

***Rezoning New York City  
Lower East Side and Coney Island***

Community Development Studio  
Edward J. Bloustein School of Planning and Public Policy  
Rutgers University

Patrick Brennan  
McCaela Daffern  
Alis Drumgo  
Jamila Henderson  
Elmyra Jemison  
Uma Mahesh Lakshiminarayanan  
William LoSasso

Arefeh Nasri  
Graydon Newman  
Deborah Schulze  
Graham Smokoski  
David Strathy  
Brian Stromberg  
Katherine White

Instructors

Katie Himmelfarb, Doctoral Candidate  
Nick Tulach, Doctoral Candidate  
Kathe Newman, PhD

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## **Introduction**

### **Rezoning New York City [TITLE SLIDE][SLIDE 2]**

The Rutgers Community Development Studio prepared this report for the New York Community Council (NYCC), a non-profit coalition of organizations that is interested in better understanding the effects of rezoning in the city. NYCC asked us to explore how the Lower East Side rezoning and the proposed rezoning plan for Coney Island would affect the areas being rezoned as well as the surrounding communities. [SLIDE 3][SLIDE 4] Since 2002, the Department of City Planning has rezoned 94 neighborhoods. The city has sought to promote economic development and increase the number of housing units while encouraging “contextual development” or development that matches the scale of the existing built environment. The city, since the Williamsburg/Greenpoint rezoning in 2005, has also argued that by including an inclusionary zoning program, rezoning can increase the city’s supply of affordable housing.

Instead of rezoning the entire city at once, the city opted for a neighborhood-by-neighborhood approach. Each rezoning process includes an analysis of the potential effect of the rezoning but there does not appear to be a study of the cumulative effect of many rezonings on the neighborhoods to be rezoned, on surrounding areas, or on the city as a whole. In this project, we explore the broader effects of rezoning. We focus on the cumulative effect of rezoning and on the context in which those rezonings take place. And we are mindful that historic preservation, capital availability, gentrification, and affordable housing regulations and many other factors shape land use and neighborhood change. In some cases our research suggests questions for future exploration. In other cases our research produced recommendations.

We have two central questions. First, if the communities tend to get some sort of land use protection because they were organized, active, and had political and or financial capital, and does the cumulative process of rezoning benefit those with resources over those without. We wonder if development seek out these neighborhoods that do not have contextual zoning, historic preservation, or other land use protections. Second, some of the rezoning processes have included an inclusionary zoning component to produce affordable housing. But even in “hot” real estate markets using inclusionary zoning (IZ) to produce affordable housing is a complicated affair. We ask questions about the underlying assumptions and process of producing affordable housing using voluntary IZ and wonder what happens in the case of a severe economic downturn such as the one we are currently experiencing. Finally, we consider whether IZ and rezoning is the best strategy to produce affordable housing given the other successful historical efforts that have produced thousands of affordable homes for many New Yorkers.

We turn now to rezoning on the Lower East Side. [SLIDE 5]

### **Lower East Side [SLIDE 6]**

On November 19, 2008, the city adopted the first comprehensive rezoning of the Lower East Side in more than 40 years. [SLIDE 7] The rapid development of out-of-context buildings, such as the one shown here, and the loss of affordable housing spurred residents

to action. In the mid 2000s, they approached the New York City Department of City Planning and requested the completion of a plan to address the rapid development of their neighborhood. **[SLIDE 8]**

The Lower East Side has been a first stop immigrant community and has been home to Eastern Europeans, Irish, Germans, Ukrainians, Italians, Puerto Ricans, Dominicans and Chinese, among others. The community suffered severe disinvestment in the latter half of the twentieth century, leaving the landscape littered with vacant and abandoned properties. Alongside this decline, the marginalization of the neighborhood by mainstream Manhattan and associated affordability made it a locus of the counterculture. Musicians and artists settled in alongside immigrants, and by the 1960s, the LES had become an epicenter for creative experimentation - helping ignite the Beat and Abstract Expressionism movements. A few years later, the New York underground punk scene thrived here with CBGB and other local spots. As bohemian culture became fashionable, the real estate industry capitalized on the neighborhood's character and used it as a selling point to transform the area into a middle-class neighborhood. By the late 1990s and 2000s, the East Village was one of the trendiest neighborhoods in Manhattan, appealing to students and young professionals alike (Chan 2008; Mele 2000; Smith 1996). **[SLIDE 9]**

New wildly out of scale dorms, hotels, and condominiums have emerged in recent years. In response, community residents initiated their own community planning process with the goal of producing a 197-a community plan. But the rapid pace of development led to concerns that a 197-a plan would take too long and the community elected instead to pursue a zoning-focused 197-c plan that could be completed more quickly. Community members had initially sought to downzone parts of the neighborhood and to encourage the production of affordable housing. The Department of City Planning took over the rezoning effort and sped it along. **[SLIDE 10]** The City's Plan was adopted in November 2008. It calls for contextual zoning, which is intended to limit the scale of new development, and it channels growth along certain corridors. A height provision limits inconsistent development. Greater density is allowed on some streets if developers produce affordable housing. **[SLIDE 11]** The city's Environmental Impact Statement suggests that the rezone will produce virtually no adverse consequences. The report expects that very few businesses will be lost, and those that will be are not considered important to neighborhood character. The population is projected to increase by 1.7%, which is considered insignificant. The EIS identified two benefits from rezoning: affordable housing development and a reduction in the construction of new, non-contextual buildings. **[SLIDE 12]**

### *Thinking about the Impact of the East Village Rezoning*

Some community members fear that the EIS did not fully anticipate the negative effects of the rezoning on the community. We address three of their concerns in this section: the loss of existing affordable housing, the limits of voluntary inclusionary zoning as a mechanism to produce affordable housing, and increased development pressure in the communities that surround the rezoned area. **[SLIDE 13]**

### *Existing Affordable Housing*

The Lower East Side, despite decades of gentrification, is still home to many low and moderate income households. More than 30,000 residents live in the 13,500 public housing units along the East River and many other households benefit from federal housing assistance such as Project Based Section 8. But these programs provide time-delimited subsidies and landlords can choose to “opt out” or not participate after a set number of years. **[SLIDE 14]** Many Section 8 contracts are expiring in the next few years, which puts thousands of units at risk. On the Lower East Side, 3,363 project based assisted units expire by 2019; 45% expire in the next two years. As housing markets heated up, landlords found that they could increase profits by removing these properties from the federal programs. Since many of these are large projects, even one landlord opting out could mean the loss of hundreds of units. While many of these units would be initially protected through rent regulation, vacancy decontrol regulations allow landlords to increase rents by as much as 20% between tenants. For a landlord motivated to increase rents, this creates an incentive to move tenants through quickly. The large student population in the LES provides an opportunity for landlords to go through tenants quickly and to rapidly raise rents. Once the rent increases to \$2,000 per month, the landlord can deregulate the apartment. And vacancy decontrol, combined with new financing, made an entirely new form of ownership possible, which has created new displacement pressures. Called predatory equity, large investment and equity firms purchased rent regulated housing with the intent of turning over units as rapidly as possible, to achieve wholesale deregulation. Many tenants report that the landlords have harassed them to drive them out of their apartments and flip them faster. **[SLIDE 15]**

### *Squeezing Development*

Limits on development in neighboring areas such as the West Village, where historic preservation limits are in place, and the swath of land along the East River, where there is high-rise public housing, has led some to wonder if the rezoning will push development into neighboring areas such as Chinatown and along the Bowery, where development is allowed as of right. A studio at Hunter College is focusing on the impact of the rezoning on Chinatown; we focus here on the Bowery.

The majority of existing buildings along the Bowery are tenements and commercial structures with fewer than six stories, while most recent developments are dramatically out of scale. The current zoning, C6-1, contains no strict height limitations and thus fails to curb this out-of-context development. To better understand how the Bowery has been changing and to consider how the rezoning might further change it, the study team examined data from the New York City Department of Finance for ten blocks on the east side of the Bowery between 5<sup>th</sup> and Grand Streets. The team recorded market and assessed property values, building class, and ownership, between 2004 and 2009. We calculated changes in market and assessed values and looked for patterns of purchase or sale. **[SLIDE 16]**

For much of the 20<sup>th</sup> century, the Bowery housed some of the city's poorest residents in "flop houses." From the north, the Bowery changes from institutional structures, such as Cooper Union, to hotels, flophouses, and stores, to lighting and restaurant supply stores, eventually ending in Chinatown at its south end. Both sides of the Bowery are zoned C6-1, which allows dense commercial uses. Since 2000, there has been more development on the eastern side of the street. **[SLIDE 17]** This new development, highlighted in blue, is higher, ranging from 6 to 16 stories, and denser than that of the surrounding parcels and consists mostly of hotels and services that cater to higher income populations. **[SLIDE 18]**

The NoHo historic district runs along the west side of the Bowery from Houston to East 4<sup>th</sup> Street and restricts development. Between the historic district limitations on development along the western side of the Bowery, and development restrictions enacted under the LES rezoning, the east side of the Bowery and areas near the rezone have become very attractive for new development. Luxury hotels have used the zoning rules related to the "community facility" density bonus to exceed existing zoning limitations. Universities also use those rules to produce large out of scale dorms. **[SLIDE 19]** As you can see from these slides, a lot of development has already occurred along the east side of the Bowery. The new emergent character of the Bowery is no longer rooted in the past, but is a product of growth unchecked by contextual zoning regulation. **[SLIDE 20]**

The large projects along the East River stand as buffers against rising property values and development pressures. Combined with a potential historic district to the south and height restrictions along select corridors within the rezone area, development possibilities are pushed further west and south. This increases pressure on market-rate affordable housing, as well as other affordable housing including rent regulated units, Project Based Section 8 and Mitchell Lama developments. The release valve for this development pressure produced by these growth limits is the Bowery and Chinatown, which still allow dense/high development as of right. **[SLIDE 21]**

Though there are talks about creating rezoning plans for the Bowery and Chinatown, rezoning processes take time. Neighborhoods that have sought protections through historic preservation or rezones have been afforded some level of protection. But other neighborhoods, especially those that suffered from decades of disinvestment, were taken by surprise by the ongoing real estate boom and may not have launched efforts to protect themselves in time. The net effect of this piecemeal rezoning is a disproportionate amount of development channeled into the less-protected places. By omitting the Bowery and Chinatown, the City left both areas vulnerable to rampant development and speculative land purchasing. Even though the real estate boom has slowed, these areas remain at risk.

We now turn to Coney Island. **[SLIDE 22]**

## **Coney Island**

Coney Island was the world's largest amusement and resort area in the first half of the 20<sup>th</sup> century. The first amusement park, Sea Lion Park, was developed in 1895. Steeplechase Park, perhaps Coney Island's most iconic theme park, was created in 1897. Luna Park, with more than a quarter-million electric lights, sprang up six years later; Dreamland Park followed in 1904. After decades of bringing visitors from all over the world to New York's Atlantic coastline, the amusements began declining in the mid-20<sup>th</sup> century. In 1954, larger-than-life City Commissioner Robert Moses, known for his dislike of Coney Island, had two parts of the area rezoned for residential use. These areas were classified as Urban Renewal, or Title I redevelopment sites, which gave the Moses the power to condemn blighted neighborhoods and transfer ownership of the property, a policy for which he was a strong advocate. The end of Coney Island's golden era came with the shuttering of Steeplechase Park in 1964.

Vacant properties, deteriorating infrastructure, and fire-damaged buildings were characteristic of Coney Island in the 1970s but beachgoers continued to visit. Artists appeared in the 1980s and have since created a thriving arts community centered around the amusement industry. **[SLIDE 23]** This community's influence in Coney Island's renaissance is visible in artistic retail signage near the amusement district, the creative activism of the amusement advocates, and by the designation of Dick Zigun as the unofficial mayor of Coney Island.

That being said, Coney Island is more than the amusement district and the boardwalk lying south of Surf Avenue. **[SLIDE 24]** There is a vibrant community of local residents just north of Surf, where the streetscape is defined by active commercial and industrial uses and a varied housing stock. While the boardwalk is what most people think of when they think about Coney Island, we are primarily interested in the effects of the proposed rezone on the residential community. **[SLIDE 25]**

### *The Proposed Rezone Plan*

In 2003, Mayor Michael Bloomberg, the City Council and the Brooklyn Borough President formed the Coney Island Development Corporation. The CIDC planned to develop Coney Island as a year-round destination and planned to rezone a number of areas to include residential uses. The goals of the comprehensive plan include expanding upon amusement characteristics, developing housing and retail, and creating new jobs. The city's comprehensive plan outlines 47 acres of developable land within Community District 13, twenty-seven of which would be an

amusement and entertainment district including a nine-acre open amusement park.

To determine the impact on the proposed rezone area and its periphery, the Draft Environmental Impact Statement (DEIS) outlines the expected development in the area, with and without implementation of a rezoning. The “build” scenario, which describes the potential neighborhood change if most anticipated development occurs, suggests that developers would create amusement, hotel, and complementary uses on Coney East, creating a 27-acre amusement and entertainment district that would include the previously mentioned nine-acre open amusement park. Additional parking would be developed and new residential and commercial development would occur in the Mermaid Avenue, Coney West, and Coney North subdistricts. **[SLIDE 26]**

The DEIS anticipates indirect residential displacement of nearly 1,500 people, or 3.2 percent of the study-area population, due to increased rents caused by an influx of higher income residents; mitigation was not deemed necessary because their displacement would not change the character of the neighborhood. Commercially, forty business and 92 employees, or one percent of total employment in the study area, are expected to be displaced with no significant adverse impact.

Indirect effects on businesses are increased rents. Notably, daycare facilities would experience a 43.7% increase in children, bringing them to capacity and requiring mitigation. The proposed rezoning would result in a 1.5-acre increase in a net gain of open space and parkland, but would displace the El Jardin de Boardwalk, a community garden north of the boardwalk at West 22<sup>nd</sup> Street. There would also be a loss of passive open spaces in non-residential and residential study areas.

Community concerns suggest other possible impacts that include a loss of existing affordable housing, an inability to produce affordable housing through the rezone, and negative impacts to the neighborhoods commercial corridors. **[SLIDE 27]**

### *Existing Affordable Housing*

According to the Draft EIS, about one-quarter of the housing stock in the rezone area is publicly subsidized. Forty-two percent of the rental units are subsidized and 34 percent are rent-regulated. Nine New York City Housing Authority developments contain 4,091 units housing over 9,000 residents. This housing is located mostly between 20<sup>th</sup> and 36<sup>th</sup> streets, between Neptune Ave and the Boardwalk. Additional affordable housing in Coney Island is also provided by several large Mitchell-Lama cooperatives. For some this suggests that Coney Island is saturated with affordable housing and should or could therefore focus on high-end development. We beg to differ. **[SLIDE 28]** Section 8 properties do not exist in perpetuity. Rather, property owners sign a long-term contract with the federal government, at the end of which they have the option of

renewing or converting their buildings to market-rate units. Upward pressure on the local housing market encouraged by local development serves as a disincentive for owners to renew their contracts. Presently, 1,417 housing units in CD 13 participate in the Section 8 program. With nearly 85% of units participating in the program under contracts expiring within the next five years, the risk to these units is very real. According to the Brooklyn Daily Eagle, other affordable units in Coney Island have already been lost. More than one-third of nearly 9,000 Mitchell-Lama co-op units were converted to market-rate in the first two months of 2007, and the leadership of another half of these units has discussed privatizing recently. **[SLIDE 29]**

The North-of-Surf neighborhood is home to many low- and moderate-income residents. They have easy access to transit a few blocks away at the Stillwell Avenue stop and have housing that is—at least for the time being—affordable at market rates. However, there is the potential for displacement on these blocks as a result of rising rents and spillover development. In our five block study area, 87 percent of parcels are soft sites, or parcels where the built FAR is less than the maximum allowable FAR under the current zoning. The blue colors on the map show parcels whose FAR is 50% of the maximum allowed FAR as of right. If the proposed rezoning is adopted and the development comes, increasing land values may encourage investors to develop these soft sites to their full capacity.

#### *Affordable Housing Production through Rezone*

The pressures we just finished describing account for the loss of 3,000 units of affordable housing, with many more at risk. The creation of 607 units—the number of new affordable units in Coney Island anticipated through the city’s inclusionary housing program—will not even begin to mitigate the damage this potential rezoning will have on Coney Island’s residents. **[SLIDE 30]**

#### *Small Businesses*

The DEIS analyzes indirect residential displacement in great detail, but does not give the same treatment to indirect business displacement. The Draft EIS claims it is not necessary because the rezoning “would not create [or] introduce new uses which would change the socioeconomic conditions in the study area.” They view the proposed rezoning as a way to “enhance and protect existing uses and previously existing uses” in Coney Island.

All of the businesses along the south side of Mermaid Avenue and within the rezone will be directly displaced due to planned development, including at least two grocery stores catering to the sizable Latin American community near the amusement district. Many other businesses to be



displaced from the corridor appear to be small, local operations that serve the existing residential population. These businesses would likely have greater difficulty than national chains reconstituting themselves in new locations after their displacement by the rezoning, possibly resulting in a permanent loss of their services to the neighborhood clients who depend on them.

Similar businesses on the rest of Mermaid Avenue will face indirect displacement pressure as new multi story development generates development interest in the rest of the strip and pushes up lease rates. The local merchants will be the least well equipped to cope with those costs and development pressures, leaving them most at risk.

Similarly, the gap between built FAR and maximum allowable FAR on commercial properties in the DEIS secondary study area could generate development pressure. **[SLIDE 31]** Every blue shade on this map shows parcels whose built FAR is 75% or less of the maximum allowed FAR as of right. As you can see, even along the bustling Mermaid Avenue corridor, many businesses occupy single story buildings that claim only a fraction of the 2.0 maximum FAR allowed under the current C1-2 commercial overlay. **[SLIDE 32]**

### *Thinking About the Proposed Rezone in Coney Island*

The proposed rezoning leans on CI's history as a basis for redeveloping the area and creating an affordable, year-round entertainment district, new affordable housing, neighborhood retail, and jobs for New York City residents. However, our analysis has found that the redevelopment proposed in the City's rezoning plan has potentially negative impacts on the residents and businesses of adjacent neighborhoods well beyond the scope discussed in the DEIS.

Residents of market rate housing are not differentiated from residents of subsidized housing when determining the portion of the study area population vulnerable to displacement. This analysis understates the risk to occupants of market rate housing who are more susceptible to displacement through increased rents or redevelopment of sites built below the maximum allowable FAR. The DEIS's reliance on subsidized housing to maintain income diversity in the neighborhood provides a false sense of security. Affordable housing units in the neighborhood are vulnerable to loss in a variety of ways, including the expiration of Section 8 contracts and the privatization of Mitchell-Lama developments. In addition, the character of the Mermaid Avenue commercial corridor is at risk from the displacement of businesses that serve the needs of the local population. All of these risks are created or enhanced by the proposed rezoning.

At this point, we turn to our discussion of inclusionary zoning and our conclusions. [SLIDE 33]  
[SLIDE 34]

## **Producing Affordable Housing**

Broadly defined, IZ is a system of incentives put in place to encourage, or in some cases, to require, developers to include the construction of affordable housing in their projects. The widespread adoption of IZ policies, such as New York's Inclusionary Housing Program, demonstrates a shift to from the government-sponsored project-based developments of the 50's, 60's and 70's to a market-driven approach.

New York has a voluntary IZ program. Incentives come in the form of density bonuses and financial incentives—most notably New York State's 421-a tax abatement program. Before 2005, inclusionary housing existed as a program only in R10 zones, the highest-density residential areas of the City. This program provided a density bonus of up to 20% for developers who built affordable units on- or off-site. This program produced only 600 units of housing since its inception more than 20 years ago.

Community groups negotiated to include an IZ component in the 2005 Williamsburg and Greenpoint rezoning. The IZ program worked slightly different there. Developments could only get a 421-a tax abatement on the waterfront if they produced affordable housing. They also could qualify for housing subsidies that would help make the new housing affordable to very low income households, assistance that was not available in the city's old R10 program. The program has produced some affordable housing but even at the height of the market there were challenges.

The city has integrated IZ as a key component in many of the new rezonings. It is a tool to produce affordable housing and perhaps even more importantly it becomes part of the argument to rezone. The Environment Impact Statements describe the benefit of rezonings as producing affordable housing but the actual data on the production of affordable units through IZ is minimal, especially in a weak real estate market. If this is the central mechanism to produce affordable housing in the rezones, much more energy and effort is needed to understand the potential impacts. If the new housing is unlikely to be constructed, then the loss of existing housing becomes all that more important. In our two areas of interest, for example, the City is projecting the construction of just under 1,200 total new affordable units under the rezoning. Yet market pressures, which we can expect to be exacerbated by the rezoning, may result in the loss of literally thousands of affordable units within five years in each neighborhood.

While many affordable housing advocates have pushed for mandatory IZ, we wonder if

inclusionary zoning is the most effective means of supporting New York's affordable housing needs. Increasing support for New York's public housing, exploring the efficacy of limited-equity cooperatives (especially in the context of the foreclosure crisis), reconsidering vacancy and luxury decontrol, preserving Project Based Section 8 and Mitchell Lama developments, rescuing developments from predatory equity, and preserving existing non-assisted affordable housing from rent escalation offer perhaps more effective strategies. **[SLIDE 35]**

It would be inappropriate for us to wrap up our discussion of housing affordability without considering what affordable means in practice. HUD establishes affordability standards based on median family income each year and uses the metropolitan area as a base for its calculation. New York City's metro area includes more than twenty counties in three states, including some of the wealthiest counties in the nation. The Area Median Income, or AMI, tends to overstate the wealth of New York's residents. In 2007, AMI for a family of 4 in New York was \$70,900.

This number is used to determine eligibility for many affordable housing programs. Low-income, for example, is 80% of AMI, which in 2007 was nearly \$57,000. This map illustrating the actual wealth of New York City tells us that a median income person in approximately half the City's community districts would qualify as low-income or very-low income. While there is certainly a need for affordable housing defined broadly, little housing is produced for households at the lower end of the affordability spectrum. And new affordable housing that is produced, such as that outlined in the EIS for both study areas, may not be a direct replacement for the "affordable" housing that is lost as a result of the rezonings and other contextual factors we mentioned. **[SLIDE 36][SLIDE 37]**

We leave you today with a few thoughts as you consider your next steps. First, we wonder about the efficacy of using IZ as a central mechanism to produce affordable housing, even in a strong market, which we currently do not have. Second, we cannot emphasize enough that inclusionary zoning is not effective in producing affordable housing by itself. Other policies intended to address affordable housing in conjunction with IZ are required, to create new affordable units and to maintain affordability of existing units. Last, planning and zoning must occur on a more comprehensive level to ensure protections for residents citywide. Perpetuating the existing fragmented system is failing to meet the needs of a large segment of New York's population. **[SLIDE 38]**