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**TESTIMONY OF THE GREENWICH VILLAGE SOCIETY
FOR HISTORIC PRESERVATION
REGARDING ‘ZONING FOR QUALITY & AFFORDABILITY’ AND
‘MANDATORY INCLUSIONARY HOUSING’ PROPOSALS
City Planning Commission Public Hearing
December 16, 2015**

I am Andrew Berman, Executive Director of the Greenwich Village Society for Historic Preservation, the largest membership organization in Greenwich Village, the East Village, and NoHo. On behalf of our several thousand members, we strongly urge you to vote no on the Zoning for Quality and Affordability (ZQA) proposal, which will improve neither quality nor affordability in new construction. What it will do is gut neighborhood zoning protections which often took years to achieve, and were the result of considerable consensus-building, negotiations, and compromise.

The premise of many of ZQA’s most basic arguments are flawed or simply false, as subsequent speakers will address. ZQA claims that New York City faces a terrible problem of new developments with ground floors of insufficient height, thus requiring an increase in allowable height for market-rate development of 5-20 feet. In fact, a survey we conducted found by far most new quality housing and contextual zoning buildings in our area already have the ground floor heights ZQA says our existing rules don’t allow, or could have had them under the existing rules, but chose not to.

ZQA claims we need to allow market-rate developments to have grand 11 or 12 foot floor to floor heights, and to do so, we should lift height limits by 5-20 feet. But we found most new developments in these districts in our neighborhood either already had those heights or chose slightly shorter ones, even though existing height limits would have allowed them to go to that height.

ZQA claims that large height increases are necessary to accommodate new market-rate developments that will include a fraction of ‘senior affordable housing’ which can be phased out after 30 years. But there is no reason why such developments cannot be built within the existing height limits for contextual zones and quality housing developments.

ZQA claims that sliver law protections and limits on rear yard incursions must be eliminated in order to allow new market-rate developments with 20% affordable housing to be built. But there is no reason why such developments cannot be built while maintaining these essential protections for neighborhoods.

ZQA claims existing height limits prevent the voluntary inclusion of 20% affordable units in new developments in inclusionary zones. But we found that more than half of such developments in our neighborhood do include the affordable units with those height limits, and in almost all cases where they don't, the existing height limits left more than enough room for them to do so. Studies and interviews with developers have shown that bureaucracy, tax incentives for market-rate housing, and the complexity of including affordable units in smaller developments are why developers don't opt into the current voluntary program – none of which would be changed by ZQA.

ZQA will do nothing to increase the affordability of our housing or our city. Making the current voluntary inclusionary program mandatory might, but not the way the Mandatory Inclusionary Housing (MIH) proposal works. Making mandatory inclusion of affordable housing contingent upon large-scale upzonings that would vastly increase the production of market-rate housing beyond what is currently allowed would have the overall effect of making neighborhoods and our city less affordable, not more. And it would destroy the scale and character of those neighborhoods in which it is done.

These rezoning proposals are a one-size-fits-all approach that fails to take into account or analyze local impacts and needs. A much more targeted approach could be taken to address the few legitimate weaknesses in the existing zoning without destroying necessary neighborhood zoning protections and years of hard work. Thus we urge you to send these proposals back to the drawing board.

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ZQA proposes to increase height limits under a variety of circumstances for purely market-rate housing – 5 to 10 feet in contextual zones, and up to 20 feet for quality housing. We believe this is absolutely wrong and should not be approved.

The Department of City Planning originally stated that such changes were necessary to allow market-rate developments to utilize their full allowable FAR. However, ensuring that every development achieves the maximum theoretically allowable FAR is not the job of zoning, which is also intended to protect light and air and establish appropriate scale for new development. That aside, we found no cases of new market-rate developments in our neighborhood in contextual zones which were unable to utilize their full FAR as a result of contextual height limits, even though DCP claims that the R7-A and R8-A districts we have are particularly onerous in this regard. Quite the contrary, we found several examples of market-rate developments in existing contextual zones which utilized full allowable FAR and even left allowable height on the table, thus showing the existing height limits in no way impede maximum allowable development.

Now DCP says height increases for market-rate developments are necessary to ensure that we don't have inadequately-scaled ground floors in new contextual developments, which it defines as less than 13.5 feet. Here again DCP's logic and data are faulty. We found that many of the new developments in our contextual zones already have 13.5 foot ground floors, and existing height limits rarely if ever prevent new developments from having them. Under ZQA, they would simply be allowed to grow an additional 5 feet or more in height, with no additional public benefit.

In many other cases, we found developers chose to have 10, 11, or 12 foot tall ground floors, even though existing height limits would have allowed them to go higher – thus making ZQA’s argument for the pressing need to gut our height limits to encourage taller ground floors particularly spurious.

Why undo years of hard work and thoughtful deliberation to ensure that every building has a 13.5 foot ground floor? Not only do many of our older and newer buildings have slightly shorter ground floor heights, but in many cases, that is actually more desirable or appropriate. Retail should have a neighborhood scale and feel, such as 11 or 12 foot ground floors provides.

Regardless, we are yet to find a single development in a contextual zone with an 8.5 foot ground floor. So even if one accepts DCP’s premise that 13.5 foot ground floors must be incentivized by the zoning, raising height limits by 5 feet or more to try to ensure this outcome is totally unnecessary and makes absolutely no sense.

ZQA also proposes to allow greater flexibility in the setback requirements for buildings in contextual districts. We question whether such changes are necessary. But one thing is clear: increasing the allowable height of new buildings to accommodate such increased flexibility is neither worth the trade off nor necessary. In recent conversations, DCP has admitted that the proposed height increases for market-rate developments are not needed to allow greater flexibility in façade depth or setbacks, since ZQA also allows lesser setbacks at the upper levels of new developments to compensate for the greater setbacks it would allow at the base.

For all these reasons, we strongly urge you to disapprove of any of the proposed height increases for market-rate developments.

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ZQA proposes to increase height limits for inclusionary developments, which contain 20% affordable housing, by up to 25 feet or more, or up to 31% -- a very significant increase. The premise is current contextual height limits prevent the inclusion of the additional affordable housing, and lifting the height limits will result in more affordable units being built. But all evidence indicates the height limits are not an impediment, and lifting them will not result in a single additional unit of affordable housing being built. It would simply allow some developments which would be built anyway to increase their height significantly.

According to a 2013 City Council study, about 13% of all new units built in inclusionary zones were affordable, out of a maximum possible 20%, meaning an approximately 65% opt-in rate. In the East Village, which has R7-A and R8-A inclusionary zones, we found the opt in rate is similar. This already tells you that the existing height limits do not prevent the inclusion of affordable units, since in nearly two-thirds of the cases, developers are opting to do so under these conditions.

But we decided to more closely examine all new developments in our East Village contextual zones – those that included the affordable housing, and those that did not. What we found is that in by far the majority of the cases where developers chose not to include the 20% affordable units, the existing

height limits allowed them more than ample room to do so, with the same floor-to-floor heights they were already using. In other words, they could have included the affordable housing without being forced to squeeze the floor area into a packed envelope.

This confirms what we already knew – height limits are not the reason some developers chose not to include the affordable units, and raising the height limits for this voluntary program won't change that.

According to the 2013 City Council study, every development which chose to include affordable units was 50 units or more. Why? Because participation in the program involves navigating significant bureaucracies, greater uncertainty in terms of time frames, and a certain savvy in terms of negotiating a complicated regulatory system. This is consistent with our conversations with developers as well. Smaller developers and smaller developments seem simply disinclined to go this route. The 2013 study also noted that developments outside of the 421-a exclusion zone rarely include the affordable units because the incentive provided by this tax abatement for doing so is gone – they get the same tax abatement simply for building market rate units.

ZQA and its height limit-lifting formula will do nothing to change these factors, which are the true reasons why some developers are not voluntarily including the affordable units in inclusionary zones. Lifting the height limits is nothing more than a red herring which will not increase affordability, but which will contribute to out-of-scale development that violates hard-fought-for and reasonable parameters for new development in residential neighborhoods. We strongly urge you to vote no on these proposed changes.

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Looking at actual developments in our area built under the existing height limits consistently refutes the arguments for ZQA and its lifting of height limits (see attached).

For example, we found that every one of the new developments with affordable housing in the inclusionary zones in the East Village were not only able to be built under the existing height limits, but actually did not even fill out the entire zoning envelope. 79-89 Avenue D, which is under construction, 21 East 1st Street, and 101 Avenue D, all left height on the table, thus illustrating that ZQA's proposed height increases are absolutely unnecessary. The two Avenue D developments are even both on interior lots, which have more restrictive lot coverage rules. All have more than adequately-scaled ground floors; while we were only able to definitively determine the ground floor height of 79 Avenue D (13 feet), 21 East 1st Street has a large space for a bank in the ground floor, and 101 Avenue D's ground floor perfectly matches the height of its two early 20th century neighbors – exactly the types of buildings and proportions DCP claims new construction in contextual zones cannot replicate due to current height limits.

79 Avenue D's other floor-to-floor heights also perfectly match those of its neighbors, further refuting DCP's claims that it is impossible to build affordable developments in inclusionary contextual zones without substandard "packing the bulk" configurations. In the case of all three developments, the existing height limits would have actually allowed even more generous floor-to-floor heights – which

DCP claims developers would provide if only they were not prevented from doing so by existing height limits.

Had ZQA been enacted, none of these developments would have provided a single additional square foot of affordable housing. The only difference would have been that these developments could have been 25 feet taller.

Looking at those developments in inclusionary zones which did not include affordable housing is equally instructive. Both 138 East 12th Street and 152 2nd Avenue chose to only include market rate units, but had more than ample room to include affordable units. Thus their decision not to had nothing to do with the height limits. 138 East 12th Street reaches 91 feet but could have gone to 120, while 152 2nd Avenue rises to 60 feet when it could have reached 80. 138 East 12th Street chose a ground floor height of 13'8" – even greater than the height DCP says developments in contextual zones are presently prevented from reaching by current height limits. It should be noted that this developer could have actually made their ground floor over 40 feet tall under the existing height limits, while still keeping all the upper floors the same height they are now and still maxing out on the allowable floor area – pointing to the ludicrous lack of need for these height limit increases.

The developer of 152 2nd Avenue chose a slightly more modest 12.5 foot ground floor, which lines up perfectly with its older neighbors (the 1920's building which previously stood on this site also had a 12.5 ft. ground floor). The building is only 60 feet tall, which not only does not even meet the maximum allowable height of 80 feet, it does not even meet the maximum allowable base height of 65 feet. This building utilized the full allowable FAR for a market rate building, but could have gone 20 feet higher, undercutting DCP's claims about the restrictions and impediments imposed by the existing zoning height limits. It should be noted that 152 2nd Avenue is also on an interior lot, which has greater lot coverage restrictions.

Under ZQA, 138 East 12th Street could have been 34 feet taller and 152 2nd Avenue could have been 25 feet taller, without providing a single unit of affordable housing, and arguably without any improvement in its aesthetics or retail space.

Looking at these real life examples it's impossible to come to any conclusion other than that DCP's analysis and conclusions are flawed, and the entire rationale for ZQA is faulty.

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We have found much real-life, empirical evidence illustrating that existing height limits do not prevent affordable units from being built in inclusionary contextual zones, nor do they force inadequately-scaled ground floors or floor to floor heights.

By contrast, DCP has based their case largely on the Citizen's Housing Planning Council Report, "The Building Envelope Conundrum," and on their own analysis in their environmental review. But both are deeply flawed, and do not reflect the types of buildings or conditions that ZQA would affect (see attached).

The CHPC report purports to show how difficult it is to access full FAR in new developments in contextual zones. What it actually shows is 17 specifically chosen developments, less than half of which are unable to use full FAR as a result of the building envelope. However, it should be noted that in all but two cases the difference between the built development and the maximum allowable floor area is minute – typically a 1 or 2% difference. In one case the development is actually a mere 2 square feet less than the maximum allowable.

It should also be noted that according to the report, many of the developments cited are located on irregularly-shaped lots or split between multiple zoning districts – conditions which always make fitting standard zoning criteria difficult. Some are not even in contextual zones, thus making them irrelevant to the argument for ZQA and for raising height limits in contextual zones altogether.

Further, it should be noted that the developments covered by the report are almost exclusively 100% affordable housing developments, not the 80/20 or 100% market-rate developments covered by ZQA. 100% affordable housing developments often have different needs and configurations than 80/20 or 100% market-rate developments. Thus to use such developments to argue that changes are needed for the types of developments covered by ZQA is false. And while there may well be accommodations which are reasonable and appropriate to make for 100% affordable developments, such accommodations are not necessarily reasonable or appropriate, or even necessary, for 80/20 or 100% market rate developments, which is what ZQA covers.

Similarly, DCP’s analysis in its environmental review of the ability to achieve full FAR in contextual and inclusionary zoning districts says it is impossible to do in many cases without “packing the bulk” configurations. However, this analysis is based entirely upon narrow street, interior lot sites, which are the most restrictive types of zoning lots. To use this as a basis for a supposedly comprehensive analysis of current conditions, and to further use it as a basis for making recommendations for across-the-board changes on all types of zoning lots, is disingenuous at best, willfully misleading at worst.

But this is not just putting a thumb on the scales of a supposedly objective analysis. The narrow street interior lots which DCP uses as the basis for its environmental review actually almost never have inclusionary zoning, making its analysis and recommendations all the more preposterous. Inclusionary districts are mapped almost exclusively on major avenues, and thus DCP’s supposed analysis almost never actually applies to them. For example, in Community Board #3, less than 1% of the lots covered by inclusionary contextual zoning districts are narrow street interior lots. And yet based upon an analysis of these types of lots, DCP is recommending lifting the height limits for the other 99% of the lots covered by inclusionary contextual zoning.

Given this deeply flawed analysis, we urge you to reject these proposed changes, and preserve the existing height limits.

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It’s clear that ZQA will do little or nothing to increase the affordability of our city or the production of affordable housing.

Arguably creating a mandatory inclusionary housing policy would, requiring new residential developments to include a substantial portion of affordable housing.

But this MIH proposal won't do that, because it will only be applied if an area is being significantly upzoned to allow a large increase in the allowable amount of market-rate housing. Therefore MIH won't be applied to any of the existing inclusionary zoning districts. And to get the affordable housing, you have to accept a lot more market-rate housing than is currently allowed.

This unnecessarily puts the creation of affordable housing fundamentally at odds with maintaining a reasonable scale of development. But perhaps more perniciously, it means that to get affordable housing, a virtual flood of market-rate housing will have to come along with it, in great excess of the amount currently allowed. This inevitably means that when MIH is applied, it will not only result in the destruction of the scale and character of the affected neighborhoods, but make such neighborhoods on the whole less affordable as well.

This is essentially applying the Williamsburg/Greenpoint and West Chelsea/Hudson Yards model to the entire city. Those neighborhoods were rezoned in 2005 to allow significantly increased market rate development, and in exchange for some affordable housing creation. In the past ten years, Williamsburg/Greenpoint and West Chelsea/Hudson Yards have produced far and away the greatest number of new affordable housing units in the city through the inclusionary zoning program. But the tsunami of market-rate housing which was the price to pay for it has made these two neighborhoods unrecognizable physically or socio-economically. They look more like Hong Kong or Miami than New York City, and they are among the least affordable, most rapidly gentrifying parts of the city.

If the City is truly interested in addressing our affordability challenges through zoning, a much more targeted approach could be taken. Seemingly the only cases where including affordable housing may be challenging under existing inclusionary contextual rules are irregularly-shaped lots, lots split between zoning districts, or other unusually restricted lots. The Board of Standards and Appeals variance process already exists to address such cases, but the city could look at ways to address these distinct cases in the zoning text. **But that is not what ZQA does.**

The City could also try to address the real impediments to greater participation in the current voluntary affordable housing program, by making it easier to access and navigate, especially for smaller developers, or eliminating the perverse tax incentives for purely market-rate rather than affordable-inclusive developments. They could also make the current optional inclusionary housing program mandatory, or not tie the mandatory program to massive upzonings that will ultimately destroy neighborhood character and affordability.

But that's not what ZQA and MIH do.

If DCP is so sure that its proposed new rules are superior to the existing zoning rules, they could also use this process to simply add them to the zoning text, without eliminating the existing zoning district rules. That would expand the zoning tool box rather than eliminating zoning rules that in many cases currently

work. Changes could then be made to existing or future contextual districts, but only after specific future ULURP applications that would require neighborhood-specific analysis, rather than applying this across-the-board formula to every area of the city.

But that's not what these proposals do. For the sake of our city and our neighborhoods, we therefore urge you in the strongest of terms to vote no.

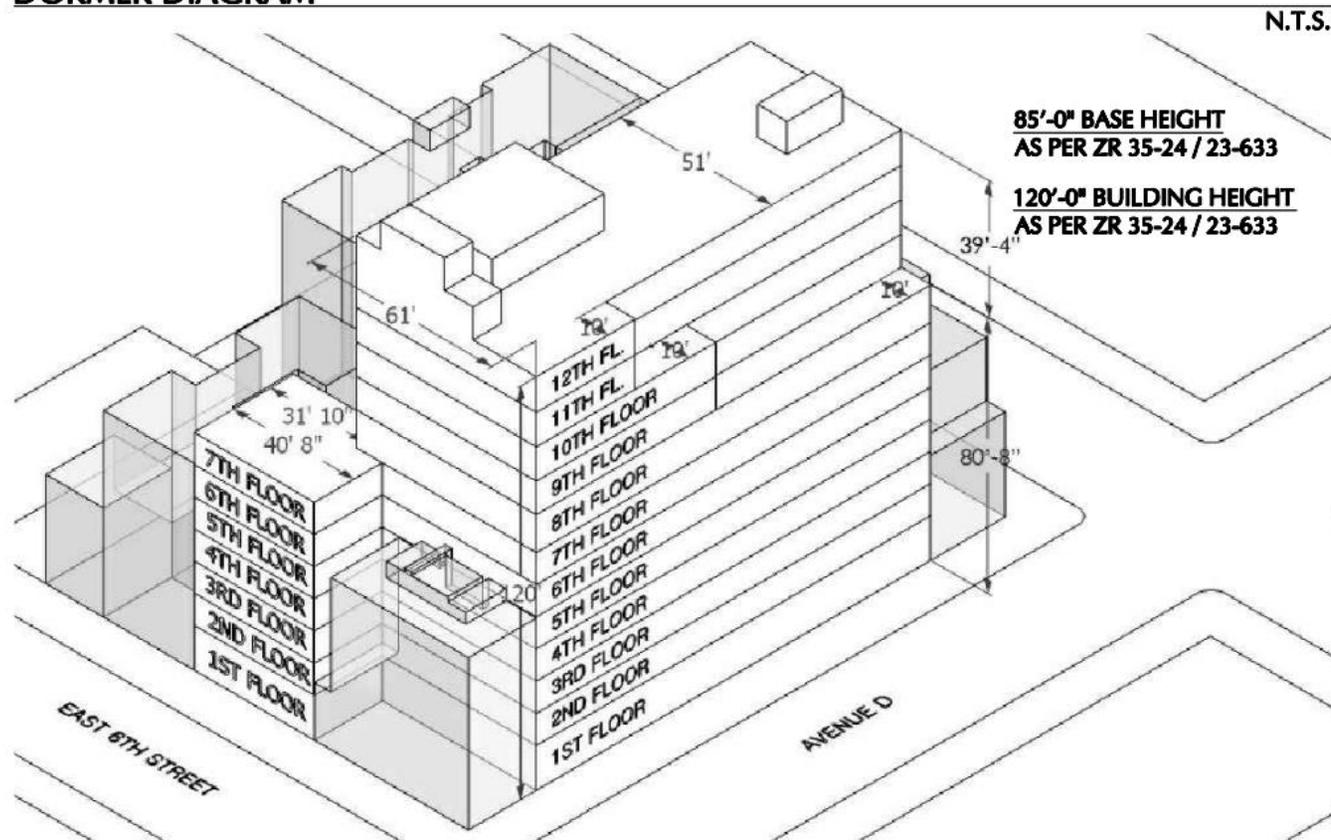
Developments in Contextual Inclusionary Zones

79-89 Avenue D (under construction) – includes affordable housing

Illustrates that developments can be built with full FAR and 20% affordable within existing contextual height limits *even on interior lots*

with the ground floor heights DCP is calling for and with room left on the table to go higher.

DORMER DIAGRAM



AXONOMETRIC - DIAGRAM

N.T.S.

- R8-A inclusionary, interior lot
- 7.2 FAR (max. allowable)
- Includes 20% affordable housing
- Max. allowable ht.: 120 ft.
- Actual ht.: 120 ft.
- Max. allowable base ht.: 85 ft.
- Actual base ht.: 80 ft.
- 13 ft high ground floor
- With five extra feet allowed in base by zoning:
 - Ground floor could go to 18 feet in height
 - or floors in base could have been nearly 1 ft taller each
- Under ZQA, building could have grown 25 feet taller without providing a single additional unit of affordable housing

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Developments in Contextual Inclusionary Zones

'Jupiter 21,' 21 East 1st Street (2nd Avenue) – includes affordable housing

Illustrates that developments can include affordable housing in inclusionary zones within existing contextual height limits with the generous ground floor heights DCP is calling for



- R8-A inclusionary
- Market-rate development with affordable units in IZ program
- Max allowable bldg. ht: 120 feet
- Actual building ht: 120 feet
- Max. allowable base ht: 85 feet
- Actual base ht: 81 feet
- Under existing ht limits, could have increased ground floor or base upper floor heights, but chose not to
- **Under ZQA, building could have grown 25 feet taller without providing a single additional unit of affordable housing**

Developments in Contextual Inclusionary Zones

101 Avenue D – includes affordable housing

Illustrates that developments can be built with full FAR and 20% affordable within existing contextual height limits

Even on interior lots

Ground floor and floor-to-floor heights line up perfectly with adjacent existing traditional buildings – which DCP claims current contextual zoning rules prevent new developments from doing.



- R8-A inclusionary
- Interior lot
- Includes 20% affordable housing
- total building height 120 feet (max. allowable)
- base height only 65 feet, 85 allowed
- With 20 extra feet allowed in base by zoning:
 - Ground floor could more than double in height
 - or floors in base could each have been 3.3 feet taller
- **Under ZQA, building could have grown 25 feet taller without providing a single additional unit of affordable housing**

Developments in Contextual Inclusionary Zones

'Nathaniel', 138 East 12th Street (3rd Avenue) – **does not include affordable housing**

Illustrates that developments that don't include affordable housing are **not** prevented from doing so by contextual height limits

Also illustrates that existing height limits do not prevent adequate ground floor heights for successful retail

(West Side Market in ground floor)

or force developers to reduce desired floor-to-floor heights



- R8-A inclusionary
- Full allowable FAR for market-rate
- Max allowable bldg. ht: 120 feet
- Actual building ht: 91 feet
- Ground floor ht: 13'8"
- Upper floor hts: 9.5-11 ft
- **Under existing ht limits building could have:**
 - Included affordable housing
 - Increased ground floor ht to 15 feet or more
 - and/or increased all floor to floor heights to 12 feet or more
- **Under ZQA, bldg. could have been 34 feet taller without providing a single unit of affordable housing**

Developments in Contextual Inclusionary Zones

152-154 Second Avenue (10th/11th Streets) – **does not include affordable housing**

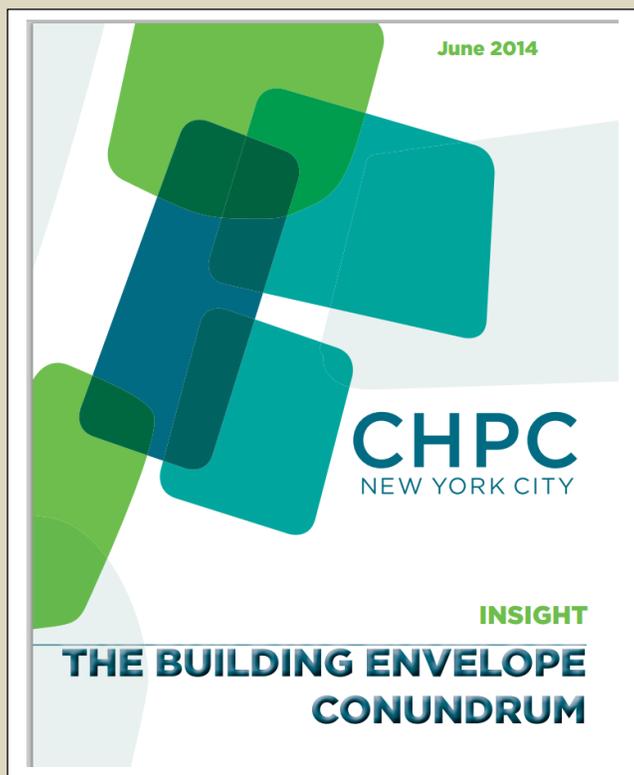
Illustrates that under existing height limits, new developments within contextual zones have room to include affordable housing (even on interior lots), but they chose not to for other reasons

Illustrates that many developments are choosing ground-floor hts. of less than 13.5 ft. ,and floor-to-floor heights of less than 11.5 ft., and are not prevented from increasing floor heights by current height limits



- R7-A inclusionary
- Interior lot
- Max. allowable bldg. ht.: 80 feet
- Actual bldg. ht.: 60 feet
- Ground floor height: 12.5 ft.
- Upper floor hts.: 9.5 ft.
- **Under existing ht .limits, bldg. could have:**
 - Increased total ht. by 20 ft.
 - Increased base ht. by 5 ft.
 - **Included affordable housing**
 - **Increased ground floor ht to 15 feet or more**
 - **and/or increased all floor to floor heights to 12 feet or more**
- **Under ZQA, building could have been 25 feet taller without providing a single unit of affordable housing**

The sources of DCP's claim that developers cannot utilize full FAR under existing contextual zoning rules is faulty. They frequently cite:



The report's conclusions:

For the seventeen projects examined we found that: Only one project was able to develop all of its allotted floor area. In eight projects, floor area was left unbuilt because of their building envelope rules. For these projects, it was the contextual building envelope rules that determined the development capacity of the buildings rather than their allotted floor area. The buildings that were limited by their envelope were underbuilt by an average of 11%. In total 56,543 square feet of buildable space was lost from these eight projects. In a further eight buildings, neither the allotted floor area nor the building envelope was maximized. This was typically because the number of housing units for the building was determined by the subsidy program it was constructed under, or the developer simply chose to limit the size of the building for other reasons. Because of this, we are unaware of whether the development capacity of these buildings would have been determined by the floor area or the building envelope rules.

What this report fails to make clear is that almost all of the projects studied were 100% affordable housing developments, NOT the 80% market rate/20% affordable developments which ZQA would apply to.

100% affordable developments have very different requirements and programs than 80/20 predominantly market rate housing. There is no reason to conclude that changes which MIGHT be necessary for 100% affordable developments should apply across the board to luxury housing with a 20% set aside for affordable units.

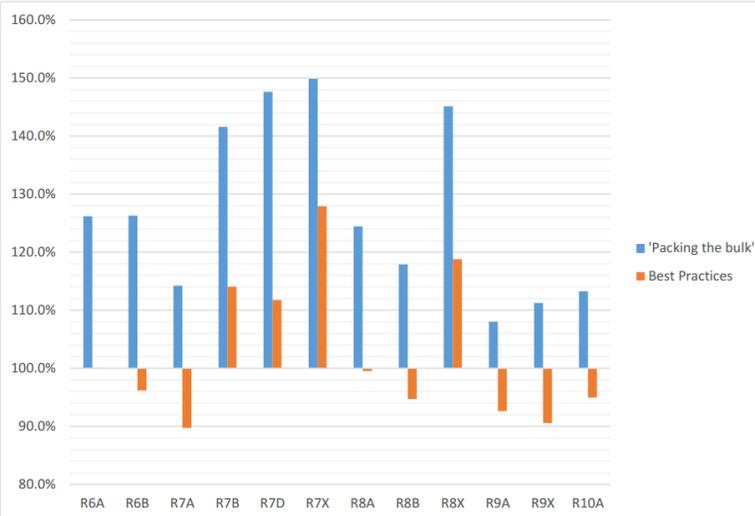
Note: 100% affordable developments often qualify as 'Community facilities' and therefore can be and often are governed by very different rules than market rate/IZ developments.

From:



HOUSING NEW YORK: ZONING FOR QUALITY AND AFFORDABILITY FINAL SCOPE OF WORK FOR AN ENVIRONMENTAL IMPACT STATEMENT

Figure 8: Bulk envelope capacity as a percentage of permitted floor area

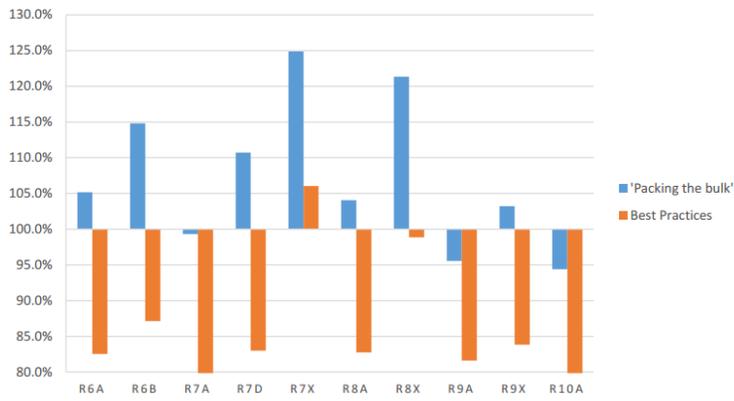


As the chart shows, this slight adjustment in floor to floor heights and building depth can easily be the determinant in whether a new development can accommodate all of its permitted floor area. Additional

DCP's ZQA Study concludes that in most cases, full FAR cannot be utilized within existing contextual zoning envelopes and height limits, using these charts (left) to illustrate the limitations under the existing system.

However, these figures are based ENTIRELY upon narrow street/interior lot rules, WHICH HAVE THE STRICTEST LIMITATIONS for the layout and lot coverage of new developments, as opposed to wide street and corner lot rules, which have much more relaxed rules, allow greater utilization of FAR, and are where inclusionary zones are more frequently found.

% OF ALLOWABLE FAR THAT CAN FIT WITHIN THE EXISTING BUILDING ENVELOPE



As the chart shows, while most districts can accommodate the permitted FAR using a 'packing the bulk' strategy, the quality of this space would likely be undesirable, and may impact the marketability of market rate units (which could in turn undermine the necessary cross-subsidization of affordable units). In nearly every scenario, the existing contextual envelope is unable to accommodate the permitted Inclusionary Housing floor area when reasonable best practices are applied. This lack of flexibility not only results in the creation of inferior dwelling units, it results in inferior buildings, since the envelope cannot accommodate streetscape design measures such as façade articulation, and a nuanced relationship to the sidewalk depending on the district (such as a planted buffer in Residence Districts and a sizeable retail heights in Commercial Districts). Similar results are found using the additional floor area permitted under Section 23-147 for non-profit residences for the elderly.