

AIA New York Chapter Housing Task Force



Ten Steps to Create More Affordable Housing in New York City

Spring 2003



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Credits

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I. Executive Summary

In December of 2002, Mayor Michael Bloomberg announced a program to stimulate the construction of 27,000 new housing units over the next five years and to preserve or rehabilitate 38,000 more, for a total of 65,000 new housing units. The AIA New York Chapter, representing 3,400 architects, professional affiliates, and associate members, commends the Mayor for this very positive proposal during this time of fiscal crisis. The AIA New York Chapter convened the Housing Task Force to enhance and improve the Mayor's plan by looking at issues that limit the quality and quantity of housing production. New housing production in New York City has decreased steadily since the mid-1960s, and in the 1990s production continued to lag behind population growth rates. The result is record-level homelessness, and a citywide average rental vacancy rate of 2.93 percent, according to the 2002 Housing and Vacancy Survey – a number well below the five percent threshold set by New York State as necessary to continue rent control. The majority of new units that were completed in the 1990s, particularly inside of the Manhattan core, were priced far beyond the means of the average New Yorker.

New York City clearly should be producing much more housing. In 1999, the Citizens Housing and Planning Council estimated that to adequately house the current population of New York City we need to create more than 200,000 units of housing¹. We feel that the implementation of the ideas in this report would help to further the Mayor's efforts in resolving this long-term housing shortage. It should be emphasized that a significant portion of the City's population cannot afford housing without some form of subsidy. The need is much greater than current resources can fill, and significant increases in funding at all levels of government, particularly at the national level, will be required to resolve the affordable housing crisis permanently.

This report is divided into four parts: issues related to the Zoning Resolution of the City of New York, issues related to the New York City Building Code, issues related to both the Zoning Resolution and Building Code, and issues related to the New York State Energy Research and Development Authority (NYSERDA). The ten proposals detailed in this report would increase the production of affordable housing without significant public funding. We strongly recommend that each proposal be evaluated by the appropriate regulatory agency and that the proposals be implemented as soon as possible.

Through the Housing Task Force discussions, it has become clear that an overriding issue in New York City housing is maintaining and increasing current density levels. Many communities in the City have pressured City officials to reduce the permitted density of their neighborhoods. At the same time, good sites for housing have become scarce. Sites have been built out below the permitted density for a number of reasons, including the high cost of small multi-family housing buildings under the Building Code and Multiple Dwelling Law; parking requirements; land costs that have not been spread over the units developed when the city gave the property at no cost; and a perception that people want to own homes with a front door. One of New York's greatest strengths is its extensive infrastructure, particularly mass transit. New York is the most energy-efficient city and region in the country because of its high-quality mass transit. Our development regulations often do not allow for denser development and/or lower parking requirements near mass-transit hubs. This is an important opportunity that has not been taken advantage of in New York City.

The Department of City Planning has made a promising start at dealing with this scarcity of sites by identifying and starting the process to rezone underutilized manufacturing districts to permit residential construction. This is a positive development.

¹ *Housing, Planning and Economic Development in New York* The Urban Prospect, September/October 1999 Volume 5, Number 4



Another set of issues relates to the duplicative and complicated regulatory processes that are currently in place. There is no doubt that regulations are needed but they can be revised for simpler and faster compliance. The way that regulations are written, coordinated, and enforced can make a significant difference in the time and cost of producing housing. Many current regulations simply raise costs without improving safety or health; these extra costs simply lower production.

Summary of Recommendations

The following is a summary of our recommendations by section.

A. Zoning Resolution Topics

- Transit-based development, or allowing higher densities near mass transit hubs, has been tried in many parts of the country and is considered good practice. We would suggest that New York City look at a combination of up-zoning around transportation nodes coupled with lowering parking requirements.
- The MX district (mixed use), allowing light manufacturing and residential uses in the same district, is a recent and positive innovation by the Department of City Planning. However, mixed-use buildings in an MX district must meet the high parking requirements for commercial use in a manufacturing district. This actually discourages the mixed-use development that the MX district was created to promote. We would suggest waiving all parking requirements for commercial uses in a mixed-use residential and commercial building in an MX district.
- The Quality Housing Program permits low-rise high-density residential development that is more in keeping with the existing adjacent neighbors. However, the permitted envelopes are limiting from a design perspective, often creating new massing that does not conform to the surrounding context. The Housing Task Force has proposed a number of changes that would make it easier for architects to produce more creative designs that fit better with neighboring buildings. We would also encourage additional study of zoning regulations to create a more flexible contextual envelope.
- Inclusionary housing permits a floor-area bonus for the creation of low-income housing, but is only allowed in the highest density R10 districts. Since the adoption of the program in 1987, approximately 600 units have been built using Inclusionary Housing. The Citizens Housing and Planning Council (CHPC) has proposed expanding it to the other high-density districts (R7, R8 and R9) and permitting it to be used concurrently with other existing tax incentives in order to improve the economic viability of each. We strongly support this proposal to permit higher density within a given zoning envelope, in return for the creation of additional affordable housing units.
- Smaller studio apartments can provide much needed housing. Many groups could benefit from additional production of mini-dwelling units: young people moving to New York, business people who live in New York for part of the week, people coming to work for a relatively short period of time for organizations such as the United Nations, and homeless singles who need an affordable transitional residence. Although non-profit single-room occupancy housing is meeting the needs of housing for specific populations, we could not reach a consensus that this type of housing should be allowed as for-profit housing. By permitting smaller studios, coupled with higher density and lower parking requirements within ½ mile of subway stations, we feel that we can address much of the need while maintaining high-quality housing. We are proposing for-profit small studios and non-profit SROs, but not for-profit SROs. We feel that shared kitchen and bath spaces are acceptable because non-profits have a history of providing the necessary social support to make them work, services not typically provided by for-profit developers.



B. Building Code Topics

- Five years ago the AIA New York Chapter proposed some small modifications to the Building Code to permit the construction of small four-story walk-up apartment buildings in a manner that would encourage construction of infill housing with a density similar to the surrounding buildings. This proposal was introduced in the City Council in 2000. We feel that this proposal would have a significant positive impact in the city and continue to support it strongly.
- The current administration is making a strong effort to improve the Department of Buildings operations, and some impact of this effort is beginning to be felt, particularly in greatly improved online information systems. We commend and support the Department in this effort. However, the filing and Certificate of Occupancy processes are currently cumbersome, time-consuming, and costly. We have prepared a number of suggestions as to how this situation may be improved not only for housing but for all building types.
- The Mayor, with the support of members of the City Council, has announced an effort to adopt a modified version of the International Building Code over the next eighteen months. The AIA New York Chapter strongly supports this effort and is providing significant resources to help analyze the impact. A well-organized code covering all issues including rehabilitation and multiple-dwelling construction that is systematically updated every three years would in many ways help housing production in New York City. However, New York City is unusual in its density and infrastructure. A model code designed for less dense, suburban areas will require modifications to support the production of existing New York City housing types in a cost-effective and safe manner. We have identified some of the differences between the model code and New York City's current Code for multi-family housing types to help inform the discussion.

C. Combined Zoning Resolution and Building Code Topics

- The number and type of residences for the elderly have mushroomed over the last ten years with the aging of our population. Current New York City zoning laws and building codes do not adequately address the development of the assisted living housing type and the desire of many elderly to age in place. We make two proposals:
 - 1) Within the Zoning Resolution the distinction between non-profit and for-profit residences for the elderly should be removed.
 - 2) Within the Building Code we propose a new occupancy type to describe a range of residences for the elderly and the special requirements of these housing types.

D. New York State Energy Research and Development Authority

- We feel it is imperative to encourage energy-efficient "green" residential construction. Energy efficiency is a major way to reduce operating costs and is something the Chapter has supported for many years through its Committee on the Environment. The New York State Energy Research and Development Authority (NYSERDA) offers a number of programs that help support the up-front costs of creating a more energy-efficient building. However, the way the NYSERDA programs are organized and the process for applying for NYSERDA funding are not coordinated with the process of designing and building housing. The Housing Task Force has proposed modest changes to the NYSERDA program that would have a significant positive impact.

In the following report, detailed studies and recommendations expand upon the Task Force's recommendations summarized in the preceding paragraphs.



Acknowledgements

The Housing Task Force would like to thank the New York City Department of Buildings, the New York City Department of City Planning, and the New York City Department of Housing Preservation and Development for sending observers to our meetings and providing us with information and feedback that, we feel, have greatly improved our recommendations. All the recommendations are those of the AIA New York Chapter and not of any public agency. We hope the public agencies will consider and support our proposals.



TEN STEPS TO CREATE MORE AFFORDABLE HOUSING IN NEW YORK CITY

A. Zoning Resolution Topics

I. Allowing for Up-Zoning at Transit-Based Developments

Special consideration should be given to sites within walking distance of mass transit, defined as a 5- to 7-minute walk, within a quarter-mile radius. This concept, referred to as Transit-Oriented Development in transit-deficient suburban cities, is an historic development pattern in New York City. In many cases, subway stops were enhanced by mixed-use higher density development. (e.g., the Brooklyn Brighton Line, Newkirk Avenue, Avenue J, Avenue U, etc.). In addition to higher density and mixed uses, the minimum parking requirements should be lowered, reducing automobile dependency and enhancing the pedestrians' environment. We should capitalize on the City's extraordinary mass transit system, creating multi-directional trips, reinforcing the quality of place, and possibly in the process transforming bedroom neighborhoods into complete communities where people both work and live.

II. Reducing Parking Requirements for Mixed Use Buildings

Parking requirements are a major issue related to the affordability of housing. We talk elsewhere about investigating transportation-based development with lower parking requirements. Putting parking under a building or in a basement increases the cost of construction. In areas where the parking space is of a high enough value, e.g., most of Manhattan and a few other areas of the City, the increased income from the parking more than offsets those extra costs. However, in areas where the cost of parking is low and the median income is low, parking under a building increases the per-unit cost of the building, making units less affordable. Many subsidy programs prevent consideration of parking under a building through their cost controls. Parking requirements often limit the size of a building footprint more than floor area ratio. This problem is particularly severe where a mixed-use building is being proposed, and is worst for the new MX districts that permit residential development in light manufacturing districts. Many mixed-use districts require one space for every 200 sf of floor area, while comparable commercial districts require one space for every 1,000 sf of floor area. In addition, the number of spaces waived in an MX district is either 15 or 40 spaces while in a Commercial district it is 40, further increasing the problem. This is because parking requirements for the commercial portion of the development must meet those of the manufacturing districts. These are usually much higher than comparable commercial districts.

Several members of the Task Force have had mixed-use development projects (residential and commercial) canceled because the parking requirements made them uneconomical, or the building had to be built without the commercial component. Good planning principles encourage commercial uses in, or adjacent to, residential uses to provide the services that make a healthy community. From laundromats to drugstores, people want services near where they live. It is also clear that, when commercial uses are adjacent to their residences, people walk to them; they do not drive. Finally, the commercial uses generate activities and eyes on the street, creating a more secure neighborhood. We feel that for all these reasons the Zoning Resolution should encourage, not discourage, the development of mixed-use buildings. Naturally, commercial uses that require parking will not locate in a development that does not meet those requirements. The need for commercial parking is usually self-regulated by the market.



For all of these reasons, we feel that in all mixed-use buildings R6 and above with more than 50% of the floor area allocated for residential uses, parking for local retail and commercial uses (Uses group 6 and 7) should be waived as of right. This would instigate a number of positive results:

- Mixed-use buildings would be encouraged since the revenue stream of the commercial uses would make the housing fundable.
- Communities with the amenities and security from commercial development on the street would be encouraged.

We strongly recommend this change.

III. Allowing Minor Modification to Zoning for Contextual Zoning

There is a need for greater flexibility in the contextual zoning regulations. The current regulations for a given zoning district may fit some situations, but all too often are a poor match with the existing neighborhood character. (e.g., R6 districts in each borough and between boroughs often have dramatically diverse characters). Second, the envelopes themselves, when coupled with the court, yard, coverage, and minimum building spacing requirements are prescriptive and over determined, leaving little room for responsiveness to context, responsible site planning, and innovative building planning and apartment design. Third, many of the City's most revered and often innovative housing cannot be built under the current as-of-right standards and/or contextual zoning regulations.

Our intent is to suggest allowing gradations of modifications from minor to major to the as-of-right generic prescriptive regulations. Most of the suggested modifications currently require ministerial reviews and could be administered as-of-right with these changes. Certification/Authorizations would be by review procedure that would allow for even greater flexibility, but still within delineated limits, and Special Permits for proposed modifications that cannot be predetermined as to either their extent or impact. The majority of the proposed modifications could be administered as-of-right and include lot coverage, yards, base height, courts, and minimum distance between windows.

The proposal also recognizes a range of special conditions in which the generic prescriptive regulations would not always pertain, including:

- sites adjacent to or opposite public parks and playgrounds;
- enclosing of non-bonusable portions of public plazas;
- infill on Height Factor/Tower-in-the-Park sites;
- full block developments and sites within walking distance of mass transit.
- Enclosing non-bonusable portions of residential plazas should be by authorization since:
 - 1) the non-bonusable portion in most residential plazas is not delineated;
 - 2) the utility of the remaining plaza re: sunlight, access, etc., must be determined;
 - 3) the location of the proposed enclosure and its contribution to the quality of the street are qualitative assessments.

Infill on Height Factor sites using unused floor area is a delicate design problem. In these situations there is a need to orchestrate the full range of bulk regulations (height and setbacks, distances, courts, etc.) in order to solve the problem sensitively. Increasing levels of requested modifications would be reflected by the administrative procedure appropriate to the modifications and be similar, if not the same, as those suggested for the context (e.g., Certification, Authorization, and Special Permit).

Appendix A lists a few areas where the regulations can be adjusted to alleviate some of these issues.



IV. Reducing Minimum Side Yard Requirements for Modular Housing Sites

In residential districts where side yards are not required but an open area extending along a side lot line is provided, the Zoning Resolution requires a minimum width of 8 feet (ZR 24-35b). This is an impediment to the economical use of pre-fabricated construction for infill housing. Modular infill units require a minimum of one foot of space along the side lot lines for installation, and cannot economically be expanded to fill more than this area after their installation.

Currently one can finesse this issue by enclosing more than half of the space with walls and calling it a terrace, but that requires unnecessary construction and expense. However, we recommend that the width of the side yard, where the yard is not required, could be reduced to two feet in buildings under six stories in height.

V. Permitting and Encouraging Smaller Studio Apartments Tied to Transit-Based Development

We had a number of discussions about permitting the construction of for-profit Single Room Occupancy housing, because it would help alleviate New York City's housing shortage and increase housing options. In the end we felt that we could not recommend this because of possible negative results. However, we felt that revisions to the Zoning Resolution to permit smaller studio apartments would provide additional housing options for the large population of singles that has grown significantly in the last thirty years, while maintaining acceptable housing standards. The singles population runs the gamut from people with special needs to transient homeless, professionals such as nurses, young firemen, recent graduates, extended work/stay United Nations workers, and other business people.

Though there is still much to do for special needs populations, there exists a relatively successful network of rules and regulations that governs housing sponsored by non-profit agencies. This leaves both the temporarily homeless who have jobs or savings and low- to middle-income workers who need inexpensive housing. The Task Force would like to promote for-profit construction of smaller studio apartments and higher density than currently permitted under the Zoning Resolution to help deal with these issues. This proposal is related to the encouragement of transit-based development discussed elsewhere in this report.

Two concerns may be raised. First, density is a sensitive issue in many New York City neighborhoods. Second, increased parking only adds to an already overly congested traffic situation. In our opinion these obstacles can be overcome sensibly and sensitively. The recommended changes would permit higher density and lower parking requirements within one half mile of subway stations. Note that these changes would not increase FAR or change bulk regulations.

Recommendations for Changes to the NYC Building Code:

The small studio apartment would incorporate a "Dwyer unit" or kitchenette composed of a sink, an electric cooktop, and a refrigerator as well as a full 3-fixture bathroom. They would be adaptable for the physically disabled and would not require changes to the Multiple Dwelling Law or the New York City Building Code.



Recommendation for Changes to the Zoning Resolution:

Section 23-23 – Minimum Size of Dwelling Units – R3, R4, R5

Add: c) In the districts indicated, provided the building is within one-half mile radius of a subway station, approved by the Department of City Planning, each dwelling unit shall contain at least 300 sf.

**Section 23-22 – Maximum Number of Dwelling Units or Rooming
Units – R1, R2, R3, R4, R5, R6, R7, R8, R9, R10**

Within a one-half mile radius of a subway station, approved by the Department of City Planning, a building can be built to the zoning lots FAR with a twenty percent reduction of the “factor for Dwelling Units.”

In the case of non-complying buildings anywhere in the City, whose floor area exceed that permitted for a new building on the same lot, where developers would like to decrease the size of existing large apartments to floor area equal to those that would be permitted on the same lot in a new building, the maximum number of allowable dwelling units would be based upon the floor area existing in the building rather than the floor area permitted for a new building on the same lot.

Section 28-21 – Size of Dwelling Units (Quality Housing)

A dwelling unit shall have an area of at least 400 sf of floor area, except within a one-half mile radius of a subway station, approved by the Department of City Planning, where a minimum of 300 sf of floor area is permitted.

Section 25 – Parking

Residential developments within a one-half mile radius of a subway station, approved by the Department of City Planning parking, would have parking requirements reduced by 20%.

The following page shows a sample floor plan illustrating a small studio design.



Typical Floor Plan of 284 East 3rd Street, NYC
Herbert L. Mandel, PC Architect/Planner
Plan is at 3/32" = 1'-0" scale





B. Building Code Topics

VI. Revising the Building Code to Allow Four-story Walk-ups

This section summarizes a proposal formulated in 1999 by a committee of the Chapter to encourage the production of low-rise, high-density, affordable housing.

The proposal would have positive effects on the affordability of new housing produced in New York City while maintaining building safety. As important, it would encourage a low-rise, high-density building type that is more appropriate, from an urban design and planning perspective, than much of what is currently being produced. It will be particularly useful as infill housing in neighborhoods of predominantly four- to six-story, Old Code apartment buildings, and would lower the cost of this infill housing type.

General Recommendations

At the present time, the New York City Building Code permits a maximum of 2,000 sf per floor and three stories in residential buildings with an open stair. With an enclosed stair, current codes permit up to six stories, but are still limited to 2,000 sf per floor.

The proposal recommends that a building type limited to four floors at 2,500 sf per floor, fully sprinklered, having a maximum travel distance of fifty feet, with an open stair serving not more than four families on a floor, would be an economical and practical solution to the provision of walk-up housing for both infill and larger site applications. This building type could be built with either Type I or Type II-B construction. If Type II-B is utilized, the framing would be limited to dimensional lumber, solid glue-laminated beams, or other approved framing materials (thin web joists would not be permitted) and concealed spaces would have to be fire stopped into areas of less than 500 sf.

This proposal, in the form of a draft Local Law, was presented to the Housing Committee of the City Council in November of 2000. It was never brought to a vote of the Council.

It is well known that there has been some construction of this nature in the past. It has been accomplished by virtue of reconsiderations obtained from the Building Department after much discussion and negotiation. The changes proposed will serve to legitimize this building type, thereby saving valuable time and eliminating the uncertainties related to the process. It is only the first of what we hope will be a series of such changes to encourage the production of much needed affordable housing which can also help to stabilize marginal neighborhoods.

Appendix B lists specific New York City Building Code regulations that would need to be adjusted and includes prototype plans.

VII. Simplifying and Reducing Filing and Certificate of Occupancy Paperwork

This section summarizes existing Department of Buildings organizational and operational issues that cause delays and thereby increase the expense of providing housing within the City. Streamlining and automating the process would reduce the cost of developing housing and would allow residents to occupy projects sooner. We understand that some of the following ideas have been proposed to the Department of Buildings (DOB) and we strongly support their adoption. Recent improvements in the DOB Building Information System (BIS) have been very valuable.



Recommendations for adjustment to Department of Buildings requirements

- a. It is not necessary for projects of all sizes and complexity to require the same type of review. We recommend creating a new filing type for smaller projects that require only a limited amount of review (ex: allow plumbing review as part of architectural plan submittal for bath and kitchen renovations rather than separate plumbing application). This would give more resources to larger projects.
- b. Permitting approvals and signoffs could be reduced if administrative tasks were automated. Limit the work of expeditors to direct coordination with Plans Reviewers. In addition, we understand that DOB is considering allowing administrative deletion of violations issued prior to 1970 as part of the permit approval process.
- c. For housing design there are multiple codes to reference and at times the New York State Multiple Dwelling Law (MDL) and New York City Building Code conflict. Adoption of the International Building Code (IBC) would simplify code reviews only if the MDL and Old Code are incorporated. The entire family of IBC codes, including Residential and Existing Building Codes, would need to be adopted.
- d. Self-certification was introduced to simplify the permitting process. As architects we believe it is best only used for small projects if at all. Until recently there has been no time limit for the audit of plans so self-certification doesn't effectively speed the process (plans are in process to set time limits on audits, which should improve the situation). Currently self-certification plans require approval of sewer connections (SD1) and Builders Pavement Plans (BPP) before plans can be submitted. However, planned changes to the submittal process include separate applications for the Department of Environmental Protection sewer connection plan (SD1). We believe that complicated projects should be reviewed by the Department of Buildings.
- e. Electronic filing could be greatly expanded and would reduce the paperwork load of the DOB. At this time, electronic filing is only available for some forms and only available for the initial filing. It is also not possible for revisions or updates to be electronically filed. Currently only PW1, PW-1A and PW-1B can be electronically filed. PW-1C, TR1, PAA, etc all require manual filing method. Revisions to any forms require manual filing.
- f. Plan review and lengthy Objections Sheet turnaround time. A complete and thorough plans review should be required for each Objections Sheet. The creation of a generic review as a method to meet the review deadline wastes time and lengthens the approval. An internal audit of Objection Sheets to ensure they relate to project types could be adopted.
- g. Inspections and Signoffs. The length of time required to obtain final inspections and signoffs needs to be drastically reduced. One suggestion is to introduce an online, voicemail or higher tech solution so that signoffs can be processed quickly. We understand the DOB is planning to implement handheld computers for the plumbing inspectors to expedite plumbing inspections.
- h. Eliminate temporary Certificate of Occupancy renewals, which are currently required every three months. Renewal requires money and energy that could be spend on obtaining the C of O.
- i. Certificate of Occupancy. The process for requesting and obtaining the final inspection is time consuming. We understand that DOB is considering the following changes to the current approvals process that would greatly simplify the paperwork:



- Allow up to a 10% variance in Schedule B plumbing counts for all projects
- Removal of previous departmental violations for boiler and elevator once demolition is signed off. We strongly support these proposals.

j. Use of Technology: inspection results are now filed by hand. Introduce wireless technology or voicemail system to allow quicker filing of signoffs

VIII. Adopting the International Building Code (IBC/NYS) Model Code (with amendments)

The American Institute of Architects on August 13, 2002 reaffirmed its support for a single set of comprehensive codes to be used throughout the United States.

At present, a Mayoral Code Commission established by Mayor Bloomberg on November 27, 2002 is reviewing and will make recommendations to the Mayor regarding the adoption of a model building code. Under review is the International Building Code (IBC) that is used in 45 states (including New York State) and thousands of jurisdictions throughout the country. It is the first family of coordinated, comprehensive building and fire safety codes for use without geographic limitation.

The adoption of a model code should enable code enforcement officials, architects, engineers, designers, and contractors to work with a consistent set of requirements and enable manufacturers to design to a single standard, enabling them to focus more on competition in the marketplace. These benefits should lead to consistent code enforcement and higher quality construction.

The IBC as currently constituted does not address the unique urban environment that is New York City where limited available land necessitates high-density development. For example, the current New York City Building Code allows occupancy group J-2 buildings to be served by a single exit provided they are of noncombustible construction, not more than sixty feet in height, have a gross area of two thousand sf or less per floor, and have a maximum travel distance of fifty feet on any floor. The Housing Task Force recommends amending the IBC so that it contains provisions similar to the New York City Building Code that benefit a residential building of limited floor area, height, and number of dwelling units per floor or of fireproof construction.

Likewise, the Housing Task Force recognizes that the proposed affordable housing prototype, a four-story walk-up apartment house occupied by not more than four families per floor and served by a single exit stairway, will require modifying the New York City Building Code (see section VI of this report). These modifications should be incorporated into the IBC.

We are supportive of adopting a model code, but it is our conclusion that the IBC will require modification and amendment to insure the development of affordable housing in New York City. Appendix C lists a few areas where the regulations can be adjusted to alleviate some of these issues.

C. Combined Zoning Resolution and Building Code Topics

IX. Creating a New Definition for Residences for the Elderly

The New York City Building Code and Zoning Resolution ordinance do not acknowledge the specificity of recent developments in housing designed for our aging and elderly populations. As our population ages and our cultural attitudes toward aging and family have evolved over the past decade, a drastic shift in how our seniors wish to live has occurred. Independence has become paramount in this shift



and the housing being built to accommodate this group's desire to live out their golden years in a dignified and independent fashion does not neatly fit into current zoning and code regulations for housing. Some of the existing regulations inherently add cost to construction of this type of housing, while other ordinances do not acknowledge the unique physical limitations of some of the residents of these dwellings.

Traditionally this housing type has been constructed in New York City as an as-of-right J-2 multiple dwelling with the operator or owner providing any social, personal, and health care services through an independent entity licensed by the Department of Health. This has created a number of issues relative to affordable development, which we hope to address in this proposal. The market and funding for this housing type is becoming more and more dependent on state licensure as an "Adult Home" or "Enriched Housing Program," both programs under the jurisdiction of the New York State Department of Health and the New York State Department of Social Services. The State is currently in a review and re-draft phase on these licensure procedures and requirements which could potentially further increase construction costs. This puts additional pressure on the City to do what it can to increase the affordability of such needed development.

This topic has generated numerous studies including a 1999 draft proposal by the New York City Department of City Planning. We support this effort and many of our recommendations summarized below mirror those proposed in the City Planning draft proposal:

- Create an occupancy classification for this type of housing, which addresses the unique issues of this populace, including but not limited to the elimination for the need of a full kitchen within the dwelling unit.
- Reduce parking requirements, as these residents do not typically drive.
- Adjust egress requirements to address the limited mobility of the proposed residents.
- Increase density, and reduce required dwelling unit size.
- Redefine Residences for the Elderly in the Zoning Ordinance to allow for greater density and the increase of potential available sites for this housing type.

Appendix D lists areas where the regulations can be adjusted more specifically to alleviate some of these issues.

New York State Energy Research and Development Authority

X. Improving New York State Energy Research and Development Authority (NYSERDA)'s Support for Housing

The New York State Energy Research and Development Authority (NYSERDA) is a valuable partner in supporting the construction and rehabilitation of housing in New York City. Its in-house expertise and incentive programs offer architects and developers opportunities to design and build housing that is more energy efficient for both operators and tenants.

The New Construction Program is the principal NYSEERDA program of relevance to new construction and substantial renovation projects. The program has established a track record of supporting efficient design in new construction and offers tremendous promise for affordable housing. There are a few modifications that the AIA believes would make the program of even greater utility for architects and developers:



Accessing the Program

NYSERDA has clearly made extensive efforts to publicize New Construction and other programs. In the case of New Construction, however, there appear to be multiple contacts. Some participating architects report uncertainty with regard to which of the contacts is ultimately responsible for service delivery and some difficulty in determining where a project stands in the approval process.

Recommendation: NYSERDA should consider establishing a single portal for the program (at least for New York City), so that a single telephone number or e-mail address can be consistently used and service delivery coordinated directly with a single point of contact.

Timing

Architects frequently operate on tight deadlines. Delays in the design process put added pressure on a construction project that may already be accruing interest on construction loans or other financing. The New Construction Program requires completed design and cost information in order to review a project. But once this information is complete, a project is often ready to move into construction.

Recommendation: NYSERDA should consider ways to expedite service delivery in order to accommodate construction deadlines. Some ways to accomplish that goal might include: 1) developing a list of typical recommendations that could be considered for inclusion in the design as it is being developed; 2) allowing for closer integration of its professional services into the design process to limit post-design review and modification, e.g., through review at the 60% or later (but pre-bid document) stage; or 3) permitting piecemeal submission of design components for review.

Financing

It is not generally known among New Construction Program participants that New York Energy \$martSM Loans are available to finance components of energy systems that are not covered by other NYSERDA incentives. Moreover, it is not clear, even to those aware of those loans, how they relate to construction and/or permanent financing.

Recommendation: NYSERDA should consider tying the New Construction Program more explicitly to financing opportunities and providing clear guidance regarding how New York Energy \$martSM Loans or other debt instruments can be effectively utilized in new construction or substantial renovation projects.

Incentives for Design Consultants

The New Construction Program includes in its incentive structure the designer, who frequently faces additional design work with no obvious return. New Construction covers a percentage of design consultant costs. However, the payments are not made until the work is complete, often as much as two years after the design work is done. Designers would probably be more willing to recommend the program if tangible incentives were available earlier in the process.

Recommendation: NYSERDA should consider adjusting its strategy for providing incentives to design consultants, including payment of one hundred percent of the design fee upon completion of NYSERDA review.



Convincing Clients

NYSERDA's design recommendations are, by their nature, innovative, and are frequently new to the architects and designers themselves. As a result, the architects are not always the best salesmen for items that may involve new technology, skilled maintenance, or extensive upkeep. Developers and operators of housing often need to be convinced of the long-term benefits.

Recommendation: Once a set of design modifications has been proposed, NYSERDA should consider sending its design professionals to present the recommendations formally to the client. In addition, NYSERDA should continue its outreach to the architecture community. Architects interested in energy-efficient design could benefit from seminars or training events.



Appendices

A. Proposed Revisions to the Zoning Resolution to allow Certification of Minor Modifications for Contextual Zoning

Modifications of Bulk Regulations

(a) Modification of certain bulk regulations either as-of-right or by certification except as otherwise set forth in this Section, in the districts indicated, for any development or enlargement, the regulations governing lot coverage, yards, minimum and maximum base heights of street walls, streetwall location, courts, minimum distances between windows and walls or lot lines, and minimum distance between buildings within the limits of the criteria outlined below:

(1) Lot Coverage: where appropriate to context and/or lot conditions:

(i) to allow for a modest increase in lot coverage for developments on through and interior lots that align with both existing buildings adjoining street and rear yard walls. The required rear yard of 30 feet would not be modified.

- Documentation: survey of adjoining building wall locations at the side lot line.
- Applicability: R6, R7-1, R7-2 districts (Note: R7-2 through R10 are already at 70% maximum coverage).
- Increase in lot coverage: R6 from 60% to 65% (65% to 70% certification) R7-1, and R7-2 from 65% to 70%.

(ii) to allow for compensatory increases in lot coverage for interior lots that are less than 100 feet deep.

- Documentation: survey of lot.
- Applicability: R6 through R10 districts
- Increase in lot coverage: may be increased in increments corresponding to the reduction in the depth of the lot and corresponding depth of the rear yard (see Yards). The maximum increase in lot coverage would be based on the maximum lot coverage in SF for a lot with a depth of 100 allowed in each district, e.g. , Assume 100' x 100' R6 lot = 60% or 6,000 SF max. coverage w/ 30' rear yard; Assume 100' x 80' lot R6 = 70% or 5,600 SF max cov.w/24' rear yard

(2) Yards: where appropriate to context and/or lot conditions:

(i) to allow for modest proportional reductions in the depth of a rear yard for lots that are > 70 feet and < 100 feet deep.

- Documentation: survey of lot.
- Application: R6 through R10
- Decrease in required rear yard: for each foot of lot depth (or fraction), that is less than 100 feet the required rear yard can be reduced by 3.33%, but no more than 33% or 10 feet. (lots < 70 feet deep are by Authorization). This would need to be coordinated with MDL changes since MDL requires 30 foot rear yard.

(ii) to allow the elimination of required side yards between R1-R5 districts and R6-R10 districts (Section 23-459).

- Documentation: survey of adjoining building location along the side lot line between R1-R5 and R6-R10 districts
- Applicability: R6 through R10.



- Eliminate the required 8-foot side yard when the adjoining building in the R1-R5 district is built to the side lot line. If the adjoining building is built within 8 and 15 feet of the lot line and does not have legal windows front the side lot line, the new building may be built to the side lot line.

(3) *Base Height*: where appropriate to context allow the base height to be adjusted to match or come close matching the base heights of an adjoining building

- Documentation: survey of building wall locations and heights at the side lot line.
- Applicability: R6 through R10
- Modification of base height: an adjoining building's street wall heights (e.g. a row house) may be used as the basis for modifying the minimum and/or maximum base heights. The streetwall of the adjoining building must be within 20 feet of the street line in R6 and R7 districts and 15 feet in R8, R9 and R10 districts. In addition, the adjusted base/s streetwall should align with the streetwall of the adjoining building.

Reduction in base height (approx. increase up to 25%)

R6	30' to 20' / 40' to 27'
R7	40' to 30' / 60' to 40'
R8	60' to 40'

R9 60' to 40'

R10 60' to 40' / 125' to 85'

Increase in base height (approx. increase up to 25%)

R6	45' to 54' / 60' to 75'
R7	60' to 75' / 65' to 80' / 80' to 100'
R8	80' to 100' / 85' to 105'
R9	95' to 115' / 102' to 125'
R10	150' to 185'

(4) *Courts*: where appropriate, to modify the proportions of *courts* in response to interior layouts and exterior site planning.

(i) to allow for usable *wide outer courts* as building entries, recreation space, and to provide a limited amount of flexibility in planning a building to fit its lot dimensions.

- Documentation: site plan with interior building layouts
- Applicability: R6 through R10
- Increase the width to depth ratio from 1.0 to 1.0 to 1.0 to 1.20 for outer courts > 45 feet in width and whose bounding building walls are no more than 7 stories tall, up to the first setback, if applicable. The minimum distance between opposite building walls above the setback is 60 feet.

(ii) to accommodate the different conditions for *narrow outer courts* such as courts without windows, courts with building corridor windows, courts with windows, and courts with legal windows.

- Documentation: site plan with interior building layouts
- Applicability: R6 through R10
- Modify the *narrow outer court* proportions:
 - outer courts without windows – no restrictions
 - outer courts with corridor window – no restrictions
 - outer courts with windows – 1.0 to 1.0
 - outer courts with legal windows - 1.0 to 1.33 (unmodified)



- (iii) to accommodate the different conditions for *outer court recesses* such as outer court recesses without windows, recesses with building corridor windows, recesses with windows, and recesses with legal windows.
- Documentation: interior layouts
 - applicability: R6 through R10
 - Modify the *outer court recess* proportions:
 - recesses without windows- no restrictions
 - recesses with corridor window- no restriction
 - recesses with windows - 1:0 to 1:0
 - recesses with legal windows - 1:0 to 1:33
- (5) *Minimum Distance Between Legally Required Windows, Walls, and Lot Lines:* where appropriate, to modify the minimum distance in response to conditions on adjoining lots, lot depth, and interior layouts
- (i) to allow the distance between a legally required window and a rear lot line to be reduced for zoning lots less than 100 feet deep in conjunction with reductions in the required rear yard (see Yards)
- (ii) to allow the distance between a legally required window and a side lot line to be reduced up to 15 feet.
- Documentation: survey of building walls and heights on adjoining lot along side lot line
 - Applicability: R6 through R10
 - Reduce the 30-foot minimum to no less than 15' when: 1. The adjoining building at the level of the legal window is at least a distance from the side lot line that would compensate for the reduction (the distance between walls around the side lot line would continue to be 30 feet.) 2. When the portion of the building containing legal windows is no more than 30 feet tall (e.g. the roof of the building base similar to R5 window to the lot line).
- (iii) to allow the distance between a legally required window and any wall in an inner court to be reduced up to 10% because of conflicts between apartment planning and lot dimensions by certification.
- (6) *Minimum Distance Between Buildings:* where appropriate, may be modified to reflect acceptable historical precedents (e.g. mews developments: Sniffen Court and Pomander Walk 2s/20' wide, Henderson Place 3s/30' wide; Streets < 60' wide with 3-6 story buildings: Little Italy, Greenwich Village, SoHo, Brooklyn Heights, parts of Queens and Brooklyn; and twin tower buildings), and zoning density.
- Documentation: site plan and sections (as required) and surveyed precedents for modifications
 - Applicability: R6 through R10 by certification.
 - The minimum distance between buildings would be modified based on city precedents, local conditions including street widths, local precedents, and current zoning district density. The table below has been modified to reflect the range subject to certification. The maximum building height would be measured from the elevation of the *building* or the portion of a *building* or a *building segment* becomes a *building* for minimum distance requirements. (e.g., twin towers or roof top structures should be measured from the roof rather than curb).



Maximum Building Height						
Wall Condition*	25	35	40	50	60	Over 60
Wall to Wall	20-15	25-20	30-25	35-30	40-35	40
Wall to Window	30-20	35-25	40-30	45-30	50-30	50-45
Window to Window	40-25	45-30	50-30	55-30	60	60-50



B. AIA NY Housing Committee. Proposed Revisions to the NYC Building Code to allow Four-story Walk-ups, 1999.

To amend the Administrative Code of the City of New York in relation to requirements respecting building exits, openings on interior stairs, and construction materials used in one- and two-family homes. All items which are underlined are revisions/additions.

I. Revise Table 3-4 of Section 27-271 of the Administrative Code of the City of New York as amended by Local Law Number 77 for the year 1988 by adding a new footnote “m” to follow the numeral “0” in the columns with the vertical designation “Rating in Hrs.” within the vertical column classifications “Class II-B” and “Class II-C,” and with the horizontal designation “non-bearing” within the horizontal column classification “Exterior Walls with an Exterior Separation of ... 30'-0” or more” under the heading “Construction Element” in that portion of the table designated “Construction Group II Combustible” to read as follows:

	Class II-B Rating in Hrs.	Class II-C Rating in Hrs.
Non-bearing ^f	0 ^m	0 ^m

The footnotes to Table 3-4 of Section 27-271 of the Administrative Code of the City of New York are amended by adding a new footnote “m” to read as follows:

m. Exterior non-bearing walls of one- and two-family dwellings may be constructed of wood studs with either 5/8” exterior gypsum sheathing, 5/8” fiberglass faced gypsum sheathing, or 5/8” cement board on the exterior side and a layer of 5/8” type x gypsum board on the interior surface when an exterior separation of thirty feet or more is provided and the height of the building does not exceed three stories and a basement.

II. Revise Subdivision (a) of Section 27-297 of the Administrative Code of the City of New York is amended to read as follows:

One- or two-family dwellings. One- or two-family detached or semi-detached dwellings of two stories or less in height and two thousand five hundred sf or less in area located within zoning residence districts R-2, R3-1, R3-2, R3-4 and R-5 may be constructed or reconstructed of construction [groups] group II-D combustible materials provided that the roof of such dwelling has a three-quarter hour fire-resistance rating, or if damaged for any cause, only the damaged portions shall be required to be reconstructed to conform to II-D construction. In addition, one-family dwellings located within zoning residence district R-1 anywhere in the city may be of combustible group II-E construction in conformance with the area and height limits established by tables 4-1 and 4-2.

III. Revise Subdivision (b) of Section 27-365 of the Administrative Code of the City of New York to read as follows:

(b) Except as otherwise provided for in subdivisions (c) [and] (d) and (e) of this section, in buildings of combustible construction group II exceeding two stories in height there shall be at least two door openings from each J-1 or J-2 dwelling unit which shall be remote from each other. Each door opening shall lead to separate exits either directly or by separate corridors or one door opening shall lead to an exit and the other to a balcony complying with subdivision (g) of section 27-369 of article five of this subchapter.

IV. Revise Section 27-365 of the Administrative Code of the City of New York by adding a new subdivision (e) to read as follows:



(e) Buildings in occupancy group J-2 not exceeding four stories in height that are fully sprinklered are exempt from the provisions of subdivisions (b) and (c) of this section.

V. Revise Subdivision one of Section 27-366 of the Administrative Code of the City of New York is amended by adding new paragraphs (f) and (g) to read as follows:

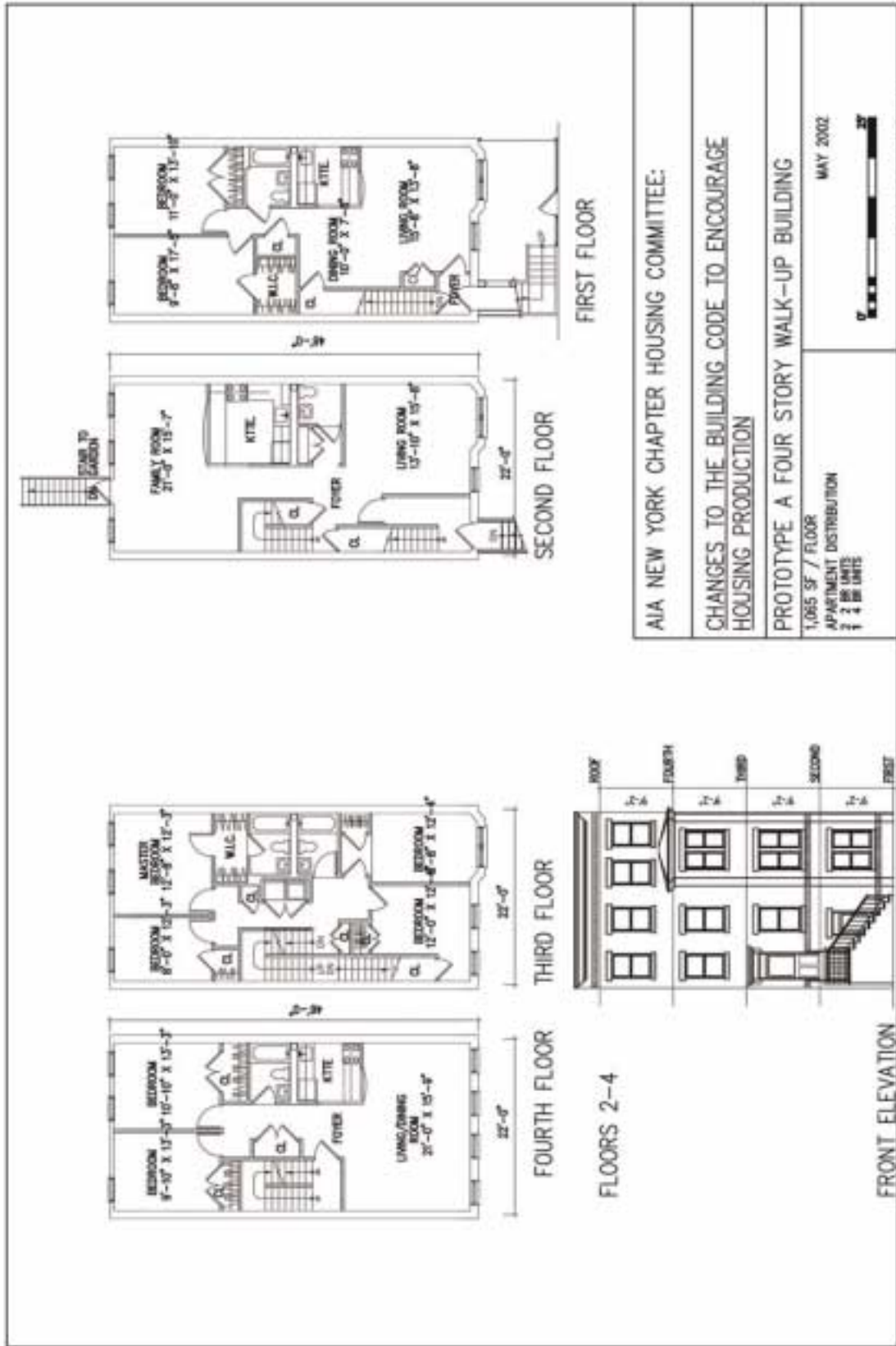
(f) Buildings classified in occupancy group J-2 of non-combustible construction group I which are fully sprinklered that are not more than forty feet in height, have a gross area of two thousand five hundred sf or less per floor, and have a maximum travel distance of fifty feet on any floor, with no occupancy above the fourth story including, but not limited to, spaces such as dormers, mezzanines and attics and with a roof slope not to exceed fifteen degrees.

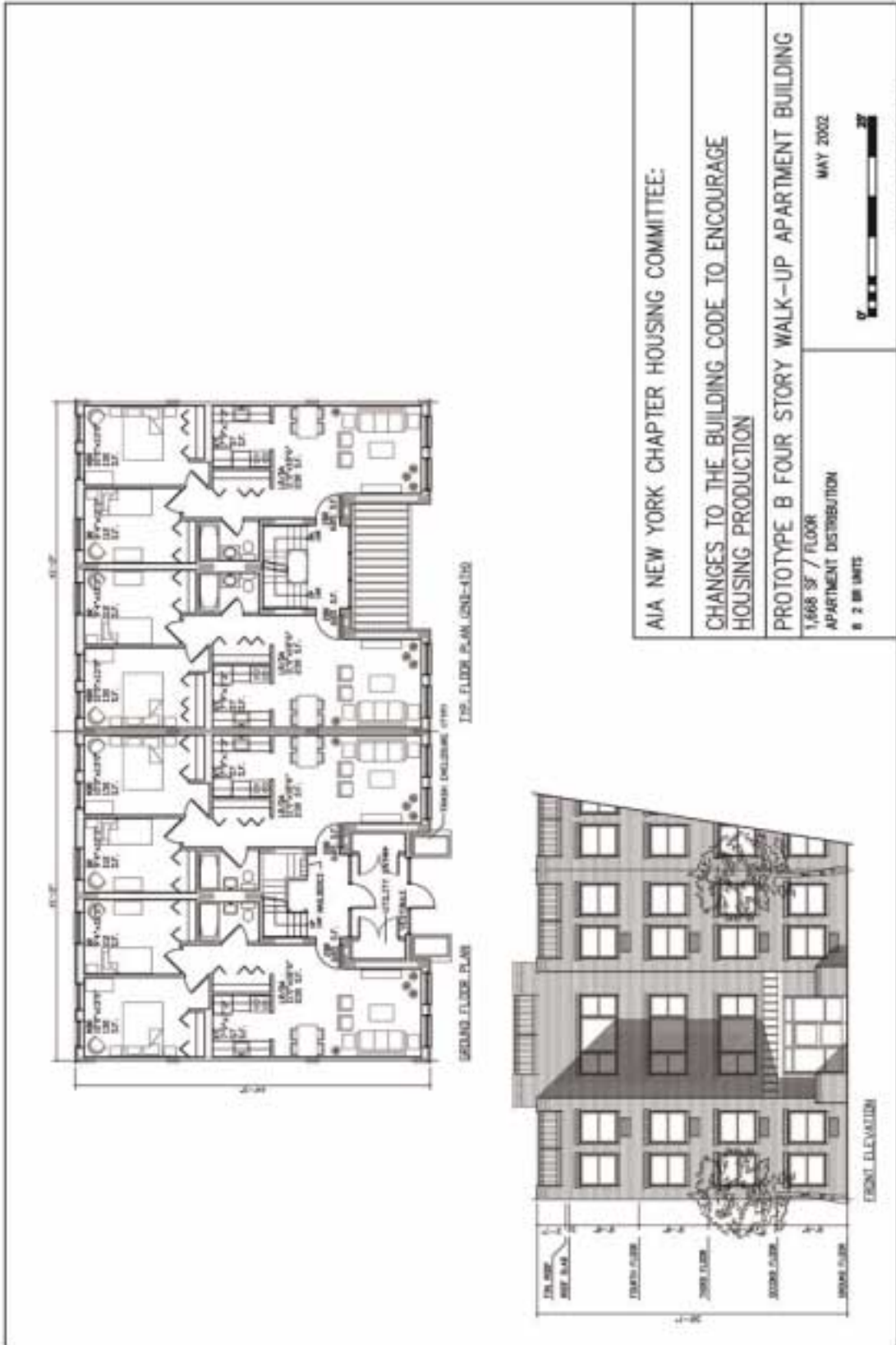
(g) Buildings classified in occupancy group J-2 of combustible construction group II-B which are fully sprinklered that are not more than forty feet in height, have a gross area of two thousand five hundred sf or less per floor, and have a maximum travel distance of fifty feet on any floor and use (i) dimensional lumber, (ii) solid glue-laminated beams, or (iii) other approved combustible structural framing materials when the concealed spaces are fire-stopped into areas of less than 500 sf with a single layer of type x gypsum board or other approved means, with no occupancy above the fourth story including, but not limited to, spaces such as dormers, mezzanines, and attics, and with a roof slope not to exceed fifteen degrees.

VI. Revise Subdivision (j) of Section 27-375 of the Administrative Code of the City of New York to read as follows:

(j) Openings and obstructions to stair enclosures. No piping of any kind, with the exception of piping required or permitted in subchapter seventeen of this code, shall be permitted within a stair enclosure. No openings of any kind, other than windows, fire department access panels, exit doors and openings specifically authorized in reference standard RS 5-18 shall be permitted within a stair enclosure. Pipes required or permitted by such subchapter seventeen and protected in accordance therewith which do not reduce the required clearances of the enclosure may be permitted. Ducts protected in accordance with the requirements of subchapter thirteen of this chapter, which do not reduce the required clearances of the enclosure, may be permitted. In addition, in buildings in occupancy group J-2, which are three stories or less in height and occupied by not more than two families on each story, a door from an apartment may open directly into a stair, and the door may swing into the apartment. In buildings in occupancy group J-2, which are not more than four stories in height and occupied by not more than four families on each story, a door from an apartment may open directly into a stair, and the door may swing into the apartment, provided that the building and stair are fully sprinklered.

Prototype Plans A, B and C illustrate three different configurations of walk-up designs that would be allowed under this Proposal.







C. Comparison of International Building Code (IBC-NYS) and Current NYC Building Code

The new New York State code as currently constituted will require modification to permit construction of the proposed affordable housing prototype, a 4 story walk-up apartment house served by a single exit stairway. The New York State code lacks provisions similar to New York City's code that benefit a residential building of limited floor area, height and number of dwelling units per floor or of fireproof construction. In general a new four-story residential building constructed under the New York State code would exceed the present New York City code by requiring:

- A fire alarm
- A standpipe if floor level of highest story exceeds 30 feet above grade
- An elevator
- Separately enclosed exit stairways (basically prohibits scissor stairs)
- One automatic clothes washer per 20 dwelling units.

A comparison of New York City code Type IIB construction (the predominant construction class of affordable housing) with the New York State code Type IIIB yields basically the same fire resistance ratings and construction. However, each code regulates single-exit buildings differently. Therefore, amendments are necessary to preserve the present provisions of the New York City code that permit buildings greater than two stories to be served by a single-exit stairway. For example, the New York City code would permit a fireproof building to be built with a single exit provided the building is not more than sixty feet in height, has a gross area of not more than 2,000 sf, has an automatic sprinkler system, and has a travel distance not more than 50 feet on any floor. The Task Force reviewed the provisions of the New York State code relating to the reconstruction of existing structures with single exits and concluded that if an existing single exit structure can be reconstructed in accordance with the requirements of the New York State code and safely occupied, it follows that a new structure could be likewise constructed and safely occupied provided the appropriate code modifications are adopted.

I. New Construction

The New York State code (new code) limits R-2 occupancy buildings with one exit to two stories and a maximum of four dwelling units per floor and 50 feet travel distance.

Exception: Buildings equipped throughout with an automatic sprinkler system (NFPA 13R) and provided with emergency escape and rescue openings shall have a maximum height of three stories above grade. Since New York City code requires all multiple dwellings to be sprinklered, the exception becomes the rule.

A four-story multiple dwelling of combustible construction (Type IIIB – New York City equivalent Type IIB) having a maximum of four dwelling units per floor and a maximum 2,500 sf per floor requires at a minimum the following under the New York State code:

- Automatic sprinkler system (NFPA 13R)
- Smoke alarm
- Fire alarm required where any dwelling unit is located three or more stories above the lowest level of exit discharge
- Standpipe system required if the floor level of the highest story is more than 30 feet above the lowest level of fire department vehicle access



- In buildings four stories in height at least one elevator shall be provided for fire department emergency access. Cab to accommodate 24-inch by 76-inch ambulance stretcher
- Two means of egress; scissor stairs count as single exit stairway. Note: An exterior stair can function as one means of egress and 50 percent of exit capacity can exit through the building at the level of discharge if that path is essentially an “exit passageway.”
- One stairway must extend to the roof unless the roof slope is greater than 4 in 12. Exception: Roof hatch permitted if unoccupied roof.
- Exit enclosures not less than two hours where connecting four stories or more.

Type IIIB construction (exterior walls noncombustible and interior elements are of any material permitted):

Structural frame	0 hr
Bearing walls exterior	2 hr*
“ “ interior	0 hr
Floor construction	0 hr**
Roof “	0 hr

*30 feet exterior separation 0 hr

However, walls and floors separating dwelling units in the same building shall be fire partitions or horizontal assemblies per Sec. 708 & 710:

- Walls – one hour; exception: Type IIIB construction, ½ hr if building sprinklered (NFPA 13).
- Floors** - one hour; exception: Type IIIB construction, half hour if building sprinklered (NFPA 13).

Draft stopping required to subdivide floor/ceiling assemblies in line with dwelling unit separations. Exception: Building equipped with automatic sprinkler system (NFPA 13R) and installed in combustible concealed spaces.

One automatic clothes washer per 20 dwelling units.

Parapet required; Exception: apply Type X GWB to underside of roof deck a minimum distance of 4 feet from exterior wall. Also applies to party/fire walls terminating at underside of roof deck.

Openings into refuse chutes shall not be located in exit access corridors.

II. Existing Structures

The New York State code as currently constituted does not permit the use of prior code provisions for alterations. It contains specific requirements for repairs, renovations, alterations and reconstruction work.

Chapter K7 Reconstruction permits single-exit buildings to be reconstructed. Reconstruction is defined as alteration work in which the reconfiguration of space adversely affects the means of egress shared with spaces outside the work area or the total work area exceeds 2/3 of the building area or the work area affects 100 percent of the occupancy.



A reconstructed single-exit building would at a minimum require:

- Automatic sprinkler system
- Applies to buildings less than 3,500 sf gross area per story with not more than one level below first story
- Maximum height five stories with sprinkler system
- Maximum travel distance 50 feet
- Emergency escape and rescue openings
- Fire alarm
- Smoke alarm
- Class I standpipe *if* > three stories
- Venting vertical exit enclosures and hoistways
- Opening protectives for walls requiring fire rating
- Corridors one-hour rated
- Dwelling unit separations (horizontal and vertical) one-hour rated.
- Vertical shafts/exits two-hour rated.

It appears that Chapter K7 as now constituted does not take into consideration the construction class of the building and treats fireproof construction the same as non-fireproof construction.

III. Further Comments

Variances from New York State code requirements are approved by the State and not by the local building official. The New York State code should be modified so that New York City retains the jurisdiction to grant variances. Otherwise, this will be a significant hardship for the development of affordable housing, particularly with regard to the renovation and adaptive reuse of existing buildings that by their nature have practical difficulties in complying with new code requirements and require flexibility by the authority having jurisdiction.

The New York State code may add to the cost of affordable housing in several areas if not modified:

- New York City modified NFPA 13R to reduce cost
- Fire alarm
- Elevator required at four stories; New York City required at five stories
- More floor area will be used for second means of egress; scissor stair prohibited
- Vestibule needed for refuse chute; more floor area lost
- New code requires every D.U. to contain one room minimum 150 sf, other rooms not less than 70 sf (except kitchen)
- Added requirements for efficiency D.U.s
- Clothes washer, one per 20 D.U.s
- Code incorporates more construction phase inspections, for example:
 - EIFS exterior wall systems
 - Smoke control ductwork
 - Seismic connections/QA plan
 - Lath and gypsum wallboard



D. New York City Building Code and Zoning Resolution Changes to Improve Provision of Residences for the Elderly.

Recommendations to allow for “*Residences for the Elderly.*”

Changes to the NYC Building Code:

- **Creation of a J-4 Classification:** RESIDENCES FOR THE ELDERLY : (this will allow smaller units without full kitchens to be built without being classified as SROs)

Shall include buildings with three or more dwelling units that are primarily occupied for shelter and sleeping accommodations on a month-to-month or longer term basis for individuals 62 years old or more who are in good physical condition, but may require limited personal care, supervision and services. These buildings are to comprise dwelling units, common areas for social interaction, recreation, and hospitality services including common meal service. These common areas are to be provided at a minimum ratio of 10% of the residential building area.

Individual dwelling units must be designed for full handicapped accessibility. The units may or may not have individual kitchens. Services provided may include bathing, grooming, medical reminders, housekeeping, personal care, transportation, recreation or social activities, and supervision. Operators of these facilities are restricted from providing medical care or services, without approval for such by the New York State Department of Health.

- Egress stairs to be 3’8” minimum. (This is to provide for the slower movement of these individuals and the accommodation of a stretcher. This will be required to comply with the IBC I-1 classification required for licensure by the NYSDOH as an adult home and/or Enriched Housing).
- Corridor dead-end conditions to be no more than 20’0” maximum. (This is to provide for the slower movement of these individuals. This will be required to comply with the IBC I-1 classification required for licensure by the NYSDOH as an adult home and/or Enriched Housing).
- Audible and visual fire and smoke alarm required throughout building in accordance with the IBC I-1 classification. (*This is required for licensure at by the NYSDOH as an adult home and/or Enriched Housing*).

Changes to the Zoning Resolution:

- 12-10: Redefine **NON-PROFIT RESIDENCES FOR THE ELDERLY** to just **RESIDENCES FOR THE ELDERLY (J-4 OCCUPANCY SEE ABOVE)**, allowing for area bonuses pursuant to 23-144 in R3 through R7 zones, or
- redefine the qualifications for “non-profit” more broadly to include organizations that are not true non-profits but are working with state and federal subsidies to provide this needed public amenity. (Any operator that has received approval for licensure of the proposed residence by the NYSDOH as an “Adult Home” or “Enriched Housing Program” should qualify for this designation).
- Parking to be provided at a maximum of .25 spaces per dwelling unit, where parking is required.
- No minimum requirement on residential apartment size; however, provide a minimum area requirement for the residential zoning area of the building of 800 SF per dwelling unit provided.
- Expand 23-144 to allow **RESIDENCES FOR THE ELDERLY** in additional zones, or
- Define **RESIDENCES FOR THE ELDERLY** as “Community Facilities.”



E. Citizens Housing and Planning Council, ***Proposal to Enhance Tax and Zoning Incentives for New Housing Production: A Policy Paper prepared by the Housing Finance and Zoning Committees***. September 2002.



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A PROPOSAL TO ENHANCE TAX AND ZONING INCENTIVES FOR NEW HOUSING PRODUCTION

A Policy Paper Produced by CHPC's

Housing Finance Committee Zoning Committee

Citizens Housing and Planning Council of New York

November 2002

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EXECUTIVE SUMMARY

New York's housing production has been decreasing for decades; during the 1990s new production averaged only 8,250 units per year. With a growing population, the low rate of new construction has resulted in rising housing prices and a proliferation of illegal and substandard dwellings. City government and the public at large would like to see a higher level of housing construction, but budget concerns are likely to constrain housing subsidy programs in future years. It is consequently a propitious time to revisit the city's residential construction incentive programs in order to identify ways of stimulating housing production without direct subsidy.

The city's primary incentive program for new housing construction is the 421-a tax incentive program. This program offers automatic property tax exemptions for up to 25 years for all new multi-family housing built in the outer boroughs and parts of Manhattan. It also offers tax exemptions for new residential buildings built in prime Manhattan locations if low-income apartments are incorporated into the project or financed off-site.

Because in most areas of the city 421-a benefits are as-of-right, almost all new multi-family housing in those areas receive them. In the Manhattan Exclusion Area, where a 20 percent low-income component is required, developers have sought to couple them with tax-exempt financing from a government agency, usually the HFA or the HDC. Under federal law, tax-exempt financing also requires a 20 percent low-income component, so developers are often able to benefit from both programs (in addition to as-of-right Low Income Housing Tax Credits), making both benefits more attractive than they are individually. Since 1986, however, the authority of state and local governments to issue tax-exempt "private activity" bonds has been limited, so they are not always available even to developers who are willing to build "80/20" projects. The intention of this paper is to propose methods of making 421-a more effective as a stand-alone incentive, or to couple it with other benefits that are not constrained by federal law.

As a production incentive, the cost-effectiveness of the 421-a program has often been questioned but never adequately determined. That is because of the difficulty of proving the counter-factual: how much of the housing would have been built without the tax incentives? For buildings that would have been built in any event, the program is obviously not cost-effective: the city foregoes tax revenues that would have been otherwise collected and gets no additional housing for it. On the other hand, if the building would not have been built without the tax incentives, it is extremely cost effective: housing is produced at no public cost and, eventually, new tax revenues are realized. It is unlikely that a conclusive statistical answer to this question will ever be produced.

Another city incentive program is Inclusionary Housing, which is a zoning rather than a tax incentive. It has seldom been used. Applicable only to R10 zoning districts, it provides floor area bonuses to developers who build or rehabilitate low-income apartments. The bonuses differ depending on whether the low-income housing is rehabilitated or newly built, and on whether it is on-site or off. In the maximum case, the developer may, within the constraints of the maximum floor area that is permitted by law, increase the floor area of a residential project by four square feet for each square foot of low-income housing provided.

Some planners and zoning experts have objected to Inclusionary Housing on philosophical and legal grounds. They argue that density bonuses should only be given in return for public improvements that mitigate the adverse effects of the increased density. In the case of New York's inclusionary housing program, they argue that there is not a clear nexus between the density bonus awarded and the public benefit of low-income housing that is received in return. On the level of planning theory, this objection is legitimate. Inclusionary Housing has nevertheless been adopted in New York, and there appears to be a desire among both the development community and affordable housing advocates to see it energized.

This proposal also considers how inclusionary housing can be made a more effective stand-alone housing incentive. Both the 421-a and Inclusionary Housing analyses are presented, however, with an eye toward their compatibility and potentially mutually reinforcing potential. Other incentive programs, such as 421-b, Urban Development Action Area (UDAAP), and J-51 benefits could eventually be incorporated into a more comprehensive program, although this document does not cover those programs.

Sensible recommendations may facilitate the use of both the 421-a and Inclusionary Housing programs and thereby increase production of housing units without costing city dollars. The following are CHPC's recommendations, which are discussed in detail in the body of this paper:

421-a Partial Tax Exemption Program

- **Change the definition of “Eligible debt-financed project” in 28 RCNY § 6-01 that prohibits projects encumbered by a lien or mortgage from also obtaining 9 percent low income housing tax credits.**
- **Create more flexibility in the on-site program by establishing a sliding scale of set-aside percentages and tenant eligibility limits. Such a sliding scale would allow developers to match the affordability requirements to the specific site, market and financing requirements of their projects. In**

addition, developers that set aside affordable units in accordance to the following scale might receive tax abatement similar to the benefits offered under the J-51 program.

- **Repeal RPTL §421-a (2)(c)(iii) that requires five new dwelling units for every demolished unit in new constructions of more than 20 units. Allow all dwelling units that exceed the number of pre-existing units to be eligible for benefits.**
- **Repeal the “initial adjusted monthly rent” formula [RPTL §421-a (3)] that applies to all except the affordable units.**

INCLUSIONARY ZONING

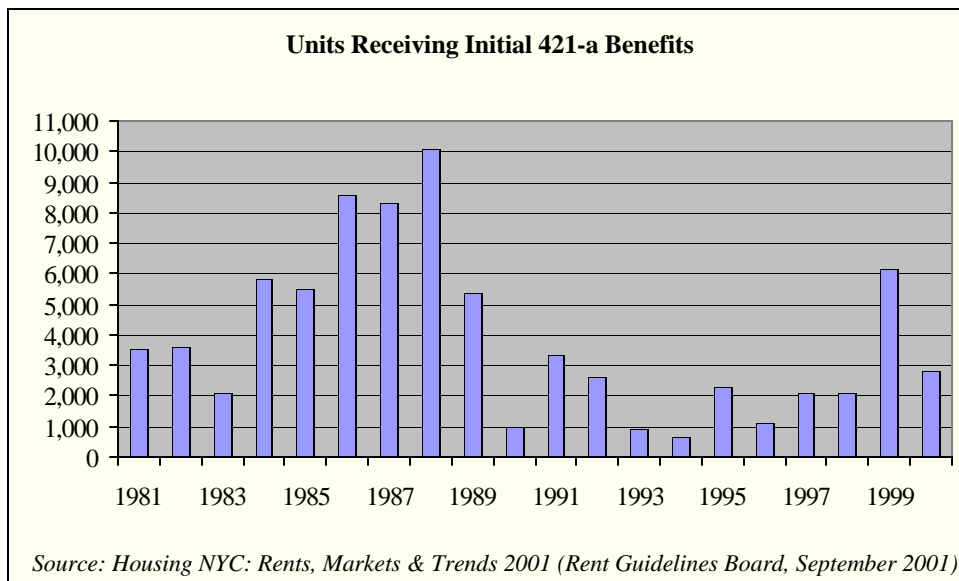
- **Adjust the bonus formulas so that developers can attain the maximum floor area bonus by providing different combinations of low-, moderate- and middle-income affordable units.**
- **Expand the Inclusionary Housing Program to include R7, R8, and R9 districts on wide streets, with a bonus award cap of no more than 20 percent of the standard allowable floor area ratio.**
- **Expand the program to incorporate commercial floor area bonuses in mixed-use districts, in exchange for affordable housing provision.**
- **Remove the restriction barring developments receiving real estate tax exemptions or operating assistance from receiving Inclusionary Housing floor area bonuses.**
- **Remove the restriction barring the use of rents from affordable units towards the principal or interest owed on any debt other than that incurred from capital improvements to the affordable units.**
- **Remove the restriction requiring that the affordable units be managed by a non-profit organization.**
- **Remove the restriction requiring that no single story in a building receiving a floor area bonus contain more than two affordable units unless 80 percent of all stories contain two or more affordable units.**

I. 421-a Tax Benefits

Background

In response to New York’s diminishing housing production, the State Legislature added Section 421 to the Real Property Tax Law in 1971, a tax incentive program for multifamily residential housing. New residential construction on vacant, predominantly vacant, or under-utilized land or land improved with a nonconforming use was given a tax exemption on the increased value during the period of construction and for 10 years thereafter. In exchange for the tax break, the residential units had to be leased at 15 percent less than market rents and were subject to rent stabilization throughout the benefit period.

In 1985, the State Legislature fundamentally changed the statute in order to allay fears that luxury developers were unnecessarily benefiting from the 421-a program as well as to further enhance production incentives in Northern Manhattan and the other boroughs. The three most significant amendments were the mapping of the Manhattan Exclusion Area (roughly defined as south of 96th street, north of Houston Street on the west, and north of 14th Street on the east), the expansion of the benefit period to up to 25 years, and the limitation of the construction period exemption to three years maximum. The State Legislature has since made technical alterations to the 421-a program and must periodically extend the provisions of the program. Currently, to receive 421-a benefits, the construction must commence before December 31, 2007.



According to the Finance Department's *Annual Report on Tax Expenditures* for fiscal year 2001, real estate tax expenditures were valued at \$1.6 billion. The 421-a program represented a relatively small proportion of that, providing developers with \$111.3 million in tax benefits for 32,449 housing units. Approximately 46 percent of the 421-a units were rentals and the rest condominiums and co-operatives.

421-a Tax Expenditures, FY 1998-2001								
(\$ Million)								
	FY 1998		FY 1999		FY 2000		FY 2001	
	# of	Tax	# of	Tax	# of	Tax	# of	Tax
	Units	Expendi- ture	Units	Expendi- ture	Units	Expendi- ture	Units	Expendi- ture
421-a Program	45,333	\$81.4	38,998	\$74.9	38,078	\$104.3	38,190	\$110.0
10-year Exemption	20,612	\$34.1	13,373	\$25.7	8,688	\$31.0	6,719	\$27.6
15-year Exemption	15,721	\$25.8	16,171	\$25.8	17,238	\$28.5	17,370	\$26.2
20-year Exemption	1,367	\$7.2	1,633	\$9.8	4,138	\$29.9	5,160	\$38.9
25-year Exemption	7,633	\$14.2	7,821	\$13.7	8,014	\$14.9	8,941	\$17.3

Source: IBO's Multiple-Dwelling History File based on Finance Department's Residential Property Assessment Database

Geographic Eligibility

Developments receive a tax exemption on the increased value during the construction period (for a maximum of three years) as well as for ten to twenty-five years following the completion of construction, depending on the project's location.

Developers in the Manhattan Exclusion Area can receive 421-a benefits only if they build affordable units on-site or if they finance off-site affordable units. Under the 421-a Affordable Housing Program, projects in core Manhattan are eligible if 20 percent of the units are set aside as affordable housing for low- and moderate-income families. In exchange, the projects receive tax exemptions for 20 years (12 years at full tax exemption and 8 years of phase-out).

Core Manhattan developers can also receive 421-a benefits if they finance affordable units elsewhere within the city. Under the 421-a Affordable Housing Program, HPD grants five "negotiable housing certificates" for every housing unit designated for low-income households (60% or less than the median area income) or four certificates for every unit designated for moderate-income families (80% or less than the median area income). Developers can either produce affordable housing outside of the Exclusion Area thereby generating Housing Certificates for their Manhattan projects or they can purchase them from affordable housing developers. Each housing certificate provides a 10-year tax exemption (2 years at

full exemption and 8 years of phase-out) for one 1,200 square feet, market-rate unit in the Exclusion Area.

Distribution of 421-a Units & Expenditure by Borough FY 2001						
	NYC	Bronx	Brooklyn	Manhattan	Queens	S.I.
# of Exemptions	20,975	1,535	5,310	4,872	6,612	2,646
# of Units	32,449	2,948	6,195	11,837	8,720	2,749
Tax Expenditure	\$111.3 m	\$4.1 m	\$10.2 m	\$73.9 m	\$20.3 m	\$2.8 m
Per Unit Expenditure	\$3,430	\$1,391	\$1,646	\$6,243	\$2,328	\$1,019

Source: Finance Department's Annual Report on Tax Expenditures, FY 2001

Residential developments in Northern Manhattan (above 110th street) and in all of the other boroughs receive “as-of-right” 421-a benefits for a period of 15 years (11 years at full exemption and 4 years of phase-out). If the project is in a Neighborhood Preservation Area (as defined in 28 RCNY §5-10), was eligible for mortgage insurance under the Rehabilitation Mortgage Insurance Corporation (REMIC) as of May 1992, or designates 20 percent of the units for low- and moderate-income households, it can receive 25 years of tax exemption (21 years at full exemption and 4 years of phase-out).

In addition, the 421-a rules impose restrictions on the way a project can be financed. Any lien on the project is subordinate to the Written Agreement between HPD and the developer and the average household income of the units in the project cannot exceed 80 percent AMI. Most restrictive of all, if a project is carrying debt, it cannot receive federal low income housing tax credits at the 9 percent reservation. This third limitation most heavily affects affordable developments in the outer boroughs where raising equity is already difficult.

The 421-a Affordable Housing program facilitates the financing of affordable housing outside of Manhattan. Each Negotiable Certificate was originally expected to sell for \$15,000-20,000 thereby providing much needed equity for affordable projects in the boroughs but they are currently selling at approximately \$10,000. Often times, a project selling Negotiable Certificates and receiving 9 percent tax credits may still need bank financing to become a reality.

Recommendation: Repeal the definition of “Eligible debt-financed project” in 28 RCNY § 6-01 that prohibits projects encumbered by a lien or mortgage from also obtaining 9 percent low income housing tax credits.

Affordability Requirements

For projects in the Manhattan Exclusion Area to qualify for 20-year 421-a tax exemptions, or for projects elsewhere in the city to qualify for 25-year exemptions, 20 percent of the units on site must be set aside as affordable housing.¹ The apartments must be rented to eligible families earning no more than 80 percent of the area median income and the rents can be no more than 30 percent of the annual income of those families. The apartments must be maintained as affordable for a minimum of 20 years or for as long as the project receives the tax exemptions, whichever is longer.

The 80-20 configuration has proven most appealing to developers who are able to finance their projects with tax-exempt bonds issued by a state or city housing finance agency. On-site affordable housing, whether within the Exclusion Area or not, has rarely been built under 421-a when the project is not receiving tax exempt financing. In Manhattan, the apartments are often too valuable to be set aside for low-income tenants even if tax exemptions are provided, and in the other boroughs, it is often difficult enough to attain economically feasible rents even with a fully market-rate project.

Another problem with the affordability provisions of 421-a is that the 20 percent requirement is too inflexible to accommodate the wide variety of market conditions found in New York City. The proportion of affordable units cannot be, say 10 percent, and there is no advantage to a developer who might be willing to provide, say, 30 percent. Furthermore, no benefit can be derived from providing affordable housing units to households above 80 percent of median area income. Thus, 421-a developers cannot tap the huge market represented by households earning above 80 percent of median but below what is necessary to rent new market-rate apartments, and few middle-income New Yorkers can benefit from new rental housing construction.

Recommendation: Create more flexibility in the on-site program by establishing a sliding scale of set-aside percentages and tenant eligibility limits. Such a sliding scale would allow developers to match the affordability requirements to the specific site, market and financing requirements of their projects. In addition, developers that set aside affordable units in accordance to the following scale might receive tax abatement similar to the benefits offered under the J-51 program.

¹ RPTL §421-a (2)(ii)(A)(C), RPTL §421-a (2)(iii)(A)(D), and RPTL §421-a (2)(iv)(A)(b).

Such a schedule might look like:

Schedule of Options for 421-a Benefits	
Proportion of Units Affordable	Maximum Household Income of Lessees
10%	60%
20%	80%
30%	100%
40%	120%
50%	140%
60%	160%
70%	180%
80%	200%
90%	220%
100%	240%

Construction Requirements

Under 421-a, eligible projects must be a new multiple-dwelling of three or more units on vacant, predominantly vacant, or under-utilized land or land improved with a nonconforming use. Under-utilized land, when improved with non-residential buildings outside of the Exclusion Area, is defined as: (1) any zoning lot which is built to no more than 75 percent of the maximum floor area permitted for residential buildings in the district or (2) has an assessed value no greater than 75 percent of the assessed valuation of the land on which the building is situated.² Construction must begin before December 31, 2007 and the developments cannot concurrently receive tax exemption or tax abatement under any other local or state law.

The 421-a statute imposes additional restrictions on larger developments even when the project is entirely market rate. Developments of more than 100 dwelling units must have at least 10 percent of the units with two bedrooms (4 ½ rooms) or more and another 15 percent must be one bedroom (3 ½ rooms) apartments. Although those requirements would usually be satisfied in any event, they may be a barrier to niche products, such as assisted housing, from receiving 421-a benefits. For developments that designate on-site affordable units, city regulations explicitly require that such units be substantially similar to market-rate units in terms of square footage and the proportion of studios, 1BRs, 2BRs, etc.³

² Definitions of under-utilized differ for sites within the Exclusion Area and sites improved with residential structures.

³ 28 RCNY §6-08 *Affordable Housing Construction Requirements*.

More importantly, if new construction occurs on a site that was previously improved with a residential building and the new development has more than 20 units, the ratio of newly built to demolished units must be at least 5 to 1. It is not clear why this ratio is set so high, or why it is preferable to simply providing benefits on the net increase in units.

Recommendation: Repeal RPTL §421-a (2)(c)(iii) that requires five new dwelling units for every demolished unit in new constructions of more than 20 units. Allow all dwelling units that exceed the number of pre-existing units to be eligible for benefits.

Rent Regulation

In exchange for the tax benefits, the Tax Incentives Programs division (TIP) of HPD sets the maximum initial rents for all units in a 421-a building according to a complex, statutory formula.⁴ However, a different rent-setting standard applies to units designated as affordable for low- and moderate-income households. Units rented to low-income households cannot exceed 30 percent of 55 percent of area median income while units rented to moderate-income families cannot exceed the average of 30 percent of 75 percent of area median income.

In addition, rental units in 421-a projects are subject to rent stabilization for the duration of the exemption period regardless of whether the unit is market rate or affordable. For the “market rate” units, during the period of gradual diminution of tax exemption, the statute allows owners a 2.2 percent rent increase independent of any escalation authorized by the Rent Guidelines Board. Once the tax benefits expire, the law permits the rents to rise to market level even while the tenant is in place. Considering the high rent levels that are permitted even under the 421-a initial monthly rent formula, and the high incomes of the families (or organizations) typically renting them, the public purpose accomplished by this requirement is dubious. However, units designated as affordable are rent stabilized for 20 years or for the duration of the exemption period, whichever is longer, can only go to market rates gradually and only when the unit becomes vacant.

Recommendation: Repeal the “initial adjusted monthly rent” formula [RPTL §421-a (3)] that applies to all except the affordable units.

⁴ RPTL § 421-a (3) establishes the initial adjusted monthly rent as follows:

Total expenses (annual cost of operation and maintenance, contingency reserves, management fees, property taxes, 14% of total project cost) **minus** the annual income derived from any floor area of commercial, community facilities, and accessory use space **divided** by the project’s room count **divided** by 12 months; this formula results in an initial adjusted monthly rent per room. A dwelling unit’s initial monthly rent is calculated by multiplying the adjusted monthly rent per room by the number of rooms in that unit.

II. Inclusionary Housing

Background

New York City's Inclusionary Housing Program is a voluntary incentive program enacted in 1987 in response to the shifting of the income mix in high-density neighborhoods. Floor area bonuses are provided to developers in exchange for the creation of affordable units in R10 districts, excluding those in Manhattan Community District seven. Administrative, financial, and site restrictions also apply.

R10, with a maximum FAR of 10.0, is the highest-density residential designation, and is found primarily in Manhattan south of 96th Street. Inclusionary Housing is not applicable to commercial or manufacturing zones with R10-equivalent residential densities.

Bonus square footage is granted on a sliding scale, according to the type and location of the affordable units. New, on-site units receive the maximum bonus, while lower bonuses are granted to off-site or rehabilitated units. Off-site units must be located either within the same community district as the development receiving a floor area bonus, or in an adjacent community district at a site no farther than one half mile from the compensated development. The total floor area ratio of a development participating in the Inclusionary Housing program cannot exceed FAR 12.0, as per state law restricting the density of residential developments.

Few units have been created under the program: only 418 units have been completed since 1987, and as of January 2002 an additional 151 units were under construction. The lack of activity is due in part to the R10 limitation, but also to cumbersome and restrictive program regulations. The following recommendations are intended to strengthen Inclusionary Housing as a stand-alone program, and to facilitate its use in coordination with other incentive programs.

If Inclusionary Housing and 421-a could be used jointly, there could be a synergistic effect in stimulating housing development. In the Manhattan Exclusion Zone, a developer could draw on the bonus floor area in order to meet the affordable housing requirements for receiving 421-a benefits. Outside of core Manhattan, the incentive for doubling up would be an extension of the tax exemption period from the minimum of 15-years to the maximum of 25-years, as well as the density bonus. In each case, the affordable units would supplement, rather than replace, market-rate housing units.

Requirements for Affordable Units

Under the laws and regulations authorizing tax-exempt bonds, 421-a benefits, and the Low Income Housing Tax Credit, developers are required to maintain affordability standards only during the years when tax exemptions are granted or

for some other finite period, and may increase rents in the affordable units to market-rate once the affordability requirements are satisfied. The affordability requirements for the Inclusionary Housing program are permanent, since the density bonus is presumably permanent.

Nevertheless, Inclusionary Housing is inherently more flexible than 421-a in that a developer does not have to provide a fixed percentage of affordable units in order to receive the maximum bonus. For on-site new construction, four square feet of total floor area is obtained for each square foot of affordable housing. In most scenarios, the percentage of the total units required to be set-aside for low- or moderate-income households is significantly less than the 20 percent required in applicable 421-a cases.

The affordable units created as part of the program are capped at an annual rent that is no more than 30 percent of the annual income of households earning a maximum of 80 percent of the SMSA median. Average annual rents of the affordable units cannot exceed the annual operating cost for those units, and revenue from those rents cannot be applied to debt service.

As with other affordable housing programs, on-site lower income units must be distributed evenly throughout buildings receiving density bonuses or other incentives. Specifically, no more than two affordable units may be placed on any single floor unless 80 percent of all floors in a building contain two or more affordable units. The rationale behind placement restrictions is to ensure that the affordable units are of comparable quality and appearance as market-rate units, and to prevent the stigmatization of households living in affordable units. In the context of the Inclusionary Housing program, however, the traditional rationale is less appropriate.

The total number of affordable units provided in order to achieve the maximum possible density bonus is relatively small in relation to total units within a development, and the risk of creating an easily distinguished “clustering” of affordable units less severe. Placement restrictions may also deter developers from participating in the program by negating the economic value of the floor area bonus. Units located on higher floors of larger residential buildings are generally more valuable than those located on lower floors; as a result, the revenue lost by offering higher-floor units at below-market rents can exceed the potential value of the bonus floor area.

Recommendation: Remove the restriction requiring that no story in a building receiving a floor area bonus contain more than two affordable units unless 80 percent of all stories also contain two or more affordable units, allowing developers to maximize the economic value of the floor area bonus.

Recommendation: Adjust the bonus formulas so that developers can attain the maximum floor area bonus by providing different combinations of low-, moderate- and middle-income affordable units. A flexible schedule may look something like:

Maximum Household Income For Affordable Units	Ratio of Total Additional Floor Area to Affordable Floor Area
80% of Area Median Income	3 square feet per 1 square foot
81% to 120% of Area Median	2 square feet per 1 square foot
120% to 240% of Area Median	1 square foot per 1 square foot

Geographic Restrictions

The most restrictive program requirement is that only developments in R10 districts may participate. While recent zoning actions in Long Island City and downtown Brooklyn created several new R10 districts, the majority of R10 districts are high-rent Manhattan areas where sites are scarce. Community District 7 in Manhattan is excluded from the program; no R10 building may exceed FAR 10 in that district.

Including the moderate to high-density R7, R8, and R9 districts if the site is on a wide street (defined in the Zoning Resolution as 75 feet or more in width) would extend the program to areas where vacant and underutilized land is more available, and where planning considerations might indicate that an increased residential density is desirable. Inclusionary Housing floor area bonuses could be used independently or in conjunction with the Quality Housing Program in those districts. The program could also be expanded to mixed-use and manufacturing districts where residential development is permitted as-of-right, or by special permit.

Recommendation: Expand the Inclusionary Housing Program to include R7, R8, and R9 districts, with a bonus award cap of no more than 20 percent of the standard allowable floor area ratio. In an R8 district the current maximum FAR of 5.99 would be increased to 7.18; in an R7 district, maximum FAR would increase from 3.3 to 3.96⁵.

Recommendations: Expand the program to incorporate commercial floor area bonuses in mixed-use districts, in exchange for affordable housing provision.

⁵ FAR bonuses are presented based on maximums for developments not participating in the Quality Housing Program. For an R8 development participating in the Quality Housing Program concurrently with Inclusionary Housing, the maximum FAR would increase from 6.02 to 7.2. In R7 districts the increase would be from 3.44 to 4.12.

Financing & Administrative Restrictions

Developments receiving tax abatements or operating assistance in return for providing low-income housing are not currently eligible for the Inclusionary Housing program unless such assistance is limited to the affordable units only, and not the development in its entirety. They are also restricted from applying rents received from the affordable units to the payment of the principal or interest owed on any debt other than that which is incurred as a result of capital improvements on the affordable units after the date of initial occupancy.

There is little justification for either of these restrictions: participation in multiple incentive programs requires no local government expenditures; and the combination of incentives could attract the participation of developers who would not otherwise have participated in either program. Rents from the affordable units should be applicable to any outstanding debt held in connection with construction of either the affordable units or the compensated development.

In addition to the financial restrictions, developers are required to contract a non-profit organization to manage and oversee the affordable units, or prove to HPD that some other plan of action has been established to ensure that affordability requirements and housing quality standards are met. This requirement increases the operational costs of the entire development, and reduces the value of the floor area bonus. The management guidelines for the Inclusionary Housing program should coordinate with those established under 421a, LIHTC, or other tax exemption programs.

Recommendation: Remove the restriction barring developments receiving real estate tax exemptions or operating assistance from receiving Inclusionary Housing floor area bonuses.

Recommendation: Remove the restriction barring the use of rents from affordable units towards the principal or interest owed on any debt other than that incurred from capital improvements to the affordable units.

Recommendation: Remove the restriction requiring that the affordable units be managed by a non-profit organization.

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