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ZONING, TAXES, AND AFFORDABLE HOUSING: Lessons from Bloomberg's Final Term

Eric Kober
Adjunct Fellow

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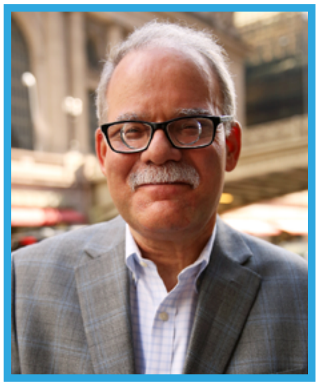
About the Author



Eric Kober is an adjunct fellow at the Manhattan Institute. He retired in 2017 as director of housing, economic and infrastructure planning at the New York City Department of City Planning. He was visiting scholar at the NYU Wagner School of Public Service and senior research scholar at the Rudin Center for Transportation Policy and Management at the Wagner School from January 2018 through August 2019. Kober holds master's degrees in business administration from the Stern School of Business at NYU and in public and international affairs from the Woodrow Wilson School at Princeton University.

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Executive Summary

This report examines the consequences of three rezonings that occurred during the final term of former New York City mayor Michael Bloomberg: Astoria (2010), Bedford-Stuyvesant North (2012), and Crown Heights West (2013). These areas can be characterized as "middle market"—where market rents are high enough to support new privately financed housing but not high enough to make the standard options under current mayor Bill de Blasio's Mandatory Inclusionary Housing (MIH) program (which requires large percentages of low-income units) economically feasible.

The report makes three interrelated points:

- In neighborhoods such as those examined here, New York City has demonstrated the capacity to generate substantial amounts of new privately financed housing through neighborhood rezonings that are arrived at amicably in discussions with community boards and elected officials.

- The rezonings included incentives to build affordable housing under Bloomberg's Voluntary Inclusionary Housing (VIH) program. A participating developer gets a floor area bonus that allows more dwelling units (increases the building's density). Most of the additional units must be "affordable," i.e., offered at below-market rents, but a small percentage add to the number of "market-rate" units constructed. Also, the developer can qualify for tax exemptions provided in state law. This report finds that where affordable housing requirements necessary to obtain both floor area incentives and tax exemptions were consistent, the city's affordable housing objectives were met. However, as of January 2020, 38 housing developments in the three areas had obtained building permits post-rezoning and received or were eligible for decades-long property-tax breaks, but did not utilize floor area bonuses to construct affordable housing (and more housing generally). These developments benefited from provisions in the law that permitted tax exemptions without having to set aside affordable housing at all, or having only to provide middle-income housing set-asides at rents close to, or even consistent with, local market rents.

- In middle-market areas where a VIH floor area bonus is allowed, New York City should require that a developer use it in order to qualify for the state's most generous tax exemptions. Moreover, the city may induce more developers to participate in today's MIH program in new rezonings, if that program utilizes a fuller range of options in middle-market areas. The result, in both cases, will be more affordable housing and more housing in general.

This report takes as a given the city's inclusionary housing programs and the state's property-tax exemptions. It then analyzes how the city and state could do better in leveraging private investment to meet their housing goals.

ZONING, TAXES, AND AFFORDABLE HOUSING:
Lessons from Bloomberg's Final Term

Introduction

This paper examines the outcome of three rezonings that took place in Brooklyn and Queens between 2010 and 2013, during New York mayor Michael Bloomberg's final term. These rezonings illustrate what New York City could accomplish in the future with further zoning reform. They also reveal the need to better coordinate the city's affordable housing incentives with the state's legislated property-tax exemptions.

The rezonings, known as Astoria (Queens), Bedford-Stuyvesant North (Brooklyn), and Crown Heights West (Brooklyn), are all in middle-market areas, where rents and condominium sales prices are high enough to support new construction without public subsidies, but not as high as the most in-demand parts of these boroughs, or in the strongest real-estate market areas of Manhattan.[1] These areas provide new housing at market rents affordable to households in the range of incomes characterized by Mayor Bill de Blasio's administration as "middle-income."[2]

Each rezoned area combined stricter height restrictions for new apartment buildings with moderate increases in density (more dwelling units) in selected locations. The increased density in these locations was projected to result in more new housing over the next 10 years than under the old zoning. In fact, each rezoned area achieved projected 10-year housing growth levels sooner than anticipated. These three areas are representative of what could be achieved in similar middle-market areas elsewhere in the city.

When Bloomberg took office in 2002, the zoning map largely reflected NYC's comprehensive rezoning in 1961. In his first term, the city undertook rezonings in areas that subsequently saw spectacular changes in land use and built density—Downtown Brooklyn, Greenpoint/Williamsburg, Hudson Yards, and West Chelsea. These were highly marketable locations where development had been held back.

Subsequent rezonings were less well located and would produce more modest results. Nonetheless, these rezonings could still represent a significant stream of new privately financed housing. At the time Bloomberg left office, at the end of 2013, many portions of the city remained subject to the obsolete 1961 zoning rules, including areas with real-estate market conditions comparable to the three areas examined here. Such areas could be rezoned in the future with similar results, presuming workable zoning and tax policies.

The Astoria, Crown Heights West, and Bedford-Stuyvesant North rezonings did lead to more housing overall; but in two of the three areas, developers failed, in many cases, to take advantage of floor area bonuses in exchange for affordable housing. These bonuses were available in specific locations, known as "designated areas," under a Bloomberg-era program known as Voluntary Inclusionary Housing (VIH).[3] While VIH has been superseded by the Mandatory Inclusionary Housing (MIH) program under Mayor Bill de Blasio, VIH continues to operate in the designated areas.

VIH permits a floor area increase of 33% if floor area equivalent to about 20% of the units is permanently affordable to households at 80% of Area Median Income (AMI).[4] The arithmetic works out so that most of the bonus floor area is used by the affordable units. The portion of the bonus floor area that is market-rate represents 5% of the finished building. With such a small increment of market-rate floor area, whether the affordable housing also provides access to tax exemptions that exist under state law is often the deciding factor in determining whether a developer will use the bonus.

This turns out to be a key issue. One important reason for developers' decisions in the rezoned areas of Brooklyn and Queens not to use the floor area bonus was the poor coordination of the city's floor area bonuses with the state's tax exemptions in Section 421-a of the New York Real Property Tax Law. Two versions of the tax-exemption law are relevant to this report. The first, or "old" Section 421-a, arose from legislative changes enacted in 2006 and 2008. These provisions expired in 2015.[5] The successor, or "new" Section 421-a (also known as Affordable New York), is currently in effect.

"**Old" Section 421-a**. This legislation defined a Geographic Exclusion Area (GEA) in which eligibility for tax exemptions depended on the provision of affordable housing. The GEA was mapped widely, but not comprehensively in NYC, including in northern and central Brooklyn and along the waterfront in western Queens (**Map 1**).[6] This created anomalous situations where tax exemptions would be granted more generously on one side of a street than the other, despite similar market conditions.

Inside or outside the GEA (except for Manhattan), the provision of affordable units would result in a 25-year tax exemption. The affordability requirement for the tax exemption was also 20% of units at 80% of AMI, aligning it with the VIH program's floor area bonus requirement.

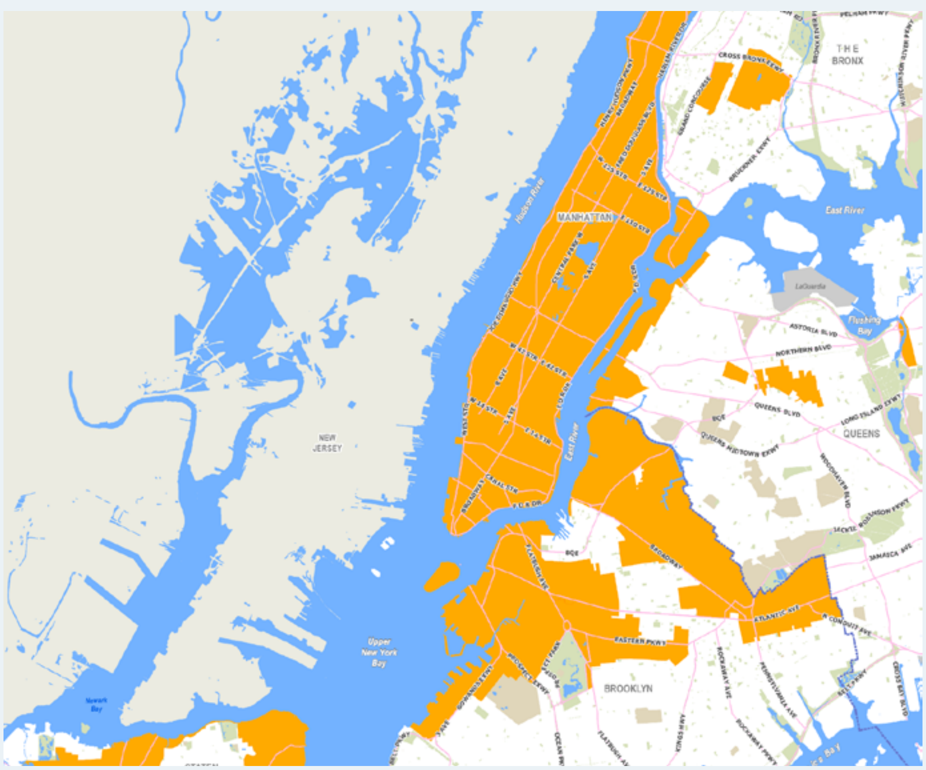
Outside the GEA only, new housing could qualify for a 15-year tax exemption as-of-right, with no affordable housing.

The GEA-based 421-a rules created sharply different incentives for developments within VIH-designated areas, e.g., those eligible for the floor area bonus.

Inside the GEA, providing affordable housing was the only route to a tax exemption (25 years for providing 20% affordable housing at 80% of AMI). The 33% floor area bonus provided additional market-rate floor area

MAP 1.

New York City's Geographic Exclusion Area (GEA)



Note: The GEA appears in orange.

Source: New York City, Department of Housing Preservation and Development

(5% of the total floor area in the building) in exchange for making the affordable housing permanent.

Outside the GEA, a 15-year tax exemption was as-of-right, requiring no affordable housing. The incentive to utilize the floor area bonus was much weaker—10 extra years of tax exemption, plus the value of the additional market-rate floor area supplied by the bonus (again, about 5% of the total floor area of the building). Thus, developers outside the GEA would be much less likely to use the bonus and provide affordable housing than those inside the GEA.

"New" Section 421-a / Affordable New York (2017). The old Section 421-a expired in 2015 and was replaced two years later with a new Section 421-a. The GEA ceased to exist. Generally speaking (special rules apply to developments of more than 300 units in specified areas), there are now three options for receiving a tax exemption, requiring different levels of affordability.

Developments inside Manhattan south of 96th Street can use two 35-year options: A (25% of units affordable); and B (30% affordable). Both options require a portion of the affordable units to be low-income.[7]

Developments outside Manhattan south of 96th Street, even in the former GEA, are eligible for Options A and B and an additional Option C, the most generous, which provides a 35-year tax exemption in exchange for a commitment to make 30% of the units affordable at incomes up to 130% of AMI. Maximum rents for qualifying units are set at $2,542 for a one-bedroom and $3,063 for a two-bedroom.[8]

The new Section 421-a inadvertently created an incentive in the designated areas within the three rezoning areas studied in this report—and in similar middle-market designated areas outside Manhattan south of 96th Street—to get a tax break by using Option C instead of the VIH floor area bonus. Without the bonus, a developer can still get a tax exemption, and rents on the 30% affordable units (130% of AMI) are close to market rates. However, taking the floor area bonus commits the developer to make 20% of units permanently affordable at a much lower 80% of AMI. The developer can still select Option C and receive a tax exemption of the same length. However, rents on two-thirds of the affordable units—the 20% required to be affordable to households at 80% of AMI—are now well below market rents. True, taking the VIH bonus allows the developer to charge market-rate rents on about 5% of the additional floor area. But the value of this floor area may not fully offset the loss of income from lower rents on affordable units. If the developer finds that the return is higher on an Option C building with no VIH bonus, the upshot is fewer housing units overall and no affordable units at 80% of AMI.

In a recent paper,[9] I noted that de Blasio's signature housing initiative, MIH, has failed in its objective of inducing private real-estate developers to construct permanently affordable housing without subsidies in connection with rezonings that permit more housing. One of the problems: the MIH design achieves financial feasibility only under limited circumstances in affluent neighborhoods, and the administration has failed to pursue rezonings in the very areas where its design is most likely to work. Another problem: MIH is inadequately coordinated with tax exemptions, which are critical to its feasibility.

As is shown in this paper, the VIH incentive was also coordinated imperfectly with real-estate tax-exemption policy. As a result, it works better currently in Manhattan south of 96th Street, where Option C is not available, and less well in other areas.

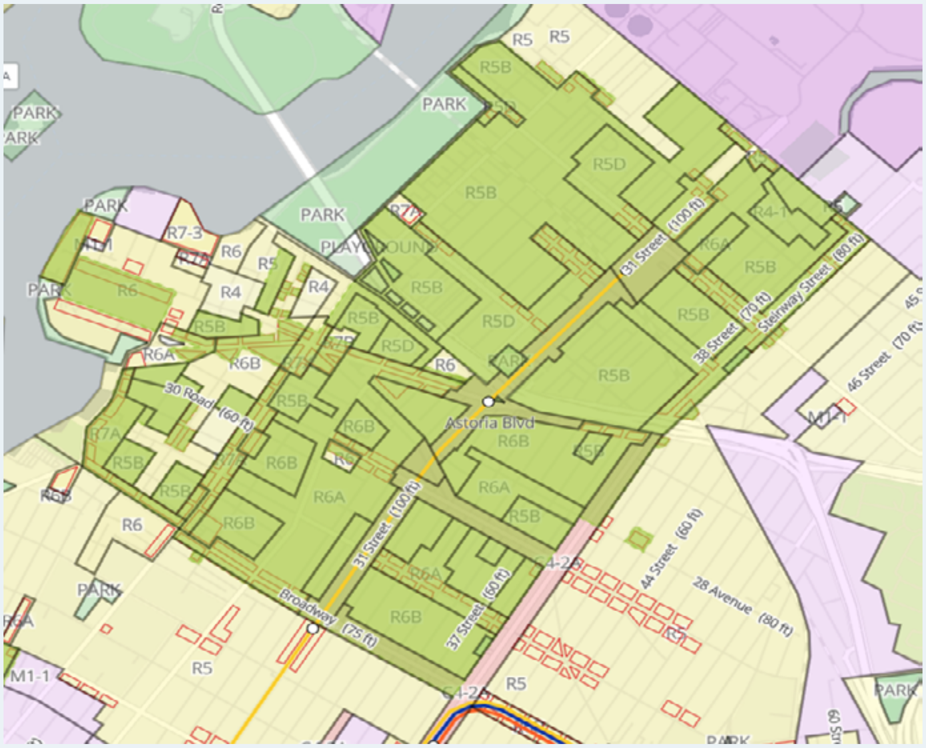
The complex interplay of the various real-estate markets, zoning, and tax incentives is revealed by the experience of the three rezoning areas in Brooklyn and Queens. VIH floor area bonuses were utilized mainly under the old Section 421-a and inside the former GEA. Outside the GEA under the old Section 421-a and in all portions of the rezoned areas under the new Section 421-a, the VIH floor area bonus is little used. The experience of the three rezonings provides insight into how the legacy VIH program and the current MIH program can become feasible for future rezonings in middle-market areas.

Astoria Rezoning

The Astoria rezoning became effective in 2010 (**Map 2**).[10] According to the City Planning Commission's report, the previously existing zoning in the area permitted new buildings that were inconsistent with the character of the area. North of the Grand Central Parkway, the zoning was unduly restrictive in areas close to transit that had many existing apartment buildings; south of the parkway, new buildings were permitted that were out of scale with existing buildings. The proposed contextual zoning would "preserve the scale and character of Astoria's blocks and ensure that future residential development would be more consistent with the surrounding neighborhood's building patterns."[11] Along wider streets and commercial corridors, and at sites close to transit, the VIH floor area bonus would be available to encourage new mixed-income housing.[12]

MAP 2.

Astoria Rezoning, 2010



Note: The rezoned areas are highlighted in green. Yellow, red, and blue lines indicate subway lines, and the areas highlighted in pink or red rectangular shapes denote commercial zoning districts.

Source: NYC Department of City Planning, Zola: New York City's Zoning and Land Use Map, zola.planning.nyc.gov

FIGURE 1.

New Housing in the Astoria Rezoning: Projected and Actual

	Projected (10 years)	Actual (since rezoning to January 2020)
Total	1,029	1,155 (471 completed, 684 under construction)
Permanently Affordable at 80% AMI	146	31 (21 completed, 10 under construction)

Source: Astoria Rezoning, Environmental Assessment Statement; NYC Dept. of Buildings; NYC Dept. of Finance

The Astoria rezoning area is mapped with a complex pattern of zoning districts (R6B, R5D, R6A, etc.) that were generally intended to encourage new apartment buildings of four to eight stories fronting major streets while preserving the lower scale of built-up side streets. The Environmental Assessment Statement (EAS)[13] projected that 10 years after its effective date, the rezoned areas might produce as many as 1,029 new housing units, of which 146 would be affordable under the VIH program; 610 new housing units were projected over the same period in the absence of the rezoning. Projections for area-wide rezonings are often well wide of the mark; but in this case, by January 2020, 471 new units had been completed in the rezoning area, and an additional 684 were under construction, for a total of 1,155 (**Figure 1**). The affordable housing projection was less successfully attained: 21 VIH units had been completed, and 10 were under construction.

In all, the Astoria rezoning met its total housing projection, but not its affordable housing projection, because of the lack of full alignment between VIH and tax-exemption programs. This misalignment is worse today than in the past because of the demise of tax exemptions inside the GEA that were only available if affordable housing was provided.

How affordable is the new housing? Several buildings have asking rents just above the maximum (130% of AMI, or $2,542 for a one-bedroom) for Option C under the new Section 421-a, according to the website Streeteasy.com. For example, 30-40 21st Street asked $2,620 and $2,900 for one-bedrooms in January

2020, and 23-15 Astoria Boulevard asked $2,650 for a one-bedroom in December 2019. Both sites, which are outside the GEA, have as-of-right tax exemptions under the old Section 421-a program. These rents would be affordable to a two-career professional couple with a combined income in the $130,000–$150,000 range. Such households are an important component of the growing college-educated labor force that supports the city's high-productivity economy.

The completed VIH site, 31-43 Vernon Boulevard, is inside the former GEA and filed for a tax exemption under the old Section 421-a program, requiring 20% affordable units. Another VIH site under construction, 28-16 21st Street, is outside the former GEA; its tax-exemption status is not determined, since filings for exemptions occur only after completion.

In most cases, buildings outside the former GEA areas requiring affordable housing for tax exemptions, and eligible to use VIH floor area, did not use the bonus. Had the three completed buildings in the Astoria rezoning that are eligible taken advantage of the bonus, about 35 more units would have been constructed, of which 28 would have been affordable.[14]

Today, a much larger number of buildings are under construction that could take advantage of the VIH program but are not doing so. Three such buildings are under construction on a single zoning lot taking up most of the block bounded by Vernon Boulevard, 30th Drive, 12th Street, and 31st Avenue, with a total of 534 units. Most of the zoning lot is eligible for the VIH floor area bonus, but the development is not participating. About 112 units (90 affordable) are being forgone on this site. An additional 104 units are under construction on other sites that are eligible for the bonus but are not using it.

Eight buildings with 245 units have been completed in zoning districts where the VIH floor area bonus is not applicable and that are outside the former GEA, making these buildings eligible for as-of-right tax exemptions under the old Section 421-a without any need for providing affordable housing. One building[15] has been completed in an area where the floor area bonus is inapplicable and filed for Option C under the new Section 421-a. Finally, 46 units are under construction at a location ineligible for the floor area bonus. In these cases, the new Section 421-a Option C tax-exemption requirements—a minimum of 30% affordability for middle-income households—are more demanding than the standards of the old Section 421-a.

Bedford-Stuyvesant North Rezoning

The Bedford-Stuyvesant North rezoning went into effect in 2012 (**Map 3**).[16] According to the City Planning Commission's report, the rezoning was undertaken in response to community concerns that existing zoning in the area did not reflect established patterns of development; the existing zoning did not distinguish between major streets, where larger buildings were appropriate, and the lower scale of side streets. The new zoning imposed height limits and allowed for residential growth, with the VIH floor area bonus available along major commercial corridors, including Myrtle Avenue, Bedford Avenue, and Broadway.[17]

This area, which is well served by transit, is now rezoned for apartment buildings of four to 11 stories, with the lowest heights generally on side streets characterized by row houses, and taller buildings allowed on major streets. According to the EAS,[18] the area was projected to see the construction of as many as 1,988 new housing units over a 10-year period following the rezoning; without the rezoning, 1,198 new units were projected (**Figure 2**). Although the VIH program was made applicable in a portion of the area, the EAS did not project affordable units. As of January 2020, 1,281 new housing units had been completed since the rezoning, and 676 were under construction. The total of 1,957 units is close to the projected total.

FIGURE 2.

New Housing in the Bedford-Stuyvesant North Rezoning: Projected and Actual

	Projected (10 years)	Actual (since rezoning to January 2020)
Total	1,988	1,957 (1,281 completed, 676 under construction)
Permanently Affordable at 80% AMI	NA	120 (19 completed, 101 under construction)

Source: Bedford-Stuyvesant North Rezoning, Environmental Assessment Statement; NYC Dept. of Buildings; NYC Dept. of Finance

Rents in Bedford-Stuyvesant North's new buildings are somewhat lower than in Astoria, according to Streeteasy.com. For example, 876 DeKalb Avenue, a 41-unit rental building completed in 2015, listed one-bedroom apartments at about $2,400 in January 2020. At 818 Lexington Avenue, one-bedroom units were

MAP 3.

Bedford-Stuyvesant North Rezoning, 2012

Note: The rezoned areas are highlighted in green. Red lines indicate subway lines, and the areas highlighted in pink or red rectangular shapes denote commercial zoning districts.

Source: NYC Department of City Planning, Zola: New York City's Zoning and Land Use Map, zola.planning.nyc.gov

listed at about $2,200. These rents are comparable with, or below, the rents affordable to households at 130% of AMI under Option C of the new Section 421-a. This makes Option C, even with its 30% affordability requirements, effectively equivalent to the former as-of-right tax exemption outside the GEA but offering a longer exemption period.

Fifty-eight residential buildings have been completed or are under construction since the Bedford-Stuyvesant North rezoning. Unlike the other rezoned areas in this report, Bedford-Stuyvesant North has produced an example of publicly assisted housing—a completed, 40-unit, 100% affordable supportive housing building at 1070 Myrtle Avenue. It is operated by the Institute for Community Living, a nonprofit organization.

Nineteen VIH affordable units have been completed in two developments,[19] and 101 are under construction in three developments. The buildings under construction include 58 affordable homeownership units[20] as part of a four-building, 196-unit development at the northeast corner of Marcy and Myrtle Avenues, known as the Cascade Linen[21] project, named after the business that formerly occupied the site.[22]

All the VIH developments in Bedford-Stuyvesant North are inside the former GEA, which required affordable housing for tax exemptions. The completed projects qualify for the tax break under the old Section 421-a, and the buildings under construction may also qualify, demonstrating how this tax exemption worked effectively. One completed new building[23] did not use the VIH floor area bonus but qualified for the old Section 421-a tax exemption in the GEA by providing 20% affordable units. Three other buildings that were located inside the GEA but were ineligible for the VIH floor area bonus also provided 20% affordable units.[24] One building inside the former GEA provided 11 (30%) affordable units at 130% of AMI under Option C of the current Section 421-a/Affordable New York.[25]

Twenty-three new buildings are outside the former GEA and qualified for the 15-year as-of-right tax exemption under the old Section 421-a. None of these buildings includes affordable units. Thirteen of these could have qualified for VIH floor area bonuses. Some of the buildings are relatively large and comparable in size with buildings inside the former GEA that did use the floor area bonus.[26]

Also, six new buildings with 196 units are under construction inside the former GEA, and five buildings with 90 units are under construction outside the GEA. Nine of them are eligible for a VIH floor area bonus, but the developers did not use it. All these developments, if rentals, would qualify for the new Section 421-a tax exemptions under the current Option C, although some may be "grandfathered" under the old Section 421-a.

In summary, the Bedford-Stuyvesant North rezoning has approximately met its projection for nearly 2,000 new housing units over a 10-year period, with about two of the 10 years remaining. However, the lack of full alignment between the VIH program and new 421-a tax incentives make the VIH floor area bonus much less attractive than was intended. Had the programs been better coordinated, the city could have had much more affordable housing, and more housing overall, than will ultimately be constructed. For example, 912 Broadway is an eight-story building under construction with 81 units at the corner of Broadway and Stockton Street, steps from the Myrtle Avenue station on the J-M-Z subway lines. Had its builders utilized the floor area bonus, it would have about 27 more units and 21 affordable units upon completion.

Crown Heights West Rezoning

The Crown Heights West rezoning was approved by the city council and went into effect in 2013 (**Map 4**). According to the City Planning Commission's report, the rezoning was undertaken "at the request of Community Board 8 and local elected officials to protect the neighborhood's character from out-of-scale development and to create opportunities for the development of affordable housing at appropriate locations."[27] The new zoning imposed height limits on new buildings while allowing denser housing along major streets.[28]

The rezoned area has a variety of zoning districts allowing apartment buildings that range in height from four to 10 stories. The EAS[29] for the rezoning projected that

FIGURE 3.

New Housing Units in Crown Heights West Rezoning: Projected and Actual

	Projected (10 years)	Actual (since rezoning to January 2020)
Total	444	504 (495 completed, 9 under construction)
Permanently Affordable at 80% AMI	99	87 (all completed)

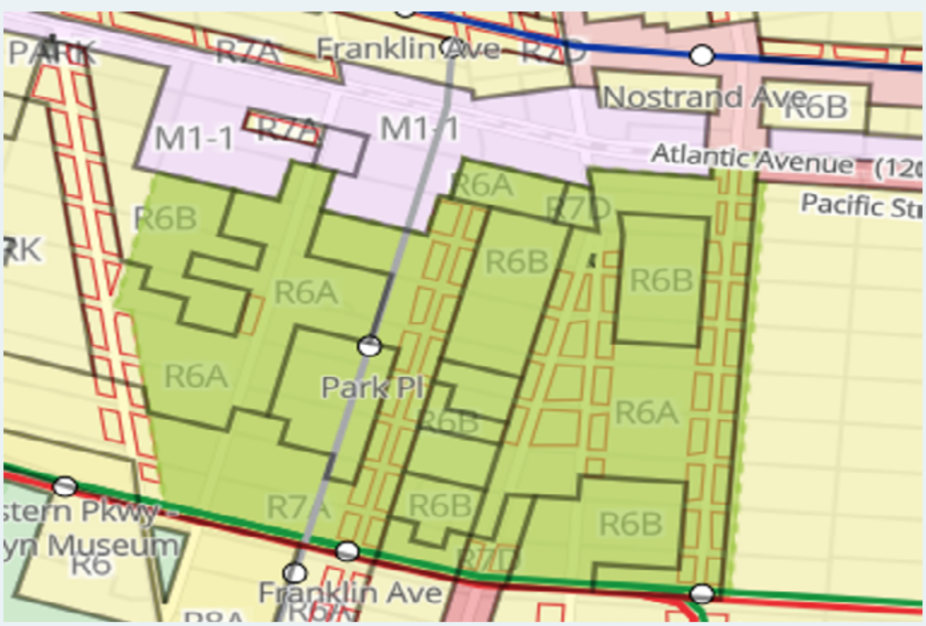
Source: Crown Heights West Rezoning, Environmental Assessment Statement; NYC Dept. of Buildings; NYC Dept. of Finance

it might result in the construction of 444 new housing units over a 10-year period, including 99 affordable units through the VIH program. In the absence of a rezoning, 201 new housing units were projected over the same period. As of January 2020, 495 units had been completed and nine were under construction since the enactment of the rezoning, including 87 completed VIH units (**Figure 3**).

Rents in the new buildings are perhaps slightly higher than in Astoria, according to Streeteasy.com. For

MAP 4.

Crown Heights West Rezoning



Note: The rezoned areas are highlighted in green. Red, green, and blue lines indicate subway lines, and the areas highlighted in pink or red rectangular shapes denote commercial zoning districts.

Source: NYC Department of City Planning, Zola: New York City's Zoning and Land Use Map, zola.planning.nyc.gov example, the rents for one-bedroom units at 1040 Dean Street in 2019 ranged between $2,960 and $3,250. These higher rents helped support the provision of affordable units.

The relative success of this rezoning in inducing developers to participate in the VIH program is also related to the inclusion of the entire rezoning area, except for one city block, in the former GEA. Two VIH buildings have filed restrictive declarations (legally binding commitments that run with the land) under the old Section 421-a, requiring 20% of the units to be affordable at 80% AMI to get a tax exemption.[30] The third building[31] is operating under a Temporary Certificate of Occupancy and is currently paying full taxes, according to the city's Department of Finance.

As in Astoria, the transition to the new Section 421-a has encouraged several developers to forgo the VIH floor area bonus. Two rental buildings have instead filed restrictive declarations under Option C of the new Section 421-a.[32]

In summary, the Crown Heights West rezoning has already met its housing production projection and has nearly met its affordable housing projection, with three years to go in the 10-year projection period. The key to achieving affordable housing production under the VIH floor area bonus program was the inclusion of nearly all the rezoning area inside the GEA, which meant that builders could not get a tax exemption (under the old Section 421-a) without providing affordable housing. The new Section 421-a eliminated the GEA; a builder could now get a tax exemption by choosing the relatively generous Option C for new rental buildings. This alternative likely has caused some buildings to forgo the VIH floor area bonus.

Conclusions and Recommendations

This review of the Astoria, Bedford-Stuyvesant North, and Crown Heights West rezonings leads to several findings and recommendations. The recommendations could be implemented by the current administration but are, perhaps, more realistically seen as an agenda for a new mayor trying to accomplish more with fewer resources, and with a greater need in constrained economic conditions to induce private investment in new housing, both market-rate and affordable.

Findings

- Rezonings that were arrived at amicably by the Bloomberg administration in discussions with community boards and elected officials demonstrate the city's capacity to generate substantial amounts of new, privately financed housing in middle-market areas. Unfortunately, rezoning such areas has become far more contentious in recent years. For example, the de Blasio administration in January 2020 shelved the proposed rezoning of Bushwick, Brooklyn, an area adjacent to the Bedford-Stuyvesant North rezoning area.[33] The city was unable to bridge differences with local elected officials and community groups over the amount of future residential development and the income mix in new housing.

Bloomberg-era rezoning agreements with communities and elected officials applied height limits to new construction via contextual zoning and made use of the VIH program to achieve a mix of incomes in new developments. This was particularly important in neighborhoods such as Crown Heights and Bedford-Stuyvesant. These areas experienced rapid demographic change, as older residents were being replaced in existing housing by newcomers who were more likely to be college-educated, have higher incomes, and be of a different race from the majority of existing residents. The city also successfully insisted on densities high enough to ensure that more new housing would be projected with the rezoning.

- The contextual objectives of the rezonings were achieved more successfully than the mix of incomes. There are several reasons. Most important, the need for tax exemptions to be aligned with the floor area bonus was imperfectly understood. Under the old Section 421-a, the floor area bonus was likely to be used inside the GEA because the provision of 20% affordable housing at 80% of AMI was necessary to obtain a tax exemption. Outside the GEA, the floor area bonus was unlikely to be used. Under the old 421-a, the builder had a viable alternative: a 15-year tax exemption as-of-right.

Under the new Section 421-a, Option C provides (except in Manhattan south of 96th Street) a 35-year tax exemption if 30% of units are affordable at 130% of AMI. Because Option C rents are close to, or even above, market rents in middle-market areas, this option represents an economically attractive alternative to the floor area bonus.

The result has been, in the three rezoned areas, that less affordable housing is constructed than was anticipated at the time of the rezoning. New apartment buildings are also smaller than they could have been, with fewer units overall.

- A major problem with the current division of labor—in which the city administers zoning and housing subsidy programs and the state legislature determines tax policy—is that aligning zoning and tax-exemption policies becomes extremely difficult. However, the city should keep the faith with communities that were told that neighborhood rezonings with VIH components would produce new housing with a mix of incomes.

Where tax policy and zoning incentives are effectively aligned, the results in the three rezoned areas represent a viable template for future rezonings in middle-market areas that can combine significantly more new housing with respect for neighborhood scale and a mix of incomes in that housing. The key is not so much that the mechanism for securing a mix of incomes is voluntary, rather than mandatory; it is that it provides a better economic return than any of the alternative investments—building a residential building without the floor area bonus, building a nonresidential building, or not changing the existing use of the property.

Where tax policy and zoning incentives are not aligned, the three rezonings illustrate the trade-offs between voluntary and mandatory inclusionary housing in middle-market areas. In this case, the generous tax incentives available to a building provide high returns without participating in the VIH program. Developers can get a 15-year tax exemption as-of-right under the old 421-a, or a 35-year tax exemption in exchange for 30% of the units affordable at incomes up to 130% of AMI (which can be at or above market rates) under the new program. Voluntary programs do not offer a guarantee of mixed-income housing; in the 2013 mayoral election, critics—including the ultimately successful candidate Bill de Blasio—seized on this point.

On the other hand, where the combination of a floor area bonus and tax exemptions are insufficient to offset the cost of VIH's 20% permanently affordable housing at 80% of AMI, developers are nevertheless able to continue building new housing with an as-of-right tax break. Under MIH, however, new housing construction may no longer be feasible in rezoned middle-market areas without a public subsidy. This is an important point to consider, as the future of the new Section 421-a is uncertain after eligibility for current benefits expires in 2022.

Recommendations

1. The Department of Housing Preservation and Development (HPD) should determine the most effective means, under the law, to deny Option C tax exemptions to developments in VIH-designated areas that could have used the floor area bonus but did not do so. State legislation provides that, through local law enacted by the city council, the city can deny Option C entirely in VIH-designated areas. This would give new developments two tax-exemption options: A and B. HPD would need to study whether these options are feasible for VIH developments that are not receiving public subsidies. If the feasibility of Options A and B is questionable, the city could propose to permit Option C conditionally, upon utilization of the VIH floor area bonus and provision of 20% affordable housing at 80% AMI. However, such conditionality would appear to require state legislation.

This action would effectively re-create the GEA in VIH-designated areas outside the portion of Manhattan (south of 96th Street) where the option is already inapplicable. Several VIH buildings are under construction in the Manhattan exclusion area. One completed VIH building[34] has filed a restrictive declaration under the new Section 421-a's Option A, in which 25% of units must be affordable for 35 years: 10% at 40% of AMI, 10% at 60% of AMI, and the remainder at 130% of AMI. The reported market rents asked in this building are far higher than those in the three rezoning areas studied in this report, according to Streeteasy.com, making the cross-subsidies required by Option A affordable housing feasible.

2. My previous Manhattan Institute report concluded that MIH rezonings in middle-market neighborhoods are likely to be ineffective at inducing private investment in new housing without public subsidies. It recommended that MIH be reformed by reinstating the middle-income Workforce Option as it was originally proposed by de Blasio.[35] His proposal required 30% of units in a new building in a rezoned area to be permanently affordable at 120% of AMI. This reform would serve as the launching pad for an aggressive program of rezonings in middle-market areas.

However, the data in this report imply that the problem with the Workforce Option in middle-market areas that might be rezoned in the future may be not so much its design, even as modified by the city council, but the unwillingness of the de Blasio administration to propose, and the city council to approve, its use in appropriate locations.

The neighborhoods studied in this report were characterized as middle-market (Astoria) and moderate (Bedford-Stuyvesant North and Crown Heights West) in the city's 2015 report on the financial feasibility of a mandatory inclusionary housing program.[36] While the "moderate" designation indicated a lesser level of financial feasibility for new private housing without public subsidies, it is likely that with more recent data, the last two neighborhoods would also be described as middle-market. These areas have market rents that are high enough with a zoning floor area bonus and long-term tax exemptions to support new construction, even when 20% of the units are permanently affordable at 80% of AMI.

The MIH Workforce Option that was adopted by the city council requires 30% of the units to be affordable at an average of 115% of AMI, with 5% affordable at 70% of AMI and an additional 5% at 90% of AMI. (These average to 80% of AMI, just like VIH, but only for 10% of the units.) To qualify for the new Section 421-a Option C tax exemption, the remaining units can be affordable at 130% of AMI (the average level of affordability for all units is just under the required 115%). Affordable rents at 130% of AMI are close to market rents in middle-market areas; thus the economic profile of a new Workforce Option building in a middle-market rezoned area should be no less favorable than that of VIH buildings developed in the GEA under the old Section 421-a. This would need to be confirmed through further analysis by the city and private developers. But if it is correct, the city has an easier path forward to the rezonings that it needs to further its housing production and affordability goals without topping up tax exemptions with additional public subsidies.

New York City needs to resume large-scale rezonings with density increases to resolve its housing crunch and accommodate its growing high-productivity workforce.[37] Developing a better understanding of when and how private developers can be expected to construct mixed-income housing without subsidies is a necessary step toward this goal.

Endnotes

[1] The highest-rent areas of Brooklyn are generally found in Community Districts 1, 2, and 6, which abut the East River, and in Queens, in Long Island City, which also abuts the East River and straddles the southern portion of Community District 1 and the western portion of Community District 2. The strongest real-estate markets in Manhattan are generally found in Community Districts 1–8, south of 110th Street on the West Side and 96th Street on the East Side.

[2] See NYC Housing, "Housing New York by the Numbers," and NYC Department of Housing Preservation and Development (HPD), "Area Median Income" (AMI). "Middle-income" is characterized as 120%–165% of AMI; AMI is established by the U.S. Department of Housing and Urban Development. The 2019 AMI in the New York City region for a family of three is $96,100. Thus, 120% of AMI is $115,320 and 165% is $158,565. Rents are considered affordable if a qualifying household is paying no more than 30% of its income in rent. Affordable monthly rents for a one-bedroom unit are $2,342 at 120% of AMI and $3,243 at 165%.

[3] NYC Department of City Planning, "Inclusionary Housing."

[4] For a three-person household, 80% of AMI is $76,880. The affordable monthly rent for a one-bedroom unit at 80% of AMI is $1,542; HPD, "Area Median Income."

[5] These changes are described in Jarrett Murphy, "UrbaNerd: Really, It's OK if You Don't Understand 421-a," City Limits, June 9, 2015.

[6] There is also an interactive map showing the boundaries of the GEA on the website of MASNYC (Municipal Art Society of New York), 421-a: Tax Exemption Map & Analysis.

[7] The Affordable New York / Section 421-a options are summarized in Eric Kober, "De Blasio's Mandatory Inclusionary Housing Program: What Is Wrong, and How It Can Be Made Right," Manhattan Institute for Policy Research, Jan. 16, 2020, p. 6. Option A—25% of the units must be affordable: at least 10% at up to 40% of AMI; 10% may be at up to 60% of AMI; the remainder (5%) at up to 130% of AMI. Option B—30% of the units must be affordable: at least 10% at up to 70% of AMI, the remainder (20%) at up to 130% of AMI.

[8] HPD, "Area Median Income." The maximum qualifying income for a family of three at 130% of AMI is $124,930.

[9] Kober, "De Blasio's Mandatory Inclusionary Housing Program."

[10] NYC Planning Commission, C 100199 ZMQ, Apr. 28, 2010.

[11] "Contextual zoning" refers to the mapping of zoning districts that restrict new construction to the size and massing of buildings that prevail in a neighborhood. The effect of contextual zoning is often to limit new construction, but the Planning Commission argued that, in many cases, the zoning formerly mapped in Astoria was inconsistent with the larger scale of older buildings that predated it. Contextual zoning therefore represented an increase in density.

[12] NYC Planning Commission, C 100199 ZMQ, p. 18.

[13] NYC Department of City Planning, 10DCP019Q, Jan. 22, 2010.

[14] These include 30-40 21st Street (62 units), 21-03 31st Avenue (21 units), and 30-25 21st Street (22 units).

[15] 14-45 31st Avenue. Six units are designated as affordable at 130% of AMI.

[16] NYC Planning Commission, C 120294 ZMK, Sept. 5, 2012.

[17] Ibid., p. 16.

[18] NYC Department of City Planning, 12DCP156Y, May 4, 2012.

[19] The completed VIH developments are 901 Myrtle Avenue (34 units, 7 affordable) and 633 Marcy Avenue (64 units, 12 affordable).

[20] These are condominium units with restricted resale prices to preserve affordability for qualifying households.

[21] Craig Hubert, "The Massive Cascade Linen Project in Bed Stuy Is Quickly Swallowing Up an Entire Block," Brownstoner.com, Mar. 11, 2019.

[22] Additional VIH sites are under construction at 874 Willoughby Avenue (93 units, 19 affordable) and 948 Myrtle Avenue (101 units, 24 affordable).

[23] 924 Myrtle Avenue (23 units).

[24] 183 Tompkins Avenue (10 units in total), 785 DeKalb Avenue (70 units), and 875 DeKalb Avenue (35 units).

[25] 867 DeKalb Avenue, 35 units. Four completed buildings in the former GEA of this rezoning have no affordable units and did not receive tax exemptions. However, three of these buildings have transitional assessments that phase in full taxes under Department of Finance rules, and one utilizes special rules for small buildings that also limit tax increases.

[26] These include 1024 Gates Avenue (49 units) and 833 Monroe Street (86 units), known collectively as the Brooklyn-Roosevelt, and 1003 Greene Avenue (65 units).

[27] NYC Planning Commission, C 130213 ZMK, Aug. 7, 2013.

[28] Ibid., p. 7.

[29] NYC Department of City Planning, 13DCP105K, Mar. 14, 2013.

[30] 1511 Bedford Avenue (142 units, 28 affordable) and 1040 Dean Street (120 units, 24 affordable).

[31] 1535 Bedford Avenue (186 units, 35 affordable).

[32] 876 Bergen Street (16 units) and 916 Bergen Street (12 units). A third building (730 Franklin Avenue, nine units) does not have a Section 421-a tax exemption but benefits from special rules limiting annual tax increases for buildings with fewer than 10 units. Additionally, two small buildings, one completed (720 Nostrand Avenue, 10 units) and one under construction (668 Nostrand Avenue, nine units), are not in a designated area eligible for a VIH floor area bonus. One comprises individually owned condominium units, which also benefit from the special rules for small buildings.

[33] Caroline Spivack, "Plans to Rezone Bushwick Are Dead, for Now," NY.Curbed.com, Jan. 13, 2020.

[34] 145 Madison Avenue (70 units in total). Only four are required to be permanently affordable under the VIH program.

[35] See Kober, "De Blasio's Mandatory Inclusionary Housing Program," p. 13.

[36] Ibid., pp. 7–8.

[37] Eric Kober, "How to Keep New York's Economic Engine Pumping," *City Journal*, Apr. 19, 2019.

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MANHATTAN
INSTITUTE