’s Housing Crisis Building New Housing in Restricted High-Opportunity Neighborhoods,” Manhattan Institute, June 1, 2022. Tower-on-a-base requires a high-lot-coverage “base” out of which a tower may rise, and it effectively limits the height of such towers. It applies in the city’s highest-density zones, designated with the prefixes R9 and R10. See NYC DCP, “R10 Tower.”

- 43 NYC DCP, “Draft Scope of Work,” p. 54. The proposal would eliminate “packing” rules (§23-651(a)(3)) requiring that 55% of a development’s floor area be below a height of 150 feet. This highly technical provision limits the size of zoning lots and thus, prevents unused floor area from being transferred from occupied buildings to a development site.
- 44 A map of these districts is found in NYC DCP, “Draft Scope of Work,” fig. 7, p. 29.
- 45 Ibid., p. 30.
- 46 See NYC DCP, “Residence Districts: R3-1 - R3-2 - R3A - R3X.”
- 47 A map of these areas can be found in NYC DCP, “Draft Scope of Work,” fig. 9, p. 40.
- 48 Ibid., pp. 39–42.
- 49 Ibid., fig. 8, p. 39.
- 50 R1, R2, and R3 prefix districts, with a commercial overlay, would receive 1.5 FAR; R4 prefix districts, 2.0 FAR; and R5 prefix districts, 2.5 FAR.
- 51 The proposed rules are explained in NYC DCP, “Draft Scope of Work,” pp. 36–38.
- 52 Ibid., pp. 33–35.
- 53 These districts have the prefix R1 and R2. A detached house is entirely surrounded by open areas.
- 54 NYC DCP, “Draft Scope of Work,” pp. 43–44.
- 55 Carl Spencer, “New Housing in Los Angeles Leans Heavily on ADUs,” *Crosstown*, Sept. 20, 2022.
- 56 Anne Olson, “NIMBY Restrictions Poison the Prospects of Accessory Dwelling Units to Address Housing Insecurity,” Pace University, Elizabeth Haub School of Law, Blog No. 22 of the Land Use, Human Health, and Equity Project, Aug. 16, 2021.
- 57 NYC’s unit-density controls divide the permitted floor area in a building by a designated “dwelling unit factor” to determine the permitted number of units. For example, in an R6 district, the factor is 680. If a lot were permitted 15,000 square feet of floor area, that number would be divided by 680, and a maximum of 22 units are permitted.
- 58 NYC DCP, “Draft Scope of Work,” pp. 18–20. The area where density controls are to be eliminated is depicted in fig. 5, p. 19.
- 59 This change is effective only because off-street parking requirements are also proposed to be eliminated. Off-street parking requirements (on a per-unit basis) discourage the inclusion of small units because more parking is then required.
- 60 Eric Kober, “New York City’s Far-Reaching Housing Proposals Are Still Not Ambitious Enough,” Manhattan Institute, Jan. 5, 2023.
- 61 NYC DCP, “Draft Scope of Work,” p. 20.



- ⁶² I discussed this issue in Eric Kober, “A Growth-Oriented Housing Plan for the Next Mayor,” Manhattan Institute, Feb. 24, 2021. See also David Brand, “Mayor Adams Pitches Dorm-Style Apartments, Hallway Bathrooms in NYC Housing Plan,” *Gothamist*, Sept. 25, 2023.
- ⁶³ NYC DCP, “Draft Scope of Work,” pp. 25–28. A map showing where special rules for converting nonresidential buildings now apply is found in fig. 6, p. 27.
- ⁶⁴ NYS, Multiple Dwelling Law, § 277.
- ⁶⁵ Ciara Long, “Signs of Distress Growing in NYC Office Market, but ‘The Worst Is Yet to Come,’” *Bisnow*, Sept. 28, 2023.
- ⁶⁶ NYC DCP, “Draft Scope of Work,” pp. 45–46.
- ⁶⁷ Proposed parking-related geographies are shown in NYC DCP, “Draft Scope of Work,” fig. 10, p. 47.
- ⁶⁸ Kober, “New York City’s Far-Reaching Housing Proposals.”
- ⁶⁹ Kober, “How to Solve New York City’s Housing Crisis.”
- ⁷⁰ NYC DCP, “Draft Scope of Work,” p. 56.
- ⁷¹ *Ibid.*
- ⁷² While MIH approvals generally demanded 25%–30% low-income housing, housing developments with pre-2014 zoning could take advantage of 421a’s Option C. This combined a 35-year tax exemption with “affordability” requirements that were close to market rents in middle-income neighborhoods.
- ⁷³ MIH restrictions in connection with zoning map changes come in the form of a zoning text amendment that adds a map of a new “MIH Area” to an appendix of such areas. There is no reason that practice cannot change. In the absence of an MIH Area text amendment, any map change would simply be subject to the underlying rules for the district. Should Zoning for Housing Opportunity be enacted, those underlying rules would include the floor area increment for incorporating affordable housing.
- ⁷⁴ These rezonings under study include the Midtown South Mixed-Use Plan and the Atlantic Avenue Mixed-Use Plan. I wrote about the latter: Eric Kober, “An Unproductive Housing Consensus,” *City Journal*, Sept. 15, 2023.
- ⁷⁵ NYC DCP, *Residential Parking Study*, table 6, p. 32.
- ⁷⁶ Daniel G. Parolek and Arthur C. Nelson, *Missing Middle Housing: Thinking Big and Building Small to Respond to Today’s Housing Crisis* (Washington, DC: Island Press, 2020).
- ⁷⁷ Missing Middle Housing website.
- ⁷⁸ Parolek, *Missing Middle Housing*, pp. 11–12.
- ⁷⁹ *Ibid.*; “The Types,” Missing Middle Housing website.
- ⁸⁰ Parolek, *Missing Middle Housing*, p. 15.



- ⁸¹ Parking requirements apply to buildings completed after 1961.
- ⁸² The lot is in an R3-2 district with a C1-3 commercial overlay. The existing zoning requires off-street parking at one space per 400 square feet of floor area. However, parking is waived for fewer than 25 required spaces. The existing building is small enough to qualify for this waiver. It could close its parking lot but not build stores on it, because in that case 36 off-street parking spaces would be required. The city's proposal would allow housing with stores and no parking, but not stores alone.
- ⁸³ NYC DCP, "City of Yes: Economic Opportunity."
- ⁸⁴ NYC Dept. of Transportation, "Busways," BetterBuses, 2023.
- ⁸⁵ Janno Lieber, "The Future Rides with Us: MTA 20-Year Needs Assessment (2025–2044)," Metropolitan Transportation Authority.
- ⁸⁶ Ibid.
- ⁸⁷ MTA, "The Future Rides with Us," p. 8; Jake Blumgart, "Commuter Rail Reform Faces High Labor, Infrastructure Costs," *Governing*, May 19, 2021.
- ⁸⁸ Dave Colon, "All-Door Bus Boarding Delayed Pending 'Measures to Curb Fare Evasion,' MTA Says," *Streetsblog*, Apr. 24, 2023.
- ⁸⁹ Dave Colon, "DOT Nixes Fordham Road Busway Due To 'Community Concerns,'" *Streetsblog*, June 7, 2023.
- ⁹⁰ Kober, "NYC's Housing Crisis."
- ⁹¹ Eric Kober, "How to Solve New York City's Housing Crisis: Building New Housing in Restricted High-Opportunity Neighborhoods," Manhattan Institute, May 2022.
- ⁹² Annie Correal, "After 91 Years, New York Will Let Its People Boogie," *New York Times*, Oct. 30, 2017.