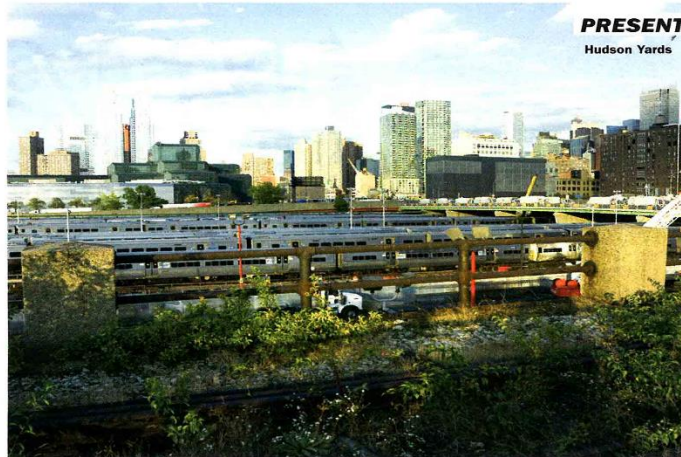
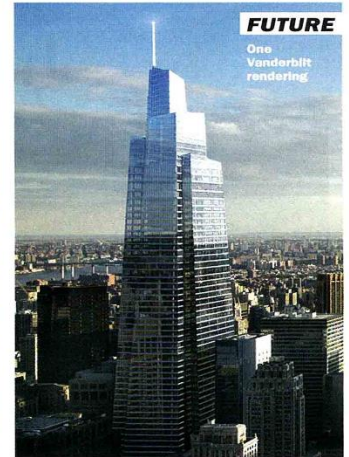


PAST
Equitable Building



PRESENT
Hudson Yards



FUTURE
One Vanderbilt rendering

Zoning games

From funding affordable housing to infrastructure, how zoning became the de Blasio administration's sharpest tool

By KATHRYN BRENZEL

Carl Weisbrod, the city's planning czar, finally put rumors to rest last month when he stepped down just one day after the City's Planning Commission kick-started the long-awaited proposal to rezone Midtown East.

For some time, it had been speculated that Weisbrod, a lawyer by training who has worked on economic development for four mayors going back to Ed Koch, wanted to end his tenure on a high note. And by all accounts, he did. The Midtown East rezoning could add up to 6.5 million square feet of new commercial space in the district. And one week after his resignation, the city announced that it had broke a record for the most affordable housing units preserved and created in a single year over the last quarter century: 21,963. Asked about her colleague's accomplishments last month, Alicia Glen, deputy mayor for housing and economic development, called him "the father of the win-win."

Weisbrod's extended role and impact on New York real estate speaks to how more than ever, the arcane realm of planning and zoning is spawning the deals that will be critical to mayoral legacies. Over the past several decades, zoning in the city has increasingly been wielded to rigorously shape economic development, from the creation of residential, commercial and manufacturing districts to the creation of affordable housing and infrastructure.

"The city is really a living and breathing

organism, and it's interesting how zoning acts as both a sword and a shield," Howard Weiss, a land use attorney for Davidoff Hutter & Citron, said. "On the one hand, the way city zoning rules are structured, it can act to protect the existing context of neighborhood. At the same time, it becomes a mechanism for enforcing change."

Case in point: During Michael Bloomberg's 12-year administration, there were roughly 120 rezonings. These included the sweeping redevelopment of the Williamsburg and Long Island City waterfronts, but also many downzonings that were used to curb changes in certain neighborhoods. A 2010 study by New York University's Furman Center found that 23 percent of the 188,000 lots rezoned between 2003 and 2007 were downzoned, 14 percent upzoned and 63 percent whose building capacity was only incrementally changed.

Within large redevelopment areas, the city under Bloomberg used zoning as leverage for public amenities. For example, the 2005 rezoning of Manhattan's Far West Side, which paved the way for Hudson Yards, incorporated an unprecedented in New York City albeit controversial plan known as tax-increment financing. Under the plan, the city issued bonds to finance \$3 billion in infrastructure improvements — the biggest being the No. 7 train extension — that would be paid back by future tax revenues.

"I think if you look at major rezonings that happened under Bloomberg, there

were a host of demands that were made of developers to ensure that there were public improvements that came out of private development," said Seth Pinsky, executive vice president of RXR Realty, who served as the New York City Economic Development Corporation president from 2008 to 2013.

According to many observers, Bill de Blasio has picked up where Bloomberg left off. The city's Planning Commission was unable to provide the exact number of rezonings under the current mayor, but to date, there have been two major rezonings — East New York and One Vanderbilt — that are poised to unleash significant density.

Moreover, incentive zoning, in which developers are given additional density in return for community improvements, has become the administration's primary policy tool to build affordable housing.

Moses Gates, director of community planning and design at the Regional Planning Association, argued that de Blasio's rezonings have been more proactive than his predecessor's, in that they are less of a response to what neighborhoods don't want to see developed and more of a guide for what kinds of projects should be built.

Ultimately, many argue that the key to zoning — as with many economic development policies — is achieving the right balance. And with that, the proof will be in the outcome.

"The key question, which really only time will tell, is if this administration squeezed just the right amount or squeezed too hard," Pinsky said. "You can't really answer that until the development projects happen or don't happen."

Affordable or bust

De Blasio early on made affordable housing a hallmark goal of his administration, pledging to create 80,000 new affordable housing units and preserve another 120,000 by 2024. Toward that end, his administration shepherded the approval of a new zoning tool, that of mandatory inclusionary housing (MIH). Adopted by the City Council last year,

MIH requires developers who benefit from a residential rezoning to set aside a certain percentage of units as affordable.

Coupled with the simultaneous passage of Zoning for Quality and Affordability — a series of zoning text changes, which included allowing buildings with affordable and senior housing to be taller — MIH has been described as the most significant change to the city's zoning code since 1961.

These days, all eyes are on the success of East New York, which last April became the first neighborhood to gain City Council approval for a rezoning under MIH. If all goes as planned, the next two years will result in the groundbreaking of 1,200 "deeply affordable" apartments. Forty percent of the rental units will be designated for families earning \$38,850 or less, while 10 percent will be rented by families making \$23,350 or less.

But as with any economic development tool, MIH, which is used in other parts of the country where rents are high, is not without its critics, who argue that it may demand too much of the private sector.

"It's like Charlie Brown's Christmas tree," said Joseph Rose, who served as Mayor Rudy Giuliani's City Planning, chair during a panel on zoning last month at the Museum of the City of New York. "You can't load too much on it. It can't support the whole planning agenda."

Rose, who now works as a consultant for developers, called MIH "a huge mistake," adding that the requirement to include the affordable units in the same project as the market-rate units — which has led to the construction of so-called "poor doors" in luxury buildings — doesn't make economic sense. In New York, developers who benefit from upzonings in certain areas must now set aside 25 to 30 percent of their new development's residential floor area as permanently affordable. Although the program does include an off-site option, it is treated as an exemption and requires a larger affordable housing contribution.

"We just have to be a little careful that

Milestones in NYC zoning history



1916

NYC introduces the first citywide zoning code

Following the construction of the Equitable Building a year earlier and a chorus of complaints about the blocking of sunlight and air, New York City passed the nation's first citywide zoning code. Although the rules established setback and height limits, they permitted skyscrapers to be built at any height provided that those building sections took up no more than 25 percent of the lot area. The result was a "wedding cake" architectural aesthetic embodied by towers such as the **Verizon Building**.



1938

The city's planning agency is formed

It took more than two decades after the creation of the city's first zoning rules for an agency to be created to oversee them. Mayor James Walker signed a law in 1930 to create the Department of City Planning, but the agency didn't have any actual authority and was dissolved three years later. But his successor, **Mayor Fiorello LaGuardia**, made it his mission to create a planning agency, and under his tenure, the City Planning Commission and Department of City Planning were born.



1961

Zoning gets a 50-year facelift

Officials approved the first major update to the legislation. It included the introduction of floor area ratio (FAR) rules — the ratio of total building floor area to the area of its zoning lot — so that building bulk could be more closely regulated. The city also implemented "incentive zoning," where developers were granted extra floor space for incorporating public amenities in office and residential buildings. Today, public spaces such as the pavilion in the **IBM Building** are by-products of that measure.



1969

Special districts created

The city started designating "special-purpose districts" to encourage specific kinds of development in certain areas. The **Lincoln Square** district was among the first that was created to limit certain kinds of commercial development in order to preserve the area as a hub for the performing arts. In 1982, the Special Midtown District was introduced to shift development to Manhattan's west and south from the overbuilt east side, as well as to protect existing theaters.



1976

Community feedback leads to ULURP

The Uniform Land Use Review Procedure grew out of increased community participation in development in the city in the 1950s and 1960s. ULURP is a seven-month process during which changes or a designation of zoning districts and special permits must be reviewed by Community Boards impacted by the application, the borough president, the City Planning Commission, the City Council and the mayor. Above, a photo of a **Community Board 7 meeting**.



2016

Mandatory inclusionary housing introduced

Mandatory inclusionary housing, the signature policy change under **Mayor Bill de Blasio**, requires a certain percentage of residential development in rezoned areas to be affordable. The first neighborhood to be rezoned under the program was East New York. Prior to MIH, the city offered a volunteer program that allowed developers to receive a density bonus in exchange for either building or preserving affordable housing. But the program suffered from a lack of participation.

we don't scare the development community from building in communities where you want it," Carlo Scissura, president of the New York Building Congress, told *The Real Deal*. "We have to ensure that there's enough for the developer."

The city has acknowledged that the success of a zoning program like MIH depends on other economic factors, namely the return of the state tax abatement program formerly known as 421a (now rebranded Affordable New York by the governor).

Some, like Rose, contend that a program that offers more flexibility to developers would lead to more affordable housing. But the city's prior affordability experiment, which was introduced in the late 1980s and made inclusionary zoning an optional program, was largely ineffective.

On the other side of the spectrum, community activists and urban planners are worried about how rezoning brings on gentrification. "If you're going to be upzoning places, you also have to proactively put in tenant protection to prevent displacement," Gates of the Regional Planning Association said. "Otherwise, the market heats up, speculation happens and then you're chasing the problem."

East New York Council member Inez Barron noted at a Land Use Committee meeting last April that 20 percent of her constituents earn less than \$15,000 and would not be reached by MIH. Plus, she argued, "there is no guarantee that developers will build affordable housing if they don't want those subsidies."

Not surprisingly, as the city moves forward to rezone another 14 neighborhoods

under MIH, it's already hitting some speed bumps. In August, the City Council rejected a private proposal to rezone a square in Inwood. Developers Washington Square Partners and Acadia Realty Trust had pledged to make roughly half of the 335 residential units planned for 4650 Broadway affordable, but residents opposed the project's height and feared it would displace families. Next up, East Harlem is set to begin a public review process this year, but the community board vehemently opposed MIH in 2015.

Even Ron Moelis of L+M Development Partners, one of the city's top affordable housing developers, has acknowledged that considerable discretion needs to go into rezonings.

"There needs to be some sensitivity from the development community as well that not everything should or can be rezoned," Moelis said at a panel in November. "It's time-consuming, it's expensive and it's grueling. There needs to be give and take in all these processes."

Trading for infrastructure

Toward the end of his third and final term in 2013, Bloomberg unveiled a plan for Midtown East that he said would put the aging business district on par with those in London, Tokyo and other international cities. The crux of the rezoning was a proposal to charge developers \$250 for every extra square foot they would build above the neighborhood's zoning limits. The money would be used to fund nearby pedestrian and transit improvements. Critics dubbed the measure "zoning for dollars." After key City Council members opposed it, Bloomberg,

who had hoped it would be the capstone to his mayoral achievements, withdrew the plan before leaving office.

The current plan developed by de Blasio officials to rezone Midtown East expands on the previous template, both in geographic area and in control by specifying the public improvements in the zoning. It will affect 78 blocks — as opposed to 73 blocks under the prior mayor. And in an attempt to hold developers' feet to the fire, certificates of occupancy will not be issued until promised public improvements are completed.

Along those lines, the city has already identified improvements to six subway stations that developers — inside designated transit improvement zones — will need to do if their projects exceed current building standards. For instance, before the top-floor tenants can move into the 1.7 million-square-foot office tower One Vanderbilt, developer SL Green must complete \$220 million worth of public infrastructure improvements, including a new train hall at Grand Central Terminal, a pedestrian plaza on Vanderbilt Avenue and new access points to the Nos. 4, 5, 6 and 7 Subway lines.

Property owners can also purchase from a pool of 3.6 million square feet of air rights from landmarked buildings in the district to build above the existing height and bulk limits. A portion of the proceeds from those sales — 20 percent — will be contributed to a "Public Realm Improvement Fund" for additional infrastructure projects.

"Everyone wants certainty in the development process," said Daniel Garodnick, a City Council member who opposed the Bloomberg rezoning but supports the latest

version. "By putting the public benefits right into the zoning code, we are able to answer these questions upfront."

The rezoning proposal is now making its way through city's Uniform Land Use Review Procedure (ULURP), a seven-month process that will culminate in a vote by the City Council. Early indications suggest the plan has sufficient support to pass. As it did with Bloomberg's plan, REBNY has endorsed the rezoning. Among the features that have pleased developers is the ability to proceed without special permits in many cases.

"It's really been structured to be virtually an as-of-right process," Weiss said. "Rather than leaving it to the vagaries of individual applications, it really, I think, is going to be transformative in what it accomplishes for the area."

Still, the success of the Midtown East rezoning and MIH will rely on developers' actually acting on the opportunities set up by the city as well as the health of the economy. Much of zoning is finding the "right cocktail" of rules that will actually lead to the building envisioned by planners, Garodnick said.

Glen, who previously headed the Urban Investment Group at Goldman Sachs, said she's acutely aware of how far to push developers when it comes to trying to cut a rezoning deal. "It requires a huge amount of analysis to figure out where that tipping point is, because you want to encourage the kinds of buildings that can be in the modern economy and support the kinds of businesses we want to see there," she said. She added: "If we were so crazy, if what we were asking for was so outrageous, then they wouldn't be building buildings." **TRD**