

CHAPTER ONE

LAND USE AND ZONING MATTER

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This chapter looks at how land use and zoning actually function in New York City. It is not a primer, though we do offer the readers a thumbnail sketch of the basics. Rather, it is an analysis of how land use and zoning are driven by powerful political and economic forces, principally the real estate industry.

New York City has never adopted a master plan—a long-term comprehensive plan for the utilization of land. It is the only major city in the United States that has never charted a strategy that would help shape the city's future. Using federal funds, the Department of City Planning completed a master plan in 1969, but it was opposed by the real estate industry and never seriously discussed or approved by the City Planning Commission.¹ Comprehensive planning looks at the future, projecting trends and integrating all aspects of urban life while outlining policies to guide decision-making by government. The city's powerful financial and real estate industries appear to be quite satisfied without it.

WHAT IS ZONING?

New York City doesn't do comprehensive planning, but it does zoning. The main instrument for land use planning and regulation is the Zoning Resolution. The Zoning Resolution broadly controls:

- How land may be used (either for residential, commercial, or industrial purposes, or a combination of these);²
- How much can be built on the land (mainly through a formula that sets a maximum Floor Area Ratio [FAR]—the built floor area divided by the total land area); and
- How much land must remain unbuilt.

The Zoning Resolution includes the *Zoning Text*, which defines permitted uses, maximum building sizes, and open space requirements, and *Zoning Maps*, which indicate where that text is to be applied. The first Zoning Resolution was established in 1916; it was rewritten in 1961 and is constantly changing as the result of revisions to the text and the maps.³

While zoning in New York City is complex and highly technical, it is also very political. Since the Zoning Resolution is so big and intricate, it can give the appearance that zoning is not political and strictly the purview of independent technocrats whose only commitment is to further "the public interest." It follows, then, that lay persons in neighborhoods who raise questions or objections to zoning proposals are often branded as parochial, uninformed, emotional, racially biased, and if opposing a rezoning that

would spur new development, driven by exclusionary "Not in My Backyard" sentiments. The zoning experts, however, though they may think and act in accordance with the very same sentiments, tend to be immune to any challenge. Since zoning remains mostly under the control of the experts, and since the use of land is regulated mostly by zoning, there is a serious deficit of open, democratic discussion and debate about the things that really matter to New Yorkers and how they can participate constructively in charting the future of the city.

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THE CITY PLANNING COMMISSION AND DEPARTMENT OF CITY PLANNING

The City Planning Commission (CPC) is a 13-person body that votes on zoning changes. The majority of appointments (seven) are made by the Mayor, who effectively controls the body, though it was created as a semi-independent body. Each of the five borough presidents appoints a commissioner and the Public Advocate appoints one.

The Department of City Planning (DCP) is the line agency made up of career professionals and employees. DCP's director is also chair of the CPC, and appoints an executive director. The Mayor has effective control of agency policy through his/her appointees, and it is a well-established practice for there to be extensive communication between City Hall and the agency. Both are sensitive to the largest elephant in the room—the real estate industry, which relies on zoning as a predictable regulatory tool that can be flexible enough so that it changes to meet the needs of the real estate market. Developers understand zoning as the machine that

must function well in order to meet the needs for growth and development while protecting the most valued real estate. While some developers may grumble about the time and cost involved in dealing with zoning, the larger and more experienced ones understand that it's better to have a predictable regulatory environment and pay established legal and lobbying firms to make sure their needs are met.

HOW IT REALLY WORKS

So much for the basics. This was not intended as a manual to teach people all they need to know about zoning, so there are many details and complexities that we will not cover. For detailed information, readers may consult the DCP website, where they will find the *New York City Zoning Handbook* and other information.⁴ What follows is our understanding, based on our experience, of how zoning actually works, including both the formal, official process, and things that occur outside of it. It is an interpretation; the planners in DCP, developers and others who have a direct stake in the process will have other interpretations. The following shows how the zoning machine works, and doesn't work, in our neighborhoods and is intended to throw light on what seems from the outside to be a highly technical arena, but in practice is deeply entwined with the real estate market. We will deal with upzoning, downzoning, contextual zoning, and hybrid rezonings, and explain how DCP thinks about the zoning process.⁵

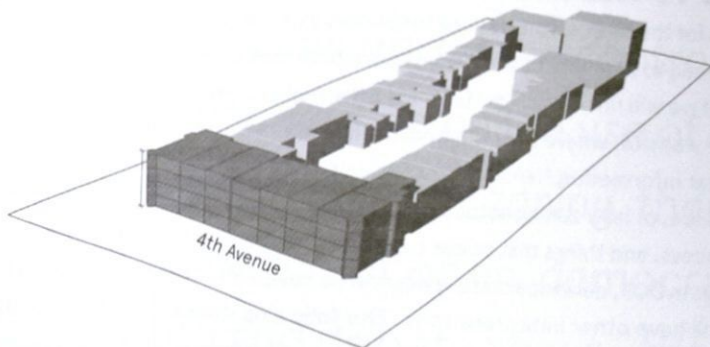
Upzonings are proposed wherever DCP determines that there is significant development potential. An upzoning generally increases the amount of square feet of building that can be developed. This is important for property owners, especially developers, for whom the time and effort involved in a zoning change has a payoff. The planners survey all blocks in the area with an eye to determining which lots are either vacant or not built out to their maximum potential under existing zoning. These are called "soft sites" or "underutilized" parcels of land. When there is significant excess floor area available for building, a lot appears to be ripe for development. The planners may conclude that a zoning change is needed to provide a greater incentive to spur development by the market. In a hot real estate market, one-story commercial buildings, auto-related uses, and small residential buildings are often targeted as "underutilized," an assessment that mirrors the views and interests of landowners, investors, and speculators who are anxious to develop the properties and would love to maximize the returns on their investments by increasing allowable densities.

01.A Upzoning on Fourth Avenue in Brooklyn.

The 2003 Park Slope Rezoning increased the residential density of Fourth Avenue, which had traditionally served as a commercial corridor with low- to mid-rise housing, while maintaining the low-rise character of adjacent side streets.

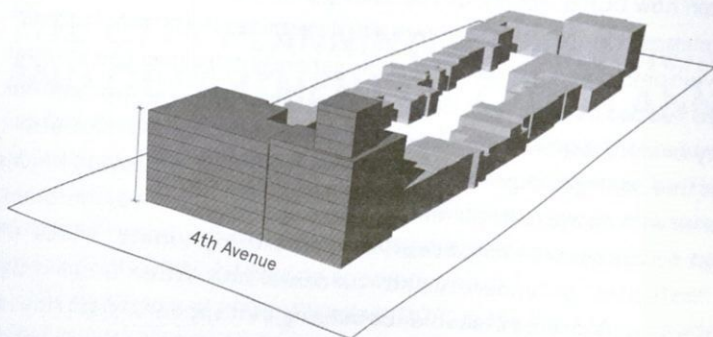
Prior to Rezoning

R6
FAR .78-2.43
Building Height
Max 65'
Typical height
prior to rezoning
30'-40'



After Rezoning

R8A
FAR 6.02
Building Height
Max 120'
Base Height
Min 60'
Max 85'



It is important to understand that for planners and developers it is the land that is “underutilized,” even when people are living or working there; developers make good money when the underutilized land they own is upzoned, increasing its value exponentially. This is what is known as the principle of “highest and best use”; if the market dictates a more intensive use and the zoning does not permit it, then the planners should amend the zoning to allow for this development. The planners may justify this by reference to environmental and planning logic—for example, that higher density is a more efficient use of land and by definition reduces energy use and negative environmental impacts.⁶ However, the driving force in operation is the bottom-line for investors and landowners.

Wherever possible, DCP seeks to develop a rezoning strategy that links individual parcels of “underutilized” land to a larger scheme that promotes development. Wide avenues are presumed to have greater development potential than side streets because wide avenues provide more light and air when there are taller buildings; so even when the buildings on these avenues are fully utilizing the floor area under existing zoning, they become targets for upzoning. This is an example of the “highest and best use of land.”

The designation of underutilized land functions very much the way the term “slum” was used decades ago to target communities of color for demolition and redevelopment under the federal urban renewal program. If there are tenants and businesses on the underutilized land, they are rendered invisible; their buildings may be perfectly habitable, and inhabited, but the inhabitants are of secondary importance. However, the planners usually articulate a narrative claiming that a rezoning will help improve the community. They often claim that upzoning by itself does not lead to displacement, and fail to seriously analyze the secondary consequences or propose effective measures to protect existing tenants and businesses. The landowners, on the other hand, benefit from upzoning even when they are actually nowhere in sight (they could be living in distant corners of the earth or they could be anonymous investors in LLCs—Limited Liability Corporations).

A change in zoning from a manufacturing district to residential or mixed-use usually functions as an upzoning because it expands development potential. Mixed-use districts permit both residential and industrial uses, but since rents for residential uses are much higher than for industrial, mixed-use districts are likely to become residential when the area is experiencing new growth. This is what happened with the Williamsburg and Greenpoint rezonings starting in 2005, which resulted

in the deindustrialization of these traditionally mixed residential-industrial neighborhoods. The mixed-use zoning had the effect of *eliminating* mixed uses. City Planning's deceptively named mixed-use districts were introduced in a way that seemed to placate the strong desire among residents and businesses to preserve the historic mixed-use character of the neighborhood (see Chapter Three).

One dramatic recent example of an upzoning is Fourth Avenue in Brooklyn, approved over decade ago. This major thoroughfare borders the Park Slope neighborhood, a notable brownstone district, which for the most part has benefited from zoning protections. Before it was upzoned, Fourth Avenue was home for many low- to mid-rise apartment buildings and small businesses with a largely Latino population. The upzoning resulted in the displacement of residents and businesses and the construction of high-rise luxury towers and upscale businesses.

Downzoning involves a reduction in buildable floor area. This may occur in places where communities strongly oppose new development and want to minimize chances that underutilized sites will be built on. DCP often seeks to balance a downzoning with an upzoning in the same area. If there is little developer interest in an area and local elected officials are strongly behind it, the planners may be more receptive to calls for downzoning. Downzoning often takes the form of contextual zones.

Contextual zones were introduced in the 1980s in response to criticisms that the city's zoning rules were based on the tower-in-the-park model, which allowed tall buildings and required open space at the ground level—the typical “Manhattan model.” This kind of development faced mounting opposition when pressures outside Manhattan started producing towers in low- to mid-rise row house neighborhoods, many of them middle- and upper-income homeowners, many of them white. Contextual zoning restricted new development so that the built form would look more like existing development in a given neighborhood.

Contextual zones are designed to maintain existing neighborhood scale and character in residential zones. They have been used extensively in places such as Brownstone Brooklyn, where they limited building heights at the street wall, building fronts had to line up, and front yard parking was prohibited. For example, much of Park Slope in Brooklyn is protected by contextual zoning (in addition to restrictions on redevelopment placed by the Landmarks Preservation Commission). See the map above showing both the Fourth Avenue rezoning area and Park Slope's contextual zones. (See Figure 01.A)

Contextual zoning has been perceived as a popular preservation tool. DCP's 2015 citywide proposal, “Zoning for Quality and Affordability,” would

stretch the building envelope in contextual zones; it faced opposition by many neighborhoods and preservation groups who have generally supported contextual zoning.

Contextual zoning and downzoning began in and are predominant in white, middle-income, homeowner neighborhoods. Without any public discussion of the racial and income disparities apparent since its introduction, contextual zoning has thrived. It is now proposed throughout the city—including some communities of color—as a means of convincing reluctant communities that new development won't overpower the existing built environment.

Hybrid rezonings involve both upzonings and downzonings in the same neighborhood. Wherever possible, DCP seeks to balance upzoning and downzoning, often including contextual zones in the mix. Hybrid rezonings appear to balance preservation and new development, and therefore help promote the image that the city planners are independent technical people who are not predisposed to either of these options, but committed to finding harmony between them. In some ways, all rezonings are to one degree or another hybrid rezonings. Hybrid rezonings, many of them in gentrifying neighborhoods, follow several rationales:

- **Wide avenues vs. side streets.** Wide avenues are upzoned and adjacent side streets are downzoned and/or contextually zoned. The assumption is that there is much greater potential for high-rise development on wide avenues, and when the side streets are protected this helps alleviate fears of adjacent residents, particularly homeowners. Indeed, homeowners often benefit when the value of their land increases (though their real estate taxes are also likely to increase).
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- **Transit corridors.** Transit (subway and bus) corridors are upzoned. This is known as "Transit-Oriented Development" (TOD), through which the planners promote higher density development at or near mass transit stops. This is presumed to encourage more people to use mass transit and reduce auto use and commuting times, especially in places where mass transit has excess capacity. Since newer buildings tend to be more energy efficient than older buildings, stimulating new construction presumably favors energy savings. TOD is thus considered to be beneficial to the environment and public health if and when it reduces auto use, a major source of air pollution, injuries, and fatalities. Where the existing built environment is low density—single-family homes,

low- to mid-rise apartment buildings, and one-story commercial uses—and when transit use is not at full capacity, as measured by numbers of passengers on trains and in stations, the area is considered to be a prime candidate for rezoning. This is one argument behind the rezonings currently proposed in East New York and the South Bronx, among other locations. However, the presumed benefits of TOD in New York City dwindle when we consider that most of the city's population is already living within walking distance of mass transit, most of the city's subways are operating at or close to capacity, the bus system is not expanding, and there are serious deficits in the maintenance and repair of mass transit that result in the longest average commute times of any city in the United States. Zoning in many of these new TODs also permits significant on-site resident parking, contradicting the claims made by planners while satisfying the interests of developers who market their properties to high-income car owners.⁷

An issue that has not been discussed by the city's planners is the potential impact of TOD on communities of color. While the principle of TOD may be valid, its application in New York City has to be evaluated in light of the severe deficits in mass transit. It appears to have been used opportunistically to justify proposed rezonings in communities of color.⁸ This pattern has been strongly criticized in other parts of the nation (Fujioka 2011).

ZONING TO SOLVE THE HOUSING PROBLEM? OR AN AFFORDABLE HOUSING SCAM?

One of the great myths circulating around public discussions of zoning is that zoning changes are essential for solving the housing problem. The city's planners sell their zoning schemes by claiming they are necessary to expand the housing stock to meet the needs of a growing population. This echoes the constant criticism heard by the real estate industry that zoning regulations inhibit housing development by limiting the amount of buildable space and

increasing costs. The assumption behind this is that the strict market principle of the law of supply and demand is the driving force behind housing development, including affordable housing. This fails to take into account the role of housing subsidies, tax policy and, most importantly, the land market.

For example, Vicki Been, Commissioner of the city's Department of Housing Preservation and Development, testified that the proposed rezoning of East New York to promote new development would actually help solve the crisis of affordable housing in the neighborhood: "The zoning proposal before you today is not the trigger for displacement; instead, it is a preventative measure."⁹ She argued that some people were falsely claiming that the rezoning would displace 50,000 people; she clarified that the Draft Environmental Impact Statement submitted with the rezoning proposal stated that 50,000 people were already at risk of displacement. She argued that the new affordable housing was therefore in great need. However, she did not address the fact that the real estate speculation that had placed many people at risk was stimulated by DCP's talk of a rezoning that began some two years prior to the actual proposal. She also made a facile assumption that any new affordable housing would be affordable to those who were displaced, and available in a timely manner.

The myth that growth will solve housing problems was boldly asserted in PlaNYC2030, the pro-growth "sustainability plan" issued in 2007, which claimed that housing had to be built for a projected one million new residents. This dubious premise, based on questionable projections, was the underpinning for the growth plan, which overshadowed every other priority in the plan (Angotti 2008a, 2008b).

It is telling that the first chapter in this "sustainability plan" is "Housing." The bold proposals for growth overwhelm the other sections that call for such embellishments as planting one million new trees, completing the old (1997) bicycle master plan, and creating small public plazas.

Increasingly, the claim about solving the housing problem is folded into the claim that rezoning is needed to provide "affordable housing." As we argue later on, even if the new zoning mandates that a portion of new housing units be "affordable" to people with limited incomes, this number is commonly dwarfed by the number of affordable housing units lost and the new unaffordable units built after an upzoning. Furthermore, some or all of the new affordable units may be built outside the rezoned neighborhoods and reinforce existing patterns of segregation by income and race. Finally, since new affordable housing is available to people in higher income brackets, very few low-income households qualify for these units. Thus, the problem is that the bulk of new housing built after upzonings is for the luxury market,

WHO ARE THE CITY'S CHIEF PLANNERS?

Carl Weisbrod was named Chair of the City Planning Commission by Mayor Bill de Blasio. He started his career working for the city's Department of Relocation, which was responsible for removing residents and businesses from urban renewal areas. He led the efforts to redevelop Times Square and Lower Manhattan after 9/11. He most recently was a partner in HR&A Advisors, consultant to major development firms.

Amanda Burden was Chair of the City Planning Commission during Michael Bloomberg's 12 years as Mayor. Now a Principal at Bloomberg Associates, she is noted for her attention to details of design and public space and promotion of development on the waterfront and in downtown areas. Her father was an heir to the Standard Oil fortune and her stepfather founded CBS.

Other recent planning commissioners with strong ties to prominent New York City developers include **Joseph Rose** and **John Zuccotti**.

is off-limits to most people living in the neighborhood, and drives up rents and housing costs instead of lowering them. And the few "affordable" housing units made available are not affordable to most existing residents.

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We will return to the larger question of housing affordability later, but our point here is to demonstrate how much the city's land use policies are based on the false premise that zoning can resolve the city's housing problems, particularly housing for the people who need it the most.

The land market and not the housing market drives housing policy in New York City.

IT'S THE LAND MARKET, STUPID!

The argument that zoning policy is needed to stimulate the housing market is grounded in a simplistic version of neoclassical economic theory. It presumes that the lack of housing is simply a matter of supply and demand. If there is not enough housing, then government needs to remove any barriers—zoning is presumably one of them—so the market can produce more housing. After all, in many parts of the country with liberal zoning policies, particularly the Southwest, new housing construction boomed while New York City lagged.

This argument obscures the most important factor in New York City's housing market, which is the same factor that governs zoning policy: the land market. Unlike the suburbs of Las Vegas, land in New York City is very expensive and much of it is already developed. Where land is cheap it's quite easy for developers to build (perhaps too easy, since after the housing bust of 2007-2008 many homes in Las Vegas were foreclosed and abandoned). This is why it is the land market and not the housing market that drives land use policy in New York City. Upzoning increases the future value of land, and land value increases are what drives new development.

In New York City, land values change progressively, often in tandem with the different phases of the rezoning process:¹⁰

- **Phase 1: Land speculation.** When investors find "underutilized" parcels of land, they move in and buy them up or secure options to buy. They may be able to assemble adjacent parcels on one block or on many blocks. They often register the deeds under different Limited Liability Corporations (LLCs), making it difficult to understand the emerging patterns of ownership. During this phase the land value remains low but once it becomes clear

that land is being assembled for possible future development the value may increase as investors engage in a buying frenzy. Landowners may also terminate leases to remove existing residents and businesses and issue short-term leases to new businesses with higher rents. These interim uses, such as storage and parking facilities, are essentially placeholders for new development that will occur after a rezoning.

- **Phase 2: Department of City Planning study.** Property owners and others may bring the situation of de facto underutilized land to the attention of DCP. DCP may already be aware of the situation. Indeed, DCP's institutional brain is wired to think like a land developer and be alert for opportunities for new growth. DCP then undertakes a land use study. They usually do not do a study unless they are reasonably certain they will be proposing a rezoning. This in itself is quite revealing: the agency uses studies not to determine what a community needs, but to shape the particular contours of an expected rezoning. These are not planning studies that look at the community in all its complexity; they are not really land use studies that look at land as a complex set of relationships in urban space. They are narrowly focused on zoning. DCP zoning studies calculate the square feet of existing land and building space and then determine whether a zoning change is needed to develop the underutilized parcels. Typically DCP will consult with the local community board before, during, and after it does the study; however, community boards are usually reminded that this consultation is merely a courtesy since community board votes are "advisory." DCP studies lead inexorably from a finding of significant underutilization to a conclusion that a rezoning is needed. While the DCP study is underway, land values are likely to increase in anticipation of a rezoning; in other words, DCP's actions play a role in creating the circumstances that justify rezoning. When developers get wind that DCP might be studying a neighborhood for rezoning, they start to move in. Crain's reported that in East New York (Brooklyn), since the city administration started pushing for a rezoning in early 2015 "prices and sales volume have begun to rise." The median sales price for a home in the main zip code rose from \$25,500 to \$275,000—a tenfold increase (Acitelli, 2016)!

- **Phase 3: Rezoning Proposal.** DCP has monopoly control over the zoning process and the substance of zoning changes. The CPC must certify that all zoning proposals are complete, and they do this at the recommendation of the DCP staff. All rezoning proposals must be accompanied by an environmental review that meets the approval of DCP staff. In practice, rezonings are initiated either by DCP or by private developers or landowners. Because of the time and resources required, community groups and individual residents rarely initiate a rezoning. Even when a community board requests a rezoning, DCP does the study and shapes the proposal. Reluctant community boards may again be reminded that their vote is only advisory.

- **Phase 4. The ULURP process.** The Uniform Land Use Review Procedure (ULURP) is about ten months long and involves public hearings and votes by the local community board, borough president, CPC, and city council, and on occasion the mayor.¹¹ While community boards are the closest of these bodies to the neighborhood being rezoned, they have the least power. A unanimous vote by a community board in opposition to a rezoning is not enough to kill it. Community boards do not have professional planners on their staff to advise them, analyze environmental studies, or prepare their own zoning proposals. Boards with access to more resources often find that their recommendations are also ignored.¹² Promises the city may make to community boards during the process—to provide community benefits such as affordable housing, or new public facilities and services, even when they are drafted as a “side agreement”—are of dubious legal value and unenforceable (see Chapter Three). Given the limitations of the ULURP process, once a rezoning proposal supported by DCP starts ULURP, it is virtually a “done deal” unless the city council, borough president, and community board all vote against it. This often leads community boards to vote “yes” or “no” with conditions in the hopes that their conditions will be met in the final negotiations leading up to the virtually inevitable city council approval. It is significant that every one of Mayor Bloomberg’s rezoning proposals (described below) were approved.

THE BLOOMBERG ZONING BLITZ

Under the administration of Mayor Michael Bloomberg (2002–2014), the city undertook a major rezoning campaign. Some 37 percent of the land in the city was rezoned, the largest set of rezonings ever, through almost 140 separate zoning actions.¹⁵ As shown in Figure 1.B, many of these rezonings were instituted during the real estate boom preceding the 2007–2008 bust. This rash of rezonings was consistent with the mayor’s pro-growth agenda and long-term sustainability plan, which called for the development of new housing for a population expected to grow by one million people before the year 2030 (City of New York 2007). The analysis by Leo Goldberg divides the rezoning actions into *upzonings*, which are aimed at increasing development capacity, *downzonings* that preserve existing development, and *hybrid* rezonings that combine both actions.

The vast majority of the rezonings protected areas throughout the five boroughs. The Bloomberg administration chose to undertake this substantial rezoning campaign instead of a comprehensive revision of the Zoning Resolution—perhaps a worthy endeavor to consider since over a half-century had passed since the last one. It is even more remarkable that the city chose to propose many localized, smaller zoning changes instead of engaging communities in a process of comprehensive long-term planning. All of this suggests that the allegiance to zoning over planning is deeply imbedded in the political culture of New York City.

ZONING AND RACE

The 15 rezoning plans currently advanced by Mayor de Blasio include large areas in East New York, the South Bronx, Flushing, and East Harlem, all communities of color. They squarely raise the question of the impact of the rezonings on racial minorities, not always evident during the Bloomberg years because of the large number of rezonings, the variety of neighborhoods affected, and the wide variation in types and scale of rezonings. While some of Mayor Bloomberg’s rezonings faced intense neighborhood opposition and charges of racial bias, such as the rezoning of 125th Street in Harlem, many of the Bloomberg-era rezonings had the effect of preserving existing communities, or mixing preservation with limited upzoning, they generally faced limited, though often vocal, opposition. Every one of them was approved. Race was not a major item for discussion—especially when it came to the rezonings in middle- and upper-income neighborhoods which are disproportionately white.

Up until now, we have barely mentioned race when discussing zoning. This is, in effect, the way many city planners are taught to understand land use and zoning, as "race-neutral." The DCP has never seriously broached the question or produced a study of the racial implications of zoning laws or the agency's own practices. It appears that zoning, like many other areas of public policy, is dealt with as "color blind" and part of the mythical "post-racial society."¹⁴

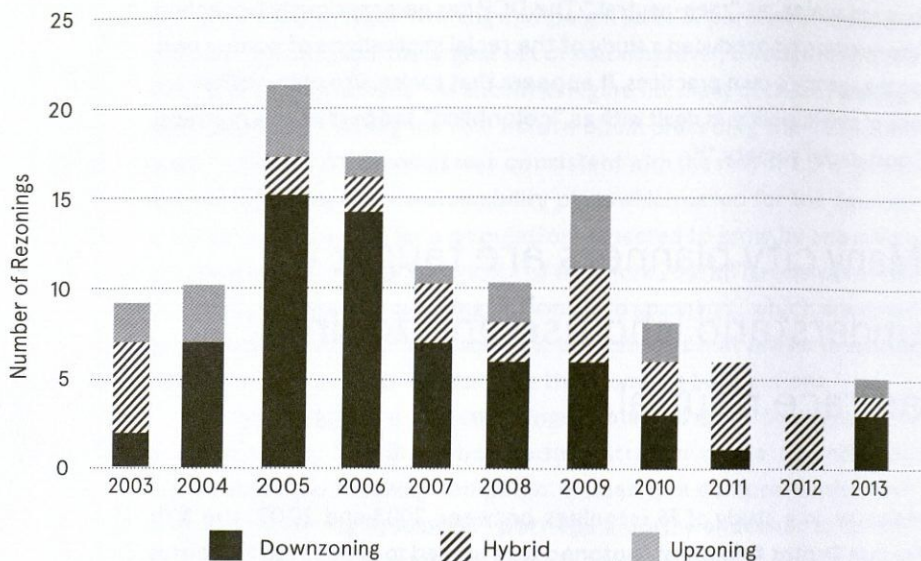
Many city planners are taught to understand land use and zoning as 'race neutral.'

However, in a study of 76 rezonings between 2003 and 2007, the NYU Furman Center found that "upzoned lots tended to be located in census tracts with a higher proportion of non-white residents than the median tract in the city." More particularly, these areas had higher concentrations of African American and Hispanic residents than the city median (Furman Center 2010).

Looking at income, the Furman Center study found that upzoned lots were in areas with "significantly lower income" and "much lower home-ownership rates" than the city median. Downzoned lots tended to be in areas that had income levels and home ownership rates below the city median but above those in upzoned areas. In contrast, contextual zoning occurred in areas where income and homeownership levels were much higher than the city median (Furman Center 2010). Recent research covering most of the Bloomberg-era rezonings, which occurred between 2003 and 2013, suggests that the Furman Center's findings were broadly valid, although the collapse of the land market in 2007–2008 makes it difficult to draw definitive conclusions. Many upzonings and hybrid rezonings did not have a measurable immediate impact due to the decline in the real estate market (Goldberg 2015).

Rezonings in strategic areas in and near the highest value real estate in the city, however, have had clear, significant impacts on communities of color. Chapters three through five present three very dramatic case studies of neighborhoods that have seen swift change and racially disparate displacement—Williamsburg (Brooklyn), and Harlem and Chinatown in


01.B Department of City Planning—Rezoning by Year, 2003–2013



Leo Goldberg (2015).

01.C Department of City Planning Rezoning, 2003-2013



 Zoning Amendments

New York City Department of City Planning, NYC GIS Zoning Features December 2015.

Manhattan. These cases show how rezonings have resulted in the displacement of minorities by stimulating new development that prices them out or by failing to provide zoning protections when they are most needed. In each case, the city failed to consider the likelihood of displacement and the ways it might affect minority populations.

DISPLACEMENT

From the perspective of the city's pro-growth strategists, displacement is not a major problem. For residents, community-based organizations, and small businesses, it is a critical problem. While public officials may acknowledge neighborhood concerns, there has been no serious action dealing with displacement. If it were seen as a problem, it would be a widely reported subject of debate in government circles and the press. There would be studies that sought to understand whether displacement occurred after a rezoning, who was displaced, and where they went. There would be well-funded committees and task forces with enforcement powers. None of this exists.¹⁵

It would appear that displacement is understood as one of those unavoidable consequences of development—in much the same way that Robert Moses declared, in defense of his projects that displaced people, “you can't make an omelette without breaking eggs” (Caro 1975). A common argument in defense of gentrification and displacement is that change is a constant and those raising questions about it are part of a chronic knee-jerk reaction against any change. Or, just expressions of nostalgia for what exists (Lees, Slater and Wyly 2008; Smith and Williams 1986).

From the perspective of “trickle-down” housing economics, there really is no downside to new development and anyone raising questions is merely interfering with the free market, which, we are told, will work its miracles if left alone. Ultimately, say the free-marketeers, new development benefits low-income and minority communities because the increased supply of luxury, market-rate housing units will free up existing units for people with lower incomes as everyone moves up along the chain connecting all income brackets. In a perverse twist, they argue that the people raising the issue of displacement are actually undermining the creation of housing for low-income minorities.

This is a fantastical story. It is the fable that underlies the city's land use and zoning policies. This is how it really works: new market-rate housing units principally serve the luxury market and the existing housing units don't trickle down. The relatively high rate of vacancies in luxury buildings

belies the notion that the surplus will trickle down to poor people; it simply remains at the top as landowners hold out for higher prices and rents. At the same time, the lack of affordable housing for low- and moderate-income households remains constant because "the market" does not build for them, and government subsidies are simply not sufficient to fill the gap. This has been further complicated by the withdrawal of direct public subsidies from low-income housing starting in the 1980s as part of the neoliberal turn in public policy aimed at unleashing the full power of the "free market." In the end, the new luxury housing produced by the market forces more people into the existing housing stock, which, if you follow the theory of supply and demand, means that the rents there will actually go up and not down!

A few examples from the city's history are useful counters to the free market narrative, as they reflect major long-term trends. In 19th-century Manhattan, the expansion of uptown housing for the gentry coincided with a severe housing shortage and overcrowded tenements. The building boom of the 1950s and 1960s was followed by massive housing abandonment in the 1970s. Throughout the city's history, homelessness and overcrowding have been a constant and have grown during building booms. We can see this happening at the neighborhood level when new development drives up land values and rents in surrounding blocks and tenants in the buildings on these blocks can't afford to pay higher rents and are forced out. They end up in the limited stock of increasingly overcrowded affordable housing or, perhaps, in homeless shelters or on the streets.

The long-term trends are repeated in short-term changes tied to rezonings. According to research by Leo Goldberg, between 2002 and 2013, the city's rezoning program produced immense value for landowners. Property values in upzoned areas rapidly increased in comparison to other parts of the city. Lots with dense building types appreciated particularly fast: the assessed value of multi-family buildings in upzoned areas increased by 120 percent while mixed-use buildings increased by 100 percent. Neighborhoods subject to hybrid rezonings produced value increases that were nearly as large. The increased valuations of multi-family buildings result in higher property taxes; in rental buildings, these are passed on to tenants in the form of higher rents (Goldberg 2015).

These results are consistent with the findings of an NYU Furman Center study that found that "just 26 percent of units constructed since 2000 rented for \$1,005 or less in 2012, a level affordable to the median renter household" (Furman Center 2013, 34). However, even at this rent level, such housing is not affordable to the majority of people living in the

WHAT IS DISPLACEMENT? HOW DOES IT HAPPEN IN NEW YORK CITY?

People all over the city are talking about displacement, in private conversations and public hearings. Displacement is not only about people moving from one place to another, but also large numbers of people having to move and having little choice in the matter. It is about people being forced out by rising land prices and rents, which is happening all over the city to a greater or lesser degree. It can happen as part of a gradual gentrification process, or it can be connected to rapid changes sparked by large-scale development and rezoning. Residents, housing activists, and legal advocates in the city tell stories of long-time tenants forced to move due to rising rents and landlord harassment.

Displacement affects many white neighborhoods as well as communities of color. However, whites typically are much more mobile and can take advantage of many affordable alternative housing opportunities. For low-income communities and communities of color, the alternatives are much more limited due to widespread discrimination in the housing and real estate markets. In the neighborhoods they are forced to leave, the new residents and businesses tend to be wealthier and whiter.

While New Yorkers may intuitively know or directly experience displacement, the city has done little to measure or prevent it. No city, state, or federal agency documents residential turnover and the extent to which it may disproportionately affect people by income and race. City agencies responsible for land use and housing policy do not collect information about the effect of their policies and programs on residential stability, never asking who might be displaced, where they might go, and whether they face better or worse living conditions. Without this data, community-based organizations concerned about displacement have limited information with which to combat it, and city government lacks the basic facts needed to either counter or mitigate displacement.

For a start, these are five major kinds of displacement that need to be addressed:

1. Rent-stabilized tenants. Rent regulation limits rent increases and guarantees the right to lease renewal. In the last decade, more than 50,000 rent-stabilized housing units were lost because landlords illegally forced tenants out, or paid them to leave so they could rent to people with much higher incomes, or the units were no longer stabilized because rents skyrocketed above the maximum that warrants protection.

2. Market-rate tenants. Tenants in buildings with five units or less, and most large buildings built after 1974, do not have the protections of rent-stabilized tenants. When owners sell to investors or flippers, tenants are often evicted or handed substantial rent increases.

3. Homeowner displacement. Homeowners in and around rezoning areas face intense pressure to sell their properties. Fraudulent foreclosure relief companies target many elderly and financially struggling owners while others are victimized by deed theft. Companies looking to flip these properties often convince homeowners to sell far below the real value of their homes and then turn around and sell at much higher prices. Predatory lending practices, concentrated in communities of color, result in displacement and free up property for speculative redevelopment.

4. Small business displacement. Small businesses have no rent protections and are vulnerable to steep rent increases when a landlord chooses to capitalize on the influx of new residents with higher buying power in a neighborhood. Often, corporate-owned businesses replace locally owned businesses, further homogenizing life in the city's neighborhoods.

5. Industrial displacement. Much of the city's industrial zoning leaves manufacturing and industrial uses open to competition from hotel, office and commercial uses that command higher rents. Speculators often move in before a neighborhood changes and wait for land values to skyrocket and then lobby for a zoning change.

neighborhoods that were rezoned for new development.

Upzoned areas, where new high-end housing units were built, predictably increased the rent burden on households in these areas, as stated in a report by the NYC Comptroller:

It is reasonable to expect that if the number of middle- or high-income households in a neighborhood increases, so will average rents and home prices. New housing development, typically of a higher cost than the existing housing stock, will usually become more viable and common. There will be more competition for existing housing units and more income available to monetize that competition (Stringer 2014, 16).

At the end of the day, increases in “affordable housing” lag far behind the increases in market-rate housing. From 2002 to 2012, “while income-restricted subsidized stock grew by about 12 percent, the market-rate stock grew by much more, increasing by 28 percent” (Furman Center 2013, 36). Further, new rent-stabilized units built in exchange for property tax benefits may (and often do) rent at levels that increase to above the “deregulation threshold, currently \$2,700 per month, after which rents are no longer regulated” (Furman Center 2013, 34).

RACE AND THE MARKET, ZONING AND FAIR HOUSING

Beyond the myths of market magic there resides the myth of race neutrality—the notion that the land market, housing market, and the zoning that regulates them have nothing to do with racial discrimination or segregation.

DCP’s reliance on zoning as the main instrument of land use policy makes it difficult to challenge the myth. The city’s multi-volume Zoning Resolution is complex and constantly changing, and most New Yorkers have to rely on technical experts to interpret it for them. There is nothing in the Zoning Resolution about race. There is not a hint that this is a city of segregated neighborhoods and schools, or that race might figure in the formulation of land use and zoning policy. There is not even a serious public dialogue about what race might have to do with the way the city uses its zoning powers.

The 1968 Fair Housing Act prohibits discrimination in housing. It bans local government policies that have a discriminatory effect as well as intentional acts of racial bias. In New York City it would be hard to find examples of blatant acts of intentional racial bias in zoning and planning, simply because race is not usually mentioned.

If it is not talked about then it is difficult to ferret out any discriminatory intent. However, it is certainly possible to assess whether zoning actions have a discriminatory effect.

The city has never seriously looked at the potential discriminatory impact of its rezonings. Since it does not recognize displacement as a major contributor to segregation and racial disparities, it does not track and measure displacement resulting from its own actions. It is worth repeating: there has never been a study of how many people were displaced by rezonings, where they went, whether they are better off or not, and whether their new living conditions are better or worse. Unless we know what happens when people are displaced, how can the city's planners make informed decisions? How can they know whether a rezoning has a disparate impact on people of different races, ethnicities and incomes, as many residents suspect? How can residents make informed decisions about whether to support or reject rezonings?

The city has never seriously looked at the potential discriminatory impact of its rezonings.

At times, city officials point to the environmental impact analyses that accompany zoning proposals. These include a section on social and economic impacts, which may involve an analysis of existing income and racial groups, and estimate the number of people who will be directly and indirectly displaced by a rezoning. The analysis tends to be buried in large and unwieldy documents that are filed with the zoning applications but rarely get in-depth scrutiny. Community boards do not have the time or professional assistance needed to plow through and challenge them. Few elected officials give them a critical review.

However, even those who care to read and challenge the environmental review cannot reject it because the environmental review is mainly intended to disclose potential negative impacts, and there is no requirement that the applicant revise or withdraw their application. Mitigations may be promised in the environmental reviews but there is rarely sufficient enforcement to insure that they are implemented. In sum, environmental review is a weak, underutilized tool for understanding the disparate impact of displacement

resulting from zoning.

The better alternative would be a thorough, in-depth analysis of different kinds of zoning actions over time, in different neighborhoods throughout the city. For this analysis the city will need to consistently monitor and measure displacement by race and ethnicity throughout the city.

The city's "color blindness" is not simply a transitory disease. It is a chronic element resulting from many decades of discrimination going back to the very founding of the city and the nation. New York City does not stand alone in this. In some ways it has been exemplary in providing housing for low-income and minority people and rejecting the exclusionary zoning and land use practices of the suburbs in the New York metropolitan region. However, in the following chapters we will show that the city, driven by its dynamic real estate market, has evolved unique forms of racial exclusion and discrimination, abetted by zoning and housing policies.

Endnotes

1. Under the Lindsay administration, city planners produced a "master plan," which underwent contentious public hearings, faced intense criticism by civic and planning groups, and faced lawsuits between 1969 and 1972. It was never voted on or approved, but was "put aside," according to city planning officials.

Paul Goldberger, "Why City Is Switching From Master Plan to 'Miniplan,'" *The New York Times*, June 27, 1974.

2. Parks are outlined on zoning maps but not subject to zoning.
3. The Zoning Resolution is at <http://www.nyc.gov/html/dcp/html/subcats/zoning.shtml>; for a comprehensive history and discussion see Bressi 1993.
4. See <http://www.nyc.gov/html/dcp/home.html>.

City agencies and independent groups have developed a number of educational resources to help the public and independent professionals understand zoning tools and existing city zoning rules. New York City Department of City Planning, *New York City Zoning Handbook*, 2011 Edition (City of New York, 2011); Christine Gaspar, Mark Torrey, and John Mangin, "What is Zoning?" Center for Urban Pedagogy, 2013, Accessed January 23, 2016, http://welcometocup.org/file_columns/0000/0530/cup-whatiszoning-guidebook.pdf.

5. As elsewhere, this section relies on the author's decades of experience with land use, zoning, and housing in New York City and eight years as a senior planner with the City of New York. The types of zoning are general and the result of an interpretation that attempts to extract the main trends. They are grounded in the detailed research of Goldberg 2015. DCP does not formally categorize its rezonings in this way.
6. Often DCP finds that there are also "overbuilt" lots that exceed the floor area allowed under the existing zoning, perhaps because they were built before the city's zoning rules were first instituted in 1916, or before they were substantially revised in 1961. These are considered "non-complying" lots. Wherever possible the DCP will upzone these lots so that the buildings comply with the zoning, or include them in a wider upzoning. This type of upzoning to increase compliance does not always spark redevelopment, especially if it occurs on a small scale and is not part of a much wider rezoning.
7. The Atlantic Yards development in Brooklyn, located at the third largest transit hub in the city, is a prime example.
8. At the time of this writing, the Department of City Planning is currently engaging in a number of neighborhood studies and rezonings, including the East New York rezoning and Jerome Avenue neighborhood study.
"East New York Community Planning," the Department of City Planning, accessed January 23, 2016, http://www.nyc.gov/html/dcp/html/east_new_york/index.shtml.
"Jerome Avenue Study," the Department of City Planning, accessed January 23, 2016, http://www.nyc.gov/html/dcp/html/jerome_ave/index.shtml.
9. Jarrett Murphy, "De Blasio Housing Chief Rebuts Critics of East N.Y. Plan," *City Limits*, January 7, 2016, <http://citylimits.org/2016/01/07/de-blasio-housing-chief-rebuts-critics-of-east-n-y-plan>.

These phases are not always neatly separated, and land values may increase at vastly different rates, depending on the circumstances of time and place. The phases are an interpretation that we hope will help outsiders understand how zoning and development really work in the real world. See also endnote 3.

11. See "Applicant Portal: UNIFORM LAND USE REVIEW PROCEDURE (ULURP)," Department of City Planning, accessed January 23, 2016, http://www.nyc.gov/html/dcp/html/ap/step5_ulurp.shtml.
12. Manhattan Community Board 2, for instance, unanimously vetoed a New York University rezoning and development plan in 2012, and included detailed analysis and recommendations, which were largely unaddressed in subsequent ULURP review and the final approval by CPC and the City Council.
Community Board No. 2, Manhattan, "Re: NYU Core Project; ULURP Applications Nos.: 120122 ZMM, N 120123 ZRM, N 120124 ZSM, 120077 MMM," March 11, 2012, accessed January 23, 2016, http://www.nyc.gov/html/mancb2/downloads/pdf/nyu_ulurp_response_approved%202.23.2012.pdf