CONTEXTUAL ZONING AS A PRESERVATION PLANNING TOOL IN NEW YORK CITY

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Chapter 1: Introduction

Contextual zoning is a planning tool used to preserve neighborhood character and promote desirable development. It has increasingly been applied to the distinctive historic neighborhoods of New York City to ensure a visual relationship between new development and the surrounding built environment. As a zoning device, this approach is rooted in the domain of urban planning, having been conceived in New York City by the Department of City Planning (DCP) in the 1980s. While historic districts have been the traditional approach to preserving the character of neighborhoods since the 1960s, contextual zoning offers an additional route to the preservation of neighborhood character. The conditions and effects of this strategy remain unstudied and this research seeks to fill that gap through a study of neighborhoods where contextual zoning has been applied in New York City both as an alternative to and in conjunction with historic district regulation. This thesis seeks to answer the following questions: how does contextual zoning currently function as a de facto preservation planning strategy in New York City? Does the broad level preservation it fosters, with its focus more on scale and siting of new buildings rather than integrity of old ones, provide a useful alternate strategy to pursue beyond traditional historic districts? How well does it perform producing new buildings that are visually compatible with existing neighborhood character? In other words, is contextual zoning actually contextual?

Although contextual zoning has been applied broadly across the city in the past decade, historic district designation remains the only codified tool for historic preservation at the neighborhood level. In New York City, the Landmarks Preservation Commission (LPC), a municipal agency established in 1965, designates historic districts. All alterations to existing buildings and new construction within designated districts are subject to design review by the LPC. When new construction occurs, either on vacant or underbuilt lots, its design is judged on a standard of “appropriateness,” a process that has produced both faithfully contextual infill structures in addition to more creative interventions.

Contextual zoning districts regulate the height and bulk of new buildings through requirements related to how the buildings interact with the streetwall and the overall appearance of buildings along the street. The desired outcome is the production of new buildings that are consistent with existing neighborhood character [Figure 1]. Contextual zoning was adopted into the Zoning Resolution in the late 1980s, and its application greatly increased under the Bloomberg administration between 2002-2013, with the first large contextual rezoning of this period implemented in Park Slope in 2003. The rezoning included the existing historic district designated in
the 1970s; it extended by-right contextual building envelopes to much of the neighborhood. Since that time, in neighborhoods where contextual zoning has been mapped the contextual boundaries have closely trailed existing historic districts, often encompassing the historic district as well as the surrounding area.

This thesis will examine four neighborhoods, focused on the rowhouse districts of Brooklyn, where both historic districts and contextual zoning have been applied. The goal of this research is to understand the evolution of these two land use tools in a place-based context and to construct a narrative which discusses the ways in which contextual zoning functions as an alternative preservation strategy, the factors that have contributed to the use of contextual zoning in particular neighborhoods, and perceptions of successful outcomes of contextual zoning. A series of stakeholder interviews with city officials and neighborhood activists to understand the motivations for the application of contextual zoning from both perspectives, as well as a review of city documents and newspaper articles from the time of the rezonings, will form the basis for this narrative. Ultimately, I will draw conclusions about the applicability and appropriateness of contextual zoning as a preservation planning tool.

As historic preservation has matured since its establishment in New York City nearly fifty years ago, preservationists are in need of more nuanced tools that are capable of maintaining neighborhood character while also allowing for change to occur. Contextual zoning is part of the broader development of tools such as neighborhood conservation districts and form-based zoning which encourage growth that has a visual relationship to existing buildings. By tracing the application of contextual zoning in four neighborhoods, this thesis codifies the functions of contextual zoning with respect to historic preservation in New York City, and evaluates the strengths and weaknesses of this approach as compared to the traditional strategy of historic district designation.
Chapter 2: Literature Review

Existing scholarship on New York City’s particular approach to contextual zoning is limited, especially given that it is a fairly recent addition to the Zoning Resolution. The discussion of zoning’s evolution between 1961 and 1991, including the advent of contextual zoning, by Norman Marcus remains the only comprehensive, published account of its development.\(^1\) Scholarship on its application as a preservation planning strategy is non-existent. This is not surprising given that the complementary use of contextual zoning with historic districts remains a relatively recent phenomenon. After contextual zoning was developed in the late 1980s, during the 1990s it was mapped on the Upper East and Upper West sides of Manhattan with the intent of preserving the residential character of the midblocks. By the 2000s, the dual strategy of contextual zoning in addition to historic district designation had crystalized and began to be used widely over the past decade.

Three urban planning master’s theses have focused on elements of contextual zoning. However, none of them have focused on the role that contextual zoning plays in terms of neighborhood preservation goals. In 1984, Dennis Ferris elaborated on the concept of “contextualism” and discussed five theorists who contributed to theories around the subject.\(^2\) In 2009, Karolina Grebowiec-Hall measured development activity and property values in areas adjacent to neighborhoods that had been contextually rezoned to understand whether residents’ perceived threat of displaced development to non-contextually rezoned areas was legitimate.\(^3\) In 2009, Andrew Watanabe investigated the effects of many recent rezonings and, among other outcomes, found that downzonings were usually community-initiated while upzonings tended to be initiated by the city, and that rezonings sometimes acted as a catalyst to rezone adjacent neighborhoods, especially in Queens and the Bronx.\(^4\)

A recent dual historic preservation/urban planning master’s thesis by Max Yeston (2014) explored a related preservation planning tool for the maintenance of neighborhood character known

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as neighborhood conservation districts. They offer an alternative to historic district designation, and Yeston thoroughly assessed the varying typologies, effectiveness, and community response to three neighborhood conservation district ordinances throughout the United States. The tool of neighborhood conservation districts does not exist in New York, but its aim of preserving neighborhood character through design review in combination with zoning controls is comparable with that of contextual zoning. Similarly, the emergence of form-based zoning codes, which have grown out of the New Urbanist approach to neighborhood planning as an alternative to traditional Euclidean zoning, represents a related tool that may offer insights into contextual zoning.

Neighborhood Character

The legislation supporting contextual zoning in New York City specifically fostered the development of multifamily housing that is “compatible with existing neighborhood scale and character.” The concept of neighborhood character as a legitimate goal of the municipal planning agency can be understood as part of the broader movement toward ‘livable cities.’ Many attributes of such cities are typical of historic neighborhoods, meeting criteria outlined by Eric Allison and Lauren Peters such as access to public transportation, walkability, appropriate human scale architecture, traditional neighborhood structure, and attractive communities with a strong sense of place.

While neighborhood character is a goal of both contextual zoning and historic districts, defining what this means in tangible terms is a challenge. Because contextual zoning is limited to the controls of zoning, it seeks to preserve neighborhood character through restrictions related to the building envelope of new construction. The primary features subject to oversight are building height and bulk, lot coverage, setback from the street, and width along street frontage. In theory, this reliance on objective criteria removes discretion from the process, simplifying the permitting process at the Department of Buildings (DOB). The aim is to standardize the process, reducing the concept of neighborhood character to a number of discrete criteria that the building either complies with or not. This is in contrast to the design review process in historic districts, both for new construction

6 “Quality Housing Program General Purposes,” (Zoning Resolution of the City of New York, Article II, Chapter 8, amended 2/2/11), 591.
and alterations to existing buildings, wherein specific features such as materiality and the rhythm of window apertures is debated in detail. The premise is that these details are critical contributors to the overall neighborhood character that is the aim of the district’s preservation.

Scholarship around Strategies for Preserving Neighborhood Character

Local historic districts are the dominant tool for preservation at the neighborhood level. While individual designation can be applied to single buildings of outstanding architectural, historical, or cultural significance, historic districts aim to protect the entirety of a place. Generally, the buildings preserved as part of a historic district would not qualify as landmarks on their own; rather, significance is derived from the combined importance of the entire district, which conveys a special character that is deemed worthy of preservation. As Allison and Peters have noted, the drive to designate historic districts falls somewhere between a desire to maintain a distinct architectural aesthetic and to preserve a “feeling of historical roots.” While each building alone would not qualify as an individual landmark, the sense of place conveyed by the area as a whole is deemed worthy of preservation. Allison defined buildings with a distinct sense of place as being able to “take residents and visitors back to a different era even though they are still being productively used as homes and offices.”

New construction in historic districts, whether new infill buildings or alterations to existing historic structures, is subject to design review based on a standard of appropriateness. According to Steven Semes in his book *The Future of the Past: A Conservation Ethic for Architecture, Urbanism, and Historic Preservation*, the evaluation of appropriateness in the context of historic buildings can either be framed as the “search for an appropriate response to the conflicting claims of continuity and change applied to a built environment,” or framed along the “spectrum of alternatives between differentiation from, and compatibility with, the preexisting context.” Although this process may offer the most complete, truest preservation of neighborhood character in terms of the built environment, the process is often divorced from the broader city planning goals with which it may be at odds. As law student Adam Lovelady noted in an article for *The Urban Lawyer*, historic preservation will benefit from inclusion in the local planning process and integration into the local

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8 Allison and Peters, 47.
9 Ibid., 49.
zoning code.\textsuperscript{11} Preservation has gradually adopted other tools to maintain neighborhood character, including easements to protect facades and view-sheds, zoning overlay districts, and conservation districts, and these are necessary tools to complement historic districts.\textsuperscript{12}

Others echoed the sentiment that the gap between protective historic districts and zoning policies that encourage redevelopment of existing historic structures needs to be filled by additional planning tools that offer a more streamlined approach to the maintenance of neighborhood character.\textsuperscript{13} In a volume titled \textit{The Rules that Shape Urban Form}, Elliott, Goebel, and Meadows wrote:

> Despite the success of the preservation movement, the standard toolbox may be inadequate to meet current challenges. In a time of shrinking budgets, local officials may be reluctant to designate new historic districts that are seen as expensive and labor-intensive to administer…short-staffed planning departments will need new tools that allow protection of increasing numbers of resources yet do not require the labor-intensive approaches typical of traditional preservation ordinances.\textsuperscript{14}

They promoted the use of form-based codes which, like contextual zoning, “offer a possible new approach to protecting neighborhood character and aesthetics by emphasizing context-based development standards that can be administered mostly by professional planning staff.”\textsuperscript{15} Form-based zoning is an outgrowth of New Urbanist approaches first articulated in the town-planning and urban design of Seaside, Florida in 1982.\textsuperscript{16} Such zoning codes rely on illustrated ordinances to produce prescribed urban forms that often tend toward “traditional” architectural styles. Unlike standard Euclidean zoning, form-based codes are more concerned with regulating urban form than land use. Allison and Peters linked form-based codes directly to contextual zoning, describing the zoning approach as a light version of form-based zoning which is “less concerned with the shape of the building envelope than it is with streetwalls and setbacks. It is, though, concerned with the appearance of the street and the maintenance of an existing rhythm.”\textsuperscript{17}

Both Morris and Allison and Peters positioned contextual zoning, along with related approaches like neighborhood conservation districts and form-based zoning codes, as a strategy to

\textsuperscript{11} Adam Lovelady, “Broadened Notions of Historic Preservation and the Role of Neighborhood Conservation Districts,” \textit{The Urban Lawyer} 40, no. 11 (2008): 152.
\textsuperscript{12} Lovelady, 150.
\textsuperscript{15} Ibid.
\textsuperscript{16} Allison and Peters, 91.
\textsuperscript{17} Ibid., 93.
align preservation and planning goals. In *Innovative Tools for Historic Preservation*, Morris explained how older, distinctive neighborhoods are prone to redevelopment that undermines neighborhood character. New residents and businesses are attracted to the neighborhood and seek to benefit (either through the pleasure they derive from living there or through business opportunities). This creates active rehabilitation and reinvestment in historic structures that invites incompatible development, not only in terms of basic design elements, but also because the economics of the real estate market dictate that new construction should be denser than existing structures, to the extent that the zoning allows.\(^\text{18}\) By altering the zoning of the area to make the maximum allowable density more similar to the surrounding context, the economic incentive for out-of-scale, incompatible development is removed. Morris noted that such downzonings and historic preservation laws are rarely subject to legal “takings” claims because they do not eliminate all economically viable use of the property; they allow new development, as long as it is compatible with the density and historic character of the area.\(^\text{19}\)

Writing in 1992, Morris specifically noted the development of contextual zoning in New York City as an example of downzoning as a tool to preserve neighborhood character. She positioned its emergence as part of a movement by residents and neighborhood groups calling for limits on incompatible development that was occurring in historic neighborhoods across the city. Citizen pressure on the planning department led to generic contextual zoning districts being adopted into the zoning resolution which sought to encourage development that was “contextual… but not cookie cutter.”\(^\text{20}\) At the time of Morris’ writing, these districts had yet to be mapped, so the effects on neighborhoods could not be seen. Although form-based codes had not yet come into vogue at the time, she discussed neighborhood conservation districts extensively as another method through which to preserve neighborhood character.

Writing in 2011, Allison and Peters took a similar approach in *Historic Preservation and the Livable City*, beginning with the persistent view held by many planners that historic preservation is a niche field, concerned only with old buildings while ignoring larger concerns about the healthy growth and economic sustenance of the city.\(^\text{21}\) This view persists, they claimed, despite the recognition of historic preservation as a legitimate interest of the federal and local government and

\(^{18}\) Morris, 25.

\(^{19}\) Ibid., 26.

\(^{20}\) Ibid., 29.

\(^{21}\) Allison and Peters, 88.
the demonstrated role that cultural resources play in the concept of the livable city.\textsuperscript{22} The authors attributed this disconnect to the lingering origins of both fields, wherein “planning is seen as enabling change while preservation is seen as seeking to prevent change.”\textsuperscript{23} Despite this divide, the authors described several planning tools, including neighborhood conservation districts and form-based zoning, whose goals are “very close in effect to what historic preservation is intended to do.”\textsuperscript{24}

Clark presented research on the applicability of neighborhood conservation districts to New York City using examples from across the country to argue that the “ongoing erosion of neighborhood character is a planning problem, not a landmarks preservation issue.”\textsuperscript{25} She went on to describe a variety of approaches to maintaining community character and physical appearance of the built environment in cities large and small, and demonstrated how they are relevant locally. Clark concluded with a call to action.

Our goal should be compiling a plan for both conservation and development in each of the five boroughs… This plan has to balance the competing realities of a growing and changing population with conserving built fabric while also enabling, even reinforcing, the very dynamism that is New York City’s core… Shouldn’t New York City aspire to be a leader, bringing the best practices from elsewhere into focus and adapting them to our needs?\textsuperscript{26}

Contextual zoning represents another planning tool, in concert with neighborhood conservation districts and form-based zoning, which demonstrates that zoning can be used to preserve neighborhood character and promote desirable development. Currently contextual zoning is the only one of these tools established in New York, and while the preservation effects of neighborhood conservation districts and, to a lesser extent form-based zoning, have been established, the effects on neighborhood character of contextual zoning in New York remain unstudied. This research seeks to fill that gap by proposing a methodology and evaluating effects on neighborhood character in select neighborhoods where contextual zoning has been applied, both as an alternative and supplement to historic district regulation.

\textsuperscript{22} Ibid., 89.
\textsuperscript{23} Ibid.
\textsuperscript{24} Ibid., 90.
\textsuperscript{26} Ibid.
Chapter 3: Research Design

This research primarily involved stakeholder interviews focused on the application of contextual zoning in a series of neighborhoods in order to understand the evolution of this planning device from its development as a tool to stimulate housing production to its frequent use as a preservation planning strategy. Case study neighborhoods in Brooklyn with a focus on Park Slope, Carroll Gardens, Fort Greene/Clinton Hill, and Bedford-Stuyvesant provided a way to focus the research by comparing four neighborhoods of similar architectural quality. These neighborhoods are representative of “Brownstone Brooklyn” and have undergone similar land use actions taken by the City. Each neighborhood illuminated a different aspect of contextual zoning, and together constituted a broad look at how contextual zoning is being used today.

In each case, a historic district was designated in the 1970s or 1980s followed by more expansive mapping of contextual districts particularly within the past ten years during the tenure of Amanda Burden as head of the DCP. The first large contextual rezoning during this wave of rezonings took place in Park Slope in 2003, making it a logical starting point for this research. Carroll Gardens and Fort Greene/Clinton Hill subsequently followed a similar pattern and are comparable to Park Slope in terms of neighborhood character and distinct sense of place. The neighborhood of Bedford-Stuyvesant has also undergone similar land use patterns; this will provide a comparison in a more socio-economically diverse neighborhood than those already under consideration.

The research comprised the construction of a narrative that describes recent land use actions in each of the neighborhoods with the goal of understanding the political context in which contextual districts were applied in relation to existing historic districts, and the goals and motivations of those seeking contextual districts. This information was elicited through interviews with key informants which took place between January and April 2015. Before interviews took place, the research proposal was reviewed by the Columbia University Institutional Review Board and approved on December 17, 2014.

Informants were categorized into two groups: neighborhood insiders and citywide experts. Neighborhood insiders included leaders of community groups who initiated (or opposed) the rezoning, while experts included current and former staff at the Brooklyn office of the DCP, veteran urban planners, practicing architects, and preservationists. For each of the four neighborhoods, I

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27 I refer to the adjacent neighborhoods of Fort Greene and Clinton Hill as a single entity because they were rezoned together.
interviewed one member of a community group and one representative from the local Community Board for a total of seven neighborhood interviews (Carroll Gardens and Park Slope are located in the same Community District). I also interviewed six additional experts in planning and preservation in New York City. Additional informal conversations with other experts helped to shape and guide my research.

Informants were selected for their knowledge of contextual zoning in particular neighborhoods and for their expertise with contextual zoning in general. In accordance with Institutional Review Board procedures informants were briefed on the project and notified that their participation in the study was voluntary. All interviews were conducted in person, recorded, and transcribed. After the interviews, interview findings were arranged into themes to answer the research questions. A selection of sample interview questions follows.

Questions for Neighborhood Insiders:

- What were the conditions that led you to advocate for contextual zoning in your neighborhood?
- What did you hope contextual zoning would achieve? Do you feel it has been successful?
- Who opposed the contextual zoning and why?
- How do you define this neighborhood’s character? What elements of neighborhood character are important to your conception of the neighborhood?
- What role did neighborhood character play?
- In your opinion, how does contextual zoning compare with historic district designation in preserving neighborhood character? Is one preferable to the other? Do they serve different purposes or the same? How have these two tools complemented each other (or not) in this neighborhood?

Questions for Citywide Experts:

- Do you have any thoughts about how contextual zoning compares with historic district designation in preserving neighborhood character? Is one preferable? Different purposes or the same?
- Ostensibly, historic districts and contextual zoning have similar goals to preserve or maintain “neighborhood character.” Do you think that means the same thing from preservation vs. planning perspective?
- One of the main things that contextual zoning controls is the scale of new buildings. Can you talk about the importance of scale within the factors that make up neighborhood character? If the scale of a neighborhood is maintained, is that a success?
- Why do you think it has caught on as a tool that neighborhoods are advocating for?
• Do you think we need a tool that offers a different approach than historic districts? What might such a tool look like? Tiered historic districts? Buffer zones? Neighborhood conservation districts? Design review?
• Do you see issues with the way that contextual zoning functions and what do you see as possible solutions? What might a mechanism that requires architects to consider actual context look like? Is context important in your view?
• Do you feel there is potential for greater use of contextual zoning as a preservation planning strategy? Why or why not?

The final task of this project was to organize findings from the research process to develop conclusions about the appropriateness of contextual zoning as a preservation planning tool in New York City.
Chapter 4: Background

The two dominant governmental land use strategies that regulate urban form in New York City are historic districts, stemming from the power of the city’s Landmarks Law, and contextual zoning, which originates in the Zoning Resolution. Both are applied in areas that possess a unique urban character and where the community or the city is interested in preserving aspects of the built form including scale, building envelope, and materiality. Together, these qualities define the concept of neighborhood character, the aim of preservation efforts of both historic district designations and contextual zoning. An explanation of the history and scope of each tool follows.

Historic Districts

Historic districts in New York City are designated pursuant to the local landmarks law, established in 1965. Since that time, the LPC has designated 131 historic districts and extensions and over 1,300 individual landmarks, a total of over 31,000 buildings.\(^28\) With the notable exception of the city’s sweeping first historic district, Brooklyn Heights in 1965, early members of the Commission tended to designate small, exemplary portions of neighborhoods.\(^29\) For example, the original Park Slope Historic District, designated in 1973, mainly protected the blocks closest to Prospect Park, despite architecture of comparable quality just beyond the boundaries of the district.

Historic districts provide a high level of protection for the existing built fabric. Alterations are subject to the approval of the LPC. Depending on the scale of the intervention, smaller projects, which will have no effect on the overall appearance of the building, are reviewed internally by the LPC staff, which issues a Certificate of No Effect. Larger projects must be presented at a public hearing before the Commission to seek a Certificate of Appropriateness. The standard of “appropriateness” is largely subjective, both a benefit and a challenge for the Commission, and allows each decision to be made on a case-by-case basis. This permits interpretation on the part of the Commissioners, but also leaves the agency open to criticism that the process is too discretionary and thus unpredictable and prone to bias. In the case of new buildings in historic districts, which do not occur often but are possible when there is a vacant or underbuilt lot in the district, the Commission has the broad power to judge what is appropriate based on the context while respecting the constraints dictated by zoning. The outcomes of these decisions are dependent on the quality of


\(^{29}\) Simeon Bankoff, personal interview with author, March 13, 2015.
the project and the positions taken by Commissioners serving at the time. Although the LPC is concerned with aesthetics, the “special character” of historic districts contributes to their status as “distinct section[s] of the city,” a distinction which reaches beyond the sole value of an area’s architecture. Unlike individual landmarks, which derive significance from their value as a single building, historic districts derive significance from the cohesive character found there.

Contextual Zoning

Contextual zoning is also concerned with neighborhood character, but rather than focusing on the preservation of extant buildings, it regulates new construction by ensuring that new buildings are compatible with the existing context. The adoption of contextual zoning into the New York City Zoning Resolution in 1987 followed years of experimentation with ways to encourage new buildings that related to the surrounding physical context. The comprehensive revision to the Zoning Resolution in 1961 was a major step forward in bringing the city’s zoning up to date, but it quickly became clear that its goals were at odds with the existing scale and character of residential neighborhoods. The 1961 Zoning Resolution drew strongly on the European modernist ideals of urban planning and encouraged superblocks and “tower in the park” style developments, which proved incompatible with entrenched building patterns in New York City. One of the underlying principles of the 1961 revision was to provide more open space in residential and commercial districts while allowing for absolute increases in density. Over time this goal was supplanted by a concern for existing conditions as former General Counsel to the City Planning Commission (CPC), Norman Marcus, has noted. This was reflected in the creation of the local landmarks law, special zoning rules to protect loft buildings and natural areas, and new special and generic zoning districts that “responded more directly to the city’s physical context.”

In many ways the 1961 zoning revision and the simultaneous urban renewal program had similar goals—the development of large lots and large redevelopments. Although this worked for large lots, the zoning prototype that held the greatest market value for new infill development on smaller lots within established neighborhoods did not match the existing built fabric in those

31 Marcus, 62.
33 Marcus, 62.
34 Ibid., 66.
neighborhoods.\textsuperscript{35} The 1965 establishment of the LPC and its power to designate historic districts (and regulate development within those districts) was a significant step in protecting neighborhood character by preserving “examples of the very buildings that the 1961 zoning revision did not favor.”\textsuperscript{36}

Special Districts

In 1967, the CPC implemented the first Special District in Times Square to maintain the character of the Theatre District without limiting the construction of new high-rise towers that were replacing two- and three-story theaters in the area. The Special Theatre District offered density bonuses to developers in exchange for the construction of theaters as part of larger high-rise projects. The Marriott Marquis and Theatre was constructed under this program. The rules of the Special District were applied as an overlay to the existing commercial zoning, with the goal of ensuring the continuation of the use that gave the area its special character. The Special Theatre District was the first zoning amendment post-1961 that “explicitly sought to promote contextualism” and was also “the first attempt to use zoning to recapture the value of private development in order to further the city’s social agenda.”\textsuperscript{37}

The Special District tool was quickly applied to many distinctive areas of the city such as Lincoln Square (1969) and Little Italy (1977).\textsuperscript{38} The DCP crafted individualized regulations for each Special District based on the unique goals for each district; regulations could include mandated height, setback, streetwall, yards, and uses, and sometimes requirements for color, materials, signs, recesses, courtyards, development right transfer, transit easements and other conditions.\textsuperscript{39} The goals of discretionary Special Districts were varied but generally adhered to three tracks: conservation of traditional physical fabric of neighborhoods “through the reiteration of the conventions which created that fabric,” the modeling of new design norms to which “adherence could be evaluated,” and “negotiation of new conventions” through a public design review process.\textsuperscript{40} By the 1980s, over

\textsuperscript{35} Ibid., 72.
\textsuperscript{36} Ibid., 67.
\textsuperscript{37} Ibid., 74.
\textsuperscript{38} Ibid., 75.
\textsuperscript{39} Ibid., 77.
forty special districts had been designated.\textsuperscript{41} The use of Special Districts in combination with Special Permits represented a shift away from as-of-right development and toward discretionary regulation of development, which soon became unmanageable for the DCP because of the lengthy administrative and public review process they entailed.\textsuperscript{42} However, what the Special Districts and Special Permits did accomplish was to allow for development that fell outside the prescriptive as-of-right zoning which was biased toward a single physical prototype.\textsuperscript{43} In the public review process involving negotiation between the public and private sectors, the CPC had moved “from legislating cultural values (civic design) into the more problematic and abstract arena of legislating beauty (architectural design).”\textsuperscript{44} Not only the did Special Districts function as separate Zoning Resolutions for different parts of the city, creating a difficult administrative issue for the DCP and DOB, but the discretionary shift challenged the agency’s understanding of its mission.

**Housing Quality Zoning**

As a response, there was an interest in exploring other methods of regulating development that would be more accountable and predictable in the range of building types that could be produced. Rather than create more Special Purpose Districts to allow for specific building types in specific locations, the approach taken by the city was to experiment with ways to add to the Zoning Resolution to incorporate “sufficient flexibility to accomplish local purposes.”\textsuperscript{45} The first predecessor to today’s contextual zoning, the Housing Quality program was developed by the Mayor’s Urban Design Council in 1974 and adopted by the Board of Estimate in 1976. It was premised on the idea that

\begin{quote}
Zoning cannot successfully predetermine the appropriate building form or building type in the abstract but is contingent on a variety of factors including site size and configuration, orientation, context, building program, building technology, and architectural design values.
\end{quote}

Although it was only available through a discretionary special permit rather than the as-of-right contextual system that currently exists, the underlying notion that ideal building form is not absolute and should be based in part on contextual conditions is similar to the goal of maintaining

\begin{itemize}
\item[41] Marcus, 77.
\item[45] “Housing Quality: A Program for Zoning Reform,” 7.
\end{itemize}
neighborhood character through contextual zoning. This idea was in direct contrast to the prescriptive, typological approach of the 1961 Zoning Resolution. Housing Quality was a performance system meant to achieve the highest “standard of quality, consistent with economic feasibility, for residential construction” in New York City and to be a tool both for the design and evaluation of residential development.\footnote{Housing Quality: A Program for Zoning Reform, 7.}

In developing the Housing Quality program, members of the Urban Design Council surveyed the built environment in all five boroughs to identify the elements that contributed to high quality residential structures. These were condensed into 26 elements constituting housing quality that were measured using a weighted point system, grouped into four categories: neighborhood impact, recreation space, security and safety, and building interior [Appendix 2: Housing Quality Scoring System]. The maximum FAR was the same as as-of-right height factor zoning. In order to qualify for the Housing Quality Special Permit (and be entitled to the maximum FAR), the building design had to earn a minimum of 85 points from among the 26 elements, out of 100 total points. Each element was weighted based on its importance, and partial points could be provided for partial compliance. A perfect score of 100 was not possible because some of the program elements were conflicting, but a minimum of 15 out of 25 possible points in each category was required.\footnote{City Planning Commission, “Zoning for Housing Quality,” New York City Planning Commission, September 1975, 11.}

In this way, an 85 point building represented a high quality building once the “design tradeoffs have been considered and balanced against each other.”\footnote{Department of City Planning, “Guide to Housing Quality Provisions,” New York City Department of City Planning, date unknown, 7.} Within each of the four categories, building elements were framed as goals rather than minimum requirements, and balancing these elements against each other using the formula would result in a buildings of high quality that were adapted to their context.

The neighborhood impact category has the most relevance to the later development of contextual zoning. Together, the six elements of off-site sunlight, street wall length, ground floor activity, street wall height, building height, and street trees were intended to “insure continuity” between existing buildings and new structures.\footnote{“Zoning for Housing Quality,” 12.} The implicit message was neighborhoods should not be “torn apart by assertive, insensitive structures…by tying the height of new apartment building to that of surrounding buildings, this program opens the way for gradual and non-disruptive
transitions.”

Michael Kwartler, an architect and urban planner who helped to craft Housing Quality zoning explained the process.

“The initial part of Housing Quality zoning was an urban design analysis… We said take a look at what’s around you. Context is THE context in which you are working. You would look at median streetwall height and there would be a range around it because that would tell you the variation in streetwall heights along the block. Same thing with building heights. And a lot of it was based on perception – the street district, which is how you experience something – the buildings on both sides of street rather than the block, which is how most planners look at it. We looked at it from a perceptual point of view, which is also how the LPC looks at things as well. You do the analysis and then you have a lot of ways you could respond. Architectural programs are complex and there is a lot of push and pull and you make decisions along the way. There is always more than one right answer.”

Ultimately, a watered-down version of this trickled into the current contextual zoning program, albeit in a much more prescriptive way which has been a criticism of architects. The Housing Quality program, while innovative, also frustrated architects who viewed it as too cumbersome. The fact that it was only available through a Special Permit, which increased the uncertainty of the process and increased the cost, also contributed to its infrequent use. In the roughly eleven years it was available, only around half a dozen buildings utilized the program.

Quality Housing Zoning

The Housing Quality special permit was replaced by the as-of-right Quality Housing program in 1987, which “further entrenched contextual building design.” Kwartler explained:

“There was an interest to make Housing Quality zoning as-of-right and that’s how Quality Housing came about. So what they did was they took a performance system and turned it into a menu, of which the neighborhood impact portion of it ended up being the Quality Housing form-based regulation with no performance anymore.”

Like Housing Quality, Quality Housing was intended to spur the construction of high quality residential buildings but to do so in a way that would actually produce more housing. In its first iteration, developers could opt to construct a Quality Housing building anywhere in the city. Each medium- and high-density zoning district (R6-R10) had a “Quality Housing” counterpart which encouraged contextual design; in many cases, the combination of increased FAR and higher lot

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51 Ibid.
52 Michael Kwartler, personal interview with author, January 22, 2015.
53 Kwartler, interview.
54 Marcus, 82.
55 Kwartler, interview.
coverage could allow for more apartments than under height factor regulations, even with additional restrictions on building height. The Quality Housing regulations also retained loose elements of the Housing Quality program by encouraging amenities like recreation space and laundry rooms by allowing them to be deducted from FAR calculations.

New generic contextual districts were also developed as counterparts for every medium- and high-density zoning district and these began to be mapped across the city. In these districts, identified by an A, B, or X suffix, the Quality Housing program was mandatory. Richard Barth, former Executive Director of the City Planning Department explained the creation of the new zoning districts.

> It all happened together. When the text amendment was adopted [in 1987], it both created the rules and it created the contextual zoning districts…. The Department made a commitment to begin to map these districts throughout the city. The idea was that you weren’t going to map all these districts at once, so… the rules were written to allow optional Quality Housing building at the same time that mimicked the contextual districts… So if you were in an R6 district you could build either R6 Height Factor or R6 Quality Housing.\(^{56}\)

Finally, there was a way to build contextual development that was as-of-right, rather than requiring lengthy and expensive special permits or special district zoning. Increased demand for new residential construction during the 1980s also put more development pressure on neighborhoods, which led to additional pressure for contextual zoning districts to be mapped according to neighborhood demand and city goals.\(^{57}\)

Some of the first areas of the city to be mapped with contextual zoning were the residential mid-blocks of the Upper West and Upper East sides of Manhattan, which took place in the mid-1980s even before the contextual zoning regulations were formally adopted by the city. The 1984 rezoning of the Upper West Side, for example, divided the area from 59th to 86th Street and Central Park West to the Hudson River into four parts: high-density avenues and streets, lower-density avenues, mid-blocks, and the Lincoln Square area. The new zoning treated each area differently with the overall goal to “keep the Upper West Side looking like the Upper West Side.”\(^{58}\) The basic form of the early contextual rezonings was based on elements of the Housing Quality special permit

\(^{56}\) Richard Barth, personal interview with author, Feb. 3, 2015.

\(^{57}\) Marcus, 80.

program, and they were mapped only in high-density areas like the East and West sides of Manhattan where “development budgets [were] large enough to make the process cost effective.”

Contextual Zoning

Today, there are twenty generic contextual districts, mapped in neighborhoods like the Far West Village in Manhattan and Park Slope in Brooklyn that correspond to the standard array of zoning districts available in residential areas [Appendix 3: Table of Zoning Districts]. Contextual zones “correct mismatches between zoning and the built fabric and provide balanced opportunities to reinvest in neighborhoods” while ensuring that future development will “be more sensitive to the built fabric… of established neighborhoods.” When development capacity is limited in residential areas, often mid-block, areas that can handle increased density with minimal environmental or other external effects, often along wide thoroughfares or proximate to public transit, must also be identified for targeted growth.

By far the most common change in the zoning in “Brownstone Brooklyn” neighborhoods is from R6, which was the standard zoning district mapped outside of Manhattan according to the 1961 Zoning Resolution, to R6B [Figure 2]. R6 allowed for a maximum FAR of 2.43 which could accommodate a 13-story building. Buildings designed under R6 are typically set back from the street and surrounded by open space and on-site parking. Due to the open space ratio in height factor zoning districts, buildings cover a small portion of the lot, which means that they are taller. There is no firm height limit, but buildings cannot exceed the sky exposure plane, which in R6 districts begins at a height of 60 feet from the front lot line. In R6B contextual districts, maximum FAR is 2.0, with maximum lot coverage of 80% on corner lots and 60% on interior lots. Base height must be within a range of 30-40 feet, while maximum building height (after a setback) is 50 feet. Parking is

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61 Ibid.
required for 50% of dwelling units. To maintain the streetscape, curb cuts are prohibited on lots less than 40 feet wide and open areas between the streetwall and the front lot line must be landscaped.\textsuperscript{63}

Unlike historic districts, which are subject to design review by the LPC, contextual zones regulate the design of new construction in broad strokes through requirements largely related to the building envelope and the location of the building on the lot. Although contextual zoning has become a commonly used tool for preservation over the past decade, it is critical to remember its primary origins as a zoning device designed to encourage housing development by allowing for greater lot coverage buildings. Michael Kwartler described the original intent of contextual zoning, “It was intended to do infill housing. That was the intent. It just reversed the formula. Before [under 1961 zoning] you could only cover 20\% of the lot, now you can cover 60-70\% of the lot so it made a lot of the lots buildable.”\textsuperscript{64} He went on to describe the way that contextual zoning “has become a kind of property by neighborhood groups and they see it as a way to stop development.”\textsuperscript{65} This evolution, from an infill housing strategy to a neighborhood preservation approach, is a unique facet of contextual zoning. After experimentation with its use alongside historic district designation on the mid-blocks of the Upper West Side in the 1980s, the frequent use of contextual zoning as a complementary preservation strategy crystalized with the rezoning of Park Slope in 2003, the first of a wave of rezonings which took place across the city over the next ten years.

\textsuperscript{64} Kwartler, interview.
\textsuperscript{65} Ibid.
Chapter 5: Park Slope

Case Study Neighborhoods

The four case study neighborhoods—Park Slope, Fort Greene/Clinton Hill, Carroll Gardens, and Bedford-Stuyvesant—were chosen because they each illustrate a different aspect of the way contextual zoning has been used in combination with formal historic preservation controls. Prior to the application of contextual zoning, each neighborhood had an existing historic district designated in either the 1970s or 1980s. These districts varied in the relative proportion of the neighborhood protected by landmark designation. Although some contextual zoning was applied to small swaths of Brooklyn neighborhoods including Prospect Heights and the northern part of Park Slope north of Union Street in the 1990s, the 2003 rezoning of Park Slope set in motion the trend of broad contextual rezonings in the neighborhoods that collectively comprise “Brownstone Brooklyn.” The sections that follow discuss the trajectory of land use actions that took place in each of these neighborhoods, beginning with the designation of historic districts followed by the later adoption of contextual zoning, efforts to expand existing historic districts, and the outcomes in each case.

Park Slope

Park Slope was the first neighborhood subject to the wave of rezonings initiated by the Bloomberg administration. A historic district had been designated in 1973. Like many historic districts of this era, the district was relatively limited, focused on the most exclusive blocks adjacent to Prospect Park [Figure 3]. The Park Slope Civic Council, an advocate for quality of life issues in the neighborhood since its founding in 1896, had long promoted designation of a local historic district.66 After organizing against urban renewal in the neighborhood in the 1950s and 1960s, the group spearheaded the effort to obtain historic district designation in the neighborhood in the 1970s, conducting block-by-block surveys and petitioning the LPC to designate a district covering the entire area from Sixth Avenue to Prospect Park West, from Park Place south to 10th Street.67 By the end of the process, the LPC chose to designate a much more modest, L-shaped district that concentrated on the blocks between Prospect Park West and Eighth Avenue.

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The district failed to include most of Seventh Avenue, a main commercial corridor. The Historic Districts Council has suggested that this omission reflected the Commission’s early reluctance to designate, and subsequently regulate, commercial buildings in primarily residential areas. Because the LPC’s purview does not extend to use, the regulation of commercial structures must be carried out judiciously. When one business replaces another, the role of the LPC to regulate changes to the exterior is complicated because the agency lacks the ability to regulate use; exterior changes on commercial buildings often include signs and other marketing tools which were thought to go beyond the agency’s ability to regulate.

Over the years, the Commission has developed methods of dealing with these issues but in 1972, just seven years after the creation of the agency and the enactment of the Landmarks Law in New York, there was a prudent sense of caution. The restraint exercised by the Commission in its early years as a result of fear to challenges of the Landmarks Law is well documented. The choice to designate only a small portion of Park Slope, when much of the neighborhood exhibited buildings of similar integrity and character, is an example of the LPC’s attitude during this period. This omission left the door open for future advocacy efforts to extend landmark protection to a broader swath of the neighborhood.

While fulfilling the mandate of the agency to protect architecturally significant portions of the city, the designation of the district was designed to address other issues as well. The 1970s were a period of urban crisis in New York, with many neighborhoods including Park Slope experiencing disinvestment and the loss of longtime residents. A current member of the Park Slope Civic Council recalled the atmosphere of the neighborhood.

The designation was addressing a very different set of circumstances from what we’re dealing with now. There wasn’t overdevelopment back then. There was redlining and conversion of properties to SROs. [The neighborhood] was a place that people were running away from rather than running to. The historic district being created at that time was a way of giving an adrenaline boost to neighborhood.

The idea that the historic district was a conscious intervention to affect the trajectory of the neighborhood is supported by the designation report which describes “ill-conceived improvements” to buildings in the district such as the removal of stoops and cornices and addition of roof parapets within the past decade as a “cause for alarm.” Such alterations create “jarring notes in otherwise harmonious rows of houses” and “almost always result in an erosion of [the] quality [of the

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68 Ibid.
69 Peter Bray, personal interview with author, January 14, 2015.
Designation of the district was thus intended to “strengthen the community by preventing this needless loss,” and encourage the nascent brownstone restoration movement taking place in other rowhouse neighborhoods of the city. In addition to restoring actual buildings, the presence of the wave of incoming renovators was thought to “create a stable family community… to insure both the physical and social character of the neighborhood.” The designation of the historic district, despite its limited boundaries, supported the burgeoning rebirth of the neighborhood.

In the 1990s when the city was first pursuing the mapping of generic contextual districts, a small portion at the northern end of the neighborhood was contextually rezoned [Figure 4]. This triangular area roughly bounded by Flatbush Avenue to the north, Eighth Avenue to the east, Union Street to the south, and Fourth Avenue to the west overlapped with the northern part of the jagged-edged historic district but carried the contextual zones out to the boundaries of this area. In the pattern that became typical of contextual rezoning, more restrictive zoning districts, mostly R6B with some R7B closer to the park, were used on the east-west mid-blocks which were mainly residential in character, while the wider north-south streets and Flatbush Avenue were mapped for slightly more density but still within the contextual envelope. The 1993 rezoning was an early use of contextual zoning, but the frequency and breadth of its application increased significantly after the 2003 rezoning of Park Slope.

According to the district manager of Community Board 6, there had been a “steady and consistent push” to extend the contextual zoning to more of the neighborhood following the 1993 action. Residents saw the height limit, uniform streetwall controls, and prohibition on curb cuts that were essential elements of contextual zoning as a way to preserve important components of the urban design of Park Slope. Residents, acting through the community board, were unsuccessful in convincing the Giuliani administration (1994-2001) to pursue a more extensive rezoning, but changing economic conditions toward the end of his term in 2001 began to alter development dynamics in the neighborhood. The real estate market shot up dramatically which in turn intensified development pressure in Park Slope. As it became economically profitable to demolish existing buildings and replace them with taller buildings that capitalized on available development rights afforded by the generous 1961 zoning still in place, neighborhood activists were unhappy with the

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71 Ibid.
72 Ibid.
73 Craig Hammerman, personal interview with author, January 23, 2015.
“growing distortion of the built form” that was taking place. New buildings perceived as out-of-scale with the surrounding context provided a catalyst for a renewed push for more expansive contextual zoning. Working under the Bloomberg administration (2002-2013), the newly appointed chair of the CPC and director of the DCP Amanda Burden recognized the importance of preserving neighborhood character in communities like Park Slope where the existing built form of the neighborhood was a key element drawing newcomers. Two years into what the New York Times was already calling the “downzoning uprising” taking place in the city, Burden described the rationale.

Because of confidence in the city, investment in housing and growth in population, we are finding neighborhoods where there's a real mismatch between the ability to build and the character of the neighborhood… That's where communities have come to us, in every single borough, saying, “Protect our neighborhood.” …If you allow the character of a neighborhood to be eroded, the people who live in that neighborhood will leave the city… We can't allow that to happen.

Adding to the desire to protect the brownstone character of Park Slope was the strong feeling of leading planners in the department that the Fourth Avenue corridor at the western edge of the neighborhood offered an enormous opportunity for growth. In 2003 low-scale commercial establishments, including a concentration of auto-oriented businesses, dominated the avenue while a subway line ran below ground. Regina Myer, who directed the Brooklyn office of DCP at the time during the time of the rezoning, explained.

The exciting part about Park Slope is that we all really believed that Fourth Avenue had this tremendous amount of housing capacity. And with the R train, we were all very eager to add capacity in the Park Slope neighborhood because it’s a great place to live… in a location that had superb transit, superb retail, and a superb park system three or four blocks away.

Increasing residential capacity through upzoning Fourth Avenue and balancing this room for growth with controlled building envelopes in the heart of the neighborhood proved essential to the contextual zoning formula. Myer, herself a resident of Park Slope, stated “the community was comfortable with the 12-story mode on Fourth Avenue but understood that there was a tradeoff in preserving the remainder of the blocks.” The fact that leading staff at the DCP central office, several of whom also lived in the neighborhood, “always really cared about that stretch [of Fourth Avenue] and understood the capacity,” that the community was asking for contextual zoning, the
train and pedestrian capacity, and the fact that other obvious neighborhoods like Brooklyn Heights were already “totally landmarked” meant that there were “a lot of nice catalysts that came together” to allow Park Slope to rise to the top of the queue for rezoning action.\(^78\)

The rezoning passed in 2003 covered a broad area that encompassed the heart of the neighborhood, generally bounded by Union Street to the north, Prospect Park West to the east, 15th Street to the South, and Third and Fourth Avenues to the west. This covered the rest of the historic district, the northern end of which had been previously rezoned. Prior to the rezoning, almost the entire area retained its 1961 R6 mapping [Figure 5]. The goals for the rezoning were stated as follows:

> The goals of the Park Slope zoning map amendments are to preserve the scale of this historic brownstone neighborhood and provide opportunities for expanded residential and commercial development on Fourth Avenue. The proposed zoning would…preserve the scale and character of the residential side streets and neighborhood commercial streets…[and] would provide opportunities for additional housing construction in the neighborhood by increasing the permitted density on Fourth Avenue.\(^79\)

Adopted by the CPC in January 2003, the rezoning mapped most of the neighborhood with R6B districts, with a section of R7B on blocks close to the park, and R6A on the commercial corridors of Third, Fifth, and Seventh Avenues [Figure 6]. These more restrictive contextual districts were balanced by upzoning Fourth Avenue to R8A. By allowing for greater density and therefore larger buildings, the upzoning was intended introduce a new scale and character in terms of new construction to the corridor. It quickly became clear that the upzoning of Fourth Avenue represented a blunder by DCP because it failed to include requirements that new buildings contain active ground floor uses. However, according to the CB6 district manager, the positive momentum around protecting the built form in the rest of the neighborhood (and adjacent fear around further distortion of the built form) led residents to not fully consider the potential negative impact of the Fourth Avenue upzoning until after its effects became apparent.\(^80\)

Although residents in the heart of Park Slope may not have closely followed the zoning proposed for Fourth Avenue, it was the subject of great debate among housing activists. Those who spoke out on the issue included then-Council Member Bill de Blasio and Brad Lander, at the time the director of the Fifth Avenue Committee. They pushed strongly that the corridor be mapped for

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\(^78\) Ibid.


\(^80\) Hammerman, interview.
inclusionary housing to spur the construction of much-needed affordable housing in the district. At the time, DCP’s use of optional inclusionary housing had produced underbuilt properties because developers tended not to use the extra bulk bonus and avoided building affordable housing.81 Wanting to avoid the neighborhood as “guinea pigs for that kind of zoning experiment,” the community board negotiated with DCP to not have it mapped on Fourth Avenue.82 Myer recalled that the Department “just could not come to a consensus on how to do inclusionary housing in that district with HPD, which was not satisfying to de Blasio… and also not satisfying for us.”83 She went on to say, “We did have the ability to evolve in our thinking on inclusionary housing subsequently in Greenpoint/Williamsburg and other rezonings. Park Slope happened to have been first.”84 An outcome of inclusionary housing not being mapped on Fourth Avenue has been that a rash of blocky luxury residential buildings have been developed on the corridor, which serve as another example of the city’s exacerbated affordable housing crisis.

There was another contentious issue with the way Fourth Avenue was mapped. As previously noted, it was significantly upzoned to allow for buildings of greater bulk and establish an entirely new context for the corridor. However, no requirements for the ground floor uses were put in place. This quickly resulted in large new buildings that were bland and inactive at the street level, often with parking garages, blank walls, and vents at the pedestrian level. As more new buildings were constructed that were unfriendly to pedestrians were built, DCP realized that corrective action was needed. The Park Slope Civic Council took the lead on advocating for change, beginning with a 2010 forum on the future of Fourth Avenue in which a DCP representative agreed that the current zoning was not functioning well.85 In 2011, a Special Enhanced Commercial District overlay was adopted for Fourth Avenue, which implemented street level urban design controls for the corridor.

Once the allowable bulk of the neighborhood was protected, activists narrowed their focus to historic district expansion since the contextual zoning lacked the design oversight afforded by historic district protection. As in the 1970s, the Park Slope Civic Council took the lead on pushing for expansion of the historic district, this time with a phased approach for subsequent expansions which they presented to the LPC. By working directly with the Commission as well as initiating an

81 Ibid.
82 Ibid.
83 Myer, interview.
84 Ibid.
85 Bray, interview.
involved public awareness campaign in the neighborhood, the Civic Council, and its Historic District Committee particularly, gained traction with the LPC.

Beginning in 2007 the Civic Council led the advocacy for expanding the historic district. This followed years of internal debate within the organization about whether it should be a priority. A combination of active opposition to the expansion of the district by influential members, especially architects, and a lack of term limits for Council officers meant that progressive voices looking to lead the expansion effort fell on deaf ears. After term limits were established, which allowed obstructionist members to ‘term out’ of office, and new leadership put in place, the Council began to lay the groundwork for support of an expanded historic district. The Council made an initial proposal for a phased expansion plan to the LPC around 2000, to no effect. After the Council launched the Historic District Committee in 2007, it approached the LPC again with a more strategic expansion plan in 2008. A committee member explained, “Our phasing is more political. We don’t want to concede right off the bat to the LPC that we’re willing to forgo certain areas, certain blocks. They are like a black box; you don’t know what goes on inside.”

With the second expansion plan, there was a realization that a sustained focus on the part of the organization would be necessary for the LPC to respond positively. With the opinion that the LPC “doesn’t take much initiative unless you hound them,” the Civic Council actively worked to “make it impossible for the LPC to say ‘no.’” This involved “taking away all of their excuses – showing our support, showing the support of homeowners in the neighborhood, doing the research, funding the survey work, and bringing in a little political muscle so the agency has to acknowledge that ‘yes, the area is landmark worthy and yes, we are committed to working with you on these phases.’”

The full master plan adopted by the Civic Council sought to expand the historic district from Prospect Park west to Fifth Avenue and to fill in some of the missing pieces at the northern end of the neighborhood bordering Flatbush Avenue, and extend it to 15th Street at the southern end [Figures 7 and 8]. With the exception of Third and Fourth Avenues, this proposal had a similar footprint to the area that had been contextually rezoned in 2003. Through concentrated advocacy, the Civic Council has been successful in their efforts with the LPC. Phase 1, designated as the first expansion in 2012, extended historic district protection to the South Slope blocks between Seventh

86 Ibid.
87 Ibid.
88 Ibid.
89 Ibid.
and Eighth Avenues, from Seventh Street to 15th Street [Figure 9]. Phase 2 is pending designation; if designated, it would extend the northern end of the district to adjacent blocks loosely bordering Flatbush Avenue [Figure 10].90 (In LPC parlance, this district was ‘calendared’ in September 2013, meaning that it was presented at a public hearing but no vote took place.) Phases 3 and 4 concentrate on the Center Slope, while Phase 5 fills in the southern Center Slope blocks. Although no formal action by the LPC has taken place in these three later phases, the agency did support an initial Civic Council-funded survey effort in Phase 3 in summer 2015 which found a high degree of integrity in those blocks.91 Given the stalled progress in moving forward with the proposed expansions under the new leadership at the LPC, the Civic Council is concerned that the momentum of success may be slowing to a halt. However, despite the lack of headway on historic district expansion in Park Slope, there is consensus within the community that the additional layer of protection from the contextual zoning has been helpful.

Although the contextual zoning controls only the building envelope and does not impact a building’s aesthetic characteristics, its application created a precedent for the historic district expansion. The district manager of Community Board 6 explained.

I don’t think the historic district expansion would have taken place as easily had it not been for the contextual rezoning paving the way… Even though they were completely different sets of agencies working on it, I think DCP set the tone by establishing the building envelope governance and LPC added their piece onto that seeing that this was something that was important to the city of New York from a policy perspective.92

From his perspective, the two tools complement each other; one is needed to control for density, and the other takes care of subjective aesthetic concerns, and the two work hand-in-hand to achieve a balance. While Civic Council advocates agree that contextual zoning can supplement preservation by removing development threats, there is a stronger opinion that contextual zoning is inadequate by itself. With the exception of Fourth Avenue, the current chair of the Historic Districts Committee of the Civic Council confirms that contextual zoning has been valuable for the neighborhood, especially because a significant portion of it remains outside the historic district. Despite lack of formal preservation protection, the zoning has successfully “shunted development away from the side streets to Fourth Avenue… but by no means does it ensure that developments are contextual in appearance and materials. For the most part [they] still see a lot of really bad

91 The author was hired by Park Slope Civic Council to complete this project.
92 Hammerman, interview.
The motivation of developers to build as cheaply as possible without regard for the neighborhood’s context results in areas of Park Slope in which appearance is “pockmarked.” While contextual zoning is necessary because of the way it shifts the economics to decrease the likelihood of teardowns and anti-contextual additions, it is insufficient in preserving neighborhood character. Bray suggested that if contextual zoning were relied upon in Park Slope, the neighborhood would look radically different in ten to twenty years and that much of the meritorious architecture that currently contributes to its distinct sense of place would be lost.

The question of regulation of neighborhood character illuminated some of its inherent tensions. Bray put it as follows.

There’s no question that this fuzzy notion of character plays a big part in why people want to live in the neighborhood and why being in a historic district in particular has an appeal to them. The appeal isn’t necessarily that I’m subject to restrictions on what I can do with my exterior. It’s the fact that the person who buys the house next to me is subject to restrictions so that I don’t have to look out at some really abysmal piece of architecture. So it’s protecting me. That’s not the civic-minded type of owner that we would prefer… but if for no other reason having historic district controls means that everyone is subject to the same level of controls, I happen to think it’s a good thing.

While contextual zoning also subjects everyone to the same level of controls, its administration by the DOB (and inherent lack of a discretionary process where details would be debated through public review) results in buildings that are guaranteed to meet the envelope criteria but may be aesthetically acontextual. It is beyond the DOB’s purview and skillset to consider issues related to aesthetics, so the result is certainty about building form and little else.

However, there is a fine line in terms of urban design and aesthetic issues in historic districts. Current preservation philosophy would frown upon a design that simply imitates elements of historic buildings; rather, new buildings should differentiate themselves as clearly new buildings. The best examples will add value to the streetscape through the interplay between old and new. Ultimately, because design is inherently subjective it is impossible to legislate design without a discretionary process; this is both a strength and weakness of the landmarks process in New York. As the CB6 District Manager put it, there is more art than science behind historic preservation, and in contrast there is more science than art behind contextual zoning.

93 Bray, interview.
94 Ibid.
95 Ibid.
While the entire neighborhood is protected by some measure of contextual zoning in Park Slope, the ultimate goal on the part of preservationists is to pair that tool with historic districts for the strongest protection of the neighborhood. The results of that pursuit, and what it will mean in terms of the neighborhood’s growth in the future, remain to be seen. From an urban design and quality of life standpoint, there may be consequences of the largely static medium-density heart of Park Slope which is sharply contrasted with the growing canyon of residential development on Fourth Avenue. The lack of mapping for inclusionary housing on Fourth Ave represents a missed opportunity to stimulate necessary affordable housing in the neighborhood. However, by capitalizing on the opportunities for development on the corridor, the DCP was able to create a balanced plan for growth in the neighborhood while maintaining the characteristic sense of place in much of the neighborhood. This pattern became typical of the way that contextual zoning would be applied in subsequent Brooklyn neighborhoods.
Chapter 6: Carroll Gardens

The contextual zoning in Park Slope in 2003 catalyzed other Brooklyn neighborhoods of similar density and architectural character to begin working toward rezonings that would similarly protect existing built character in the face of rising development pressure. The community of Carroll Gardens, located to the west of the Park Slope and the Gowanus Canal which divides the neighborhoods, successfully advocated for contextual rezoning but has been less effective in extending historic district designation. The Carroll Gardens Historic District, designated in 1973, is a small area relative to the size of the neighborhood. DCP defines the neighborhood as an 86 block area roughly bounded by the Gowanus Expressway to the south, Columbia Street to the west, DeGraw and Warren Streets to the north, and Bond Street to the east [Figure 11]. In contrast, the diminutive historic district encompasses only the two blocks of President and Carroll Streets between Smith and Hoyt Streets, as well as the western ends of the two blocks between President and First Streets [Figure 12]. It contains 160 buildings, the equivalent of two very long city blocks. Like Park Slope, at the time of designation the neighborhood was on the cusp of the “Brownstone Movement.” The area had only recently adopted the name Carroll Gardens and until the mid-1960s was considered part of Red Hook.

One of the character-defining features of the neighborhood is the deep front yards, or gardens, behind which sit three- and four-story rowhouses. Ranging from 25-39 feet in depth, the deep front yards are a “fine expression of rational urban planning,” the result of an early surveyor in 1846 on the “Place” blocks (First Place, Second Place, Third Place and Fourth Place) and many of the “Street” blocks between Smith and Hoyt (Union, President, Carroll, and Second). The rows of houses set back behind deep gardens characterize the neighborhood and display “an awareness of the values of open space, a remarkable degree of architectural unity and a quiet dignity.”

The recent push for land use action in Carroll Gardens began with a zoning text amendment, passed in 2008, which changed the categorization of several streets (including all of the “Place” blocks) from ‘wide’ to ‘narrow’ streets for zoning purposes. In certain zoning districts, allowable height and density is calculated based on the width of the street, with tighter restrictions

97 Ibid.
98 Carroll Gardens Historic District Designation Report, 2.
99 Ibid.
on narrower streets. Although not a full contextual rezoning, this was a first step in adjusting the local land use policy in favor of the existing built character.

One of the neighborhood groups which advocated for the zoning text amendment was the Carroll Gardens Neighborhood Association (CGNA). The group was founded in 1990 with the help of the local police precinct to address crime in the neighborhood, but its focus has expanded over the years to the health and safety of the entire neighborhood.\textsuperscript{100} A member of the group framed the effort to eliminate the zoning anomaly in response to out-of-scale construction that was beginning to show up in the neighborhood, including a “particularly egregious” building at 11 Second Place between Clinton and Henry Streets.\textsuperscript{101}

The DCP defines narrow streets as those less than 75 feet wide.\textsuperscript{102} Because the distinctive front yards on many of the “Place” blocks had been included in the calculation of street width, these streets were officially mapped with widths of 100 to 130 feet and therefore classified as wide streets for zoning purposes. However, the total width of sidewalks and roadways on these streets is approximately 50 feet, meaning that they look like and function as narrow streets.\textsuperscript{103} Wide streets have looser allowable building envelopes than narrow streets. Under the existing R6 zoning at the time, the maximum residential floor area ratio was 2.43, but buildings on wide streets developed using the optional Quality Housing Program could have an FAR of up to 3.0 with a maximum heights of 70 feet. These loose parameters allowed the construction of 11 Second Place, which is clearly out of character within the neighborhood [Figure 13]. Although the building is in line with the existing streetwall, it rises to six stories in a row of mainly intact three- and four-story rowhouses. Its flat facade lacks the dynamism of the surrounding buildings which derive visual interest from their three-dimensional ornamentation. The large scale and high proportion of glass on the facade make it look like a misplaced office building in an otherwise cohesive row.

A CGNA member recalled that there was huge community support for the text amendment because residents could clearly see the negative effects of this zoning anomaly. “As compared to landmarking, people were much more willing to accept contextual zoning if it meant that they

\textsuperscript{101} John Hatheway, personal interview with author, January 8, 2015.

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wouldn’t have a behemoth right next door to them.”  

Once DCP was receptive to the community’s request for the zoning amendment, CGNA began to organize a similar campaign for Carroll Gardens.

The early rezoning of Park Slope also effectively paved the way for the subsequent mapping of contextual zoning in other brownstone neighborhoods. The district manager of the community board described the Park Slope effect.

We started to hear the same complaints from Carroll Gardens about the distorted built form that was evolving, or devolving, as a result of real estate pressures. Everybody pointed to Park Slope and said, “Well, if you’re going to rezone there you should rezone here—we have similar circumstances that need to be addressed.”

Although in retrospect the Carroll Gardens zoning text amendment and contextual zoning could be framed as a coordinated effort to gain successively stronger protection favoring neighborhood character, this was not the case. Rather, the decision to work toward contextual zoning was an attempt to capitalize on the momentum of the successful text amendment of 2008. It was also representative of the tendency for community groups to go from one crisis to the next, rather than having a plan of future projects. This is typical of small, volunteer-based organizations and reflects the need for such groups to quickly change course depending on current and shifting priorities and threats.

I’d like to think that we were so precise about our planning but I think we were really trying to address the crises at any given moment. Once we closed this loophole with respect to the wide streets, we realized that it was actually possible to get something done in this city, so then we said, “Ok, let’s go for the contextual zoning.” What really inspired us to push on the contextual zoning was we realized that curing the “Place” block problems was only part of the problem.

The goal in organizing for a contextual zoning was to prevent out-of-scale development not only within a select number blocks, but in the neighborhood as a whole. The argument made by CGNA was that the neighborhood was cohesive, without a large number of intrusions or “missing teeth,” and it possessed qualities which the contextual zoning would encourage by pushing developers to keep new buildings better scaled to the neighborhood. To raise community awareness of the issues, CGNA held public meetings that highlighted areas that were at risk for overdevelopment under the existing zoning which had been in place since 1961.

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104 Hatheway, interview.
105 Hammerman, interview.
106 Hatheway, interview.
107 Ibid.
One site that was the “major impetus” for contextual rezoning was the International Longshoremen’s Association site at 340 Court Street. The existing building was a mid-century white brick medical facility set behind a plaza that had been bought and used by Long Island College Hospital. Although it interrupted the flow of Court Street, its demolition in 2008 and the prospect of a major new building allowable under pre-2009 zoning sparked fear in the neighborhood. As renderings of the new building circulated throughout the neighborhood and were perceived as incompatible with the existing character of Court Street, this created an incentive to push for the certainty in scale and bulk of new buildings that contextual zoning would provide. The new development at 340 Court Street was set to be a seven-story mixed-use building containing ground floor retail and 32 condominium units, as well as 11 four-story townhouses to either side on Sackett and Union Streets [Figure 14].

The sense of fear around possible overdevelopment as a result of permissive existing zoning and the attitudes of some residents about large new projects were summarized by a member of the Union-Sackett Block Association as quoted in the Daily News. “This is probably the largest building project in Carroll Gardens in the last 30 years…There's nothing like that here. This is a bastardization of brownstone architecture.”108 The building was under construction at the time of the rezoning but was determined to have a vested right in a Board of Standards and Appeals case; it was ‘grandfathered’ and construction was allowed to proceed despite its lack of compliance with the new zoning.109 The resulting building occupies the entire frontage of the Court Street block, lacking the variety of surrounding block fronts which contain multiple smaller buildings. Although it is significantly bulkier than its surroundings, design details like the cement panels, which were altered to be a brownstone color, and the setback of the two upper floors help the building to assimilate into the neighborhood. A CGNA member agrees that the building “turned out ok,” although it is not what he and other residents would have preferred.110

After CGNA and other active groups gained the support of the community board, the request for a contextual rezoning study was made to the DCP. Unlike the Park Slope rezoning, which became a priority of the administration and therefore progressed swiftly, the process was

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110 Hatheway, interview.
much slower for Carroll Gardens. According to the district manager of CB6, there were two main contributing factors to this. One was that Carroll Gardens lacked areas available for designation for increased development to balance the tighter controls in the core of the neighborhood; in Carroll Gardens there was no equivalent to Fourth Avenue available which was perceived as a blank slate for development. The other factor was that, by the mid-2000s, DCP had mapped contextual zoning in several neighborhoods and many more wanted similar treatment. There was a queue of neighborhoods waiting for contextual zoning. Without a clear area to act as a release valve for development, to balance tighter contextual controls in other areas, Carroll Gardens was not prioritized by the administration.  

The fact that there was opposition within the community to the rezoning also contributed to the slower pace. More so than in Park Slope, some residents of Carroll Gardens viewed contextual zoning as a taking from property owners because of the way it would limit the developable bulk of their properties. As the district manager noted, “There was no clear-cut effort to tie this to a future historic preservation push because they were really caught in the debate over whether contextual was in fact a good thing or not.” Ultimately, most of the community felt that the zoning would protect them, with a small portion of neighborhood property owners objecting to the decreased property values as a result of limited development rights. None of those opposed to the rezoning spoke at the CPC hearing and the contextual zoning in Carroll Gardens was approved in 2009. The goals of the rezoning were articulated as follows:  

The rezoning responds to community concerns about recent out-of-scale development permitted under the current zoning by mapping contextual districts with height limits throughout the rezoning area which would preserve the existing built character. It would allow for new development and modest expansions at a height and scale that is in keeping with the existing context. The rezoning would support and promote the local, vibrant retail corridors while protecting the residential character of nearby side streets.  

The area was rezoned almost entirely R6B (78% of the rezoned area), including the small existing historic district [Figure 15]. Certain retail corridors, concentrated along Court, Clinton, and Columbia Streets, were zoned as R6A which allows for slightly greater density than R6B. Commercial overlays were also applied to some of these R6A districts. Notably, the Smith Street

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111 Hammerman, interview.  
112 Ibid.  
113 Hatheway, interview.  
commercial corridor was mapped with a commercial overlay but the more restrictive R6B zoning, suggesting a conclusion that the strength of the aesthetic coherence of the area trumped the need for increased density. There were no areas specifically designated for higher density future growth, as occurred on Fourth Avenue in Park Slope.

Interestingly, a discussion of expanded historic district protection arose at the CPC hearing for the rezoning. This was a contrast to the experience in Park Slope where the issue of historic district expansion was initiated by the Civic Council several years later. Preceding the CPC hearing for Carroll Gardens, the Borough President issued a statement requesting LPC evaluation of two properties (234 President Street and 240 Union Street) for individual landmark designation. The Borough President’s statement also made a request that the neighborhood be considered as a historic district with priority placed on the areas to be zoned as R6A. The statement concluded that if these two efforts to expand landmark protection to two individual sites and a historic district were unsuccessful, another mechanism should be implemented to limit height of buildings to 50 feet (perhaps by changing these areas from R6A to R6B).\(^{115}\) Some speakers at the CPC hearing, including a representative of the local City Councilmember and a community resident, echoed the Borough President’s requests.\(^{116}\) Many others voiced concerns that reflected the same issue—the maximum building height of 70 feet in R6A zones was too tall, and that would produce out-of-scale buildings; speakers proposed changing specific areas of R6A to R6B zoning.\(^{117}\)

The Commission’s consideration of these issues did not address the requests for LPC evaluation. In response to the contested R6A zones, the CPC noted that R6A designation was selected because it best fit the bulk, height, and setbacks of a majority of existing buildings in these areas. Most of the buildings in the proposed R6A zones have street walls between 45-60 feet high. Designating these areas as R6B zones (which have a maximum streetwall height of 40 feet) would render many of these buildings non-complying.\(^{118}\) The CPC report also emphasized that the zoning proposal was developed through a “fully participatory process” in collaboration with the community board and community groups.\(^{119}\)

Despite the request of the Borough President, no immediate action was taken on expanding the historic district. CGNA turned its focus toward expansion of the historic district after the

\(^{116}\) Ibid., 17.
\(^{117}\) Ibid., 16.
\(^{118}\) Ibid., 18.
\(^{119}\) Ibid., 17.
contextual zoning was passed, but it has not gained as much traction with the LPC as did Park Slope. Around 2011 CGNA began to formulate priorities for an expanded historic district. Working within the same footprint as the rezoning area, CGNA identified nine study areas or “potential landmark zones.” For each area, members took photographs which were keyed to maps and developed descriptions of the architecture and overall integrity of each area. A variety of potential boundaries for an expanded historic district were also developed [Figure 16]. The most expansive of these proposals encompassed 1,642 buildings and all of the study areas. The smallest proposal would protect just 93 buildings along the Smith Street corridor north of the existing historic district. The array of proposed boundaries illustrates priority landmark areas for CGNA.

When CGNA presented this proposal to the LPC, the response was lukewarm. They were polite but not enthusiastic. They said they had other things on their plate but would take a look at it. Since it was getting toward the end of Bloomberg's term, they weren’t particularly motivated to satisfy the community politically. We did get them to come out and walk the neighborhood and then they gave us… the most pitiful analysis. They said too many houses had been altered for this to be a viable historic district… they were particularly dismissive of the “Place” blocks.

While the CGNA member reasoned that the LPC was politically unmotivated to satisfy the community given the approaching end of the mayoral term, he also suggested that the LPC did not take their request seriously.

They were really just trying to get us out of their hair as opposed to a serious analysis and understanding, by their own criteria, that this neighborhood had everything they look for, particularly in the “Place” blocks related to the urban design plan.

An additional factor compounding the LPC’s unwillingness to pursue an expanded historic district in Carroll Gardens was a lack of broad community support. The district manager of the community board supported this perspective.

There’s been a fairly steady push from the Carroll Gardens community to expand the historic district…[but] I think the neighborhood may be a bit more divided over whether that’s a preferential policy direction to go in. We heard much more debate in Carroll Gardens over the sense of an uncertainty about expanding the historic district. There are more people of the mindset who don’t want those kinds of restrictions on their properties. So without a clear-cut consensus and organized push forward the way Park Slope had done, and with so many other neighborhoods asking for historic districts, LPC just simply hasn’t made Carroll Gardens a priority.

120 Hatheway, interview.
121 Ibid.
122 Ibid.
123 Hammerman, interview.
As in the effort to achieve contextual zoning in the neighborhood, the effort to expand the historic district in Carroll Gardens was adversely affected by lack of broad community support.

The difference in perceptions of the CGNA member and the community board district manager is also notable. While the CGNA member, a local resident, attributed the LPC’s unwillingness to act on the historic district expansion to a combination of its lack of interest politically and a poor analysis of the area’s architectural quality, the district manager viewed the LPC’s decision to defer further research of the area as being primarily motivated by the lack of community support. The CGNA member agreed.

We faced much stiffer community resistance to landmarking, so that is also maybe why LPC didn’t feel any need to push it. Park Slope was really active and organized. If there were people who didn’t agree, somehow they were stifled or they were a clear minority. In Carroll Gardens it was a 50/50 thing.\(^\text{124}\)

This is consistent with the generally understood policy of the LPC not to designate without community backing. Local support ensures compliance with LPC regulations, which makes enforcement much easier. In reality, the reason for the LPC’s lack of action in Carroll Gardens is probably a combination of the above factors, with the lack of community consensus just a contributing element. Despite substantial alterations on some blocks, the district manager reported that the LPC relayed to the community that they, “do believe in the concept of what they’re asking for, so they have given them reason to be hopeful, but there’s no timeline or horizon they are working with.”\(^\text{125}\)

While preservation activists in the neighborhood have been frustrated by the lack of progress in expanding the historic district protection to more of Carroll Gardens, there is an acknowledgement that the subject of landmarks strikes a negative chord with some members of the community.

I think contextual zoning is a really good thing because a lot of people are a turned off by landmarks as a subjective analysis of what’s right. They look at the LPC as a bunch of people who think they are all so special because they know how everything should look. And the nice thing about contextual zoning is it’s just the law. You have these buildings, and they have to conform to this shape. It actually promotes a lot of what the LPC is trying to promote. It doesn’t go as far, but I think scale is one of the most important things in a historic district.\(^\text{126}\)

\(^{124}\) Hatheway, interview.
\(^{125}\) Hammerman, interview.
\(^{126}\) Hatheway, interview.
While the subjectivity of aesthetics and the discretionary nature of the historic preservation regulatory framework can provoke criticism from property rights enthusiasts, the fact that contextual zoning eliminates these aspects of personal taste is framed here as an advantage. (Alternately, one could view it as a watered down version of the discretionary process of design review which reduces complex aesthetic issues to quantifiable measures which can be checked off by bureaucrats.) The quality of contextual zoning as “the law” is more palatable partly because it is limited in what it can regulate. Although historic preservation is also “the law,” the subjective nature of aesthetic regulation can be a divisive issue. “So many people say, I don’t want Landmarks telling me what I have to do with my windows. It’s always the windows. They’re going to make me put in these wood windows that cost three times as much the aluminum windows.”

CGNA and neighborhood activists still want expanded historic district protection in the community, but collective energy has waned since the new administration in 2014. There is also a feeling that while there is no substitute for a historic district in terms of the level of protection it provides, the contextual zoning is “keeping things at bay” by discouraging teardowns. Renovations and small expansions still occur, but they are required to fit within the contextual building envelope. “The contextual rezoning put a bit of a damper on new construction in the neighborhood and quite frankly, that was part of our goal. Not that we were anti-development, but we wanted any development to be good development.”

The community board representative affirmed the position of many community members:

We have these super active communities that have these wonderfully active civic groups that are, by and large, the frontlines. They are the sentinels. When they catch wind of a new building design, they are all over it. They want to know what it’s going to look like, they want to talk to the people designing it and they want to have input, whether or not they have a formal role to play. They want it nonetheless.

Within this context the district manager cited “design pressure” to conform within an otherwise cohesive row. While people may disagree about the aesthetic quality of proposed new buildings, they will be contextual in terms of scale, at least. Even absent a broad historic district, architectural qualities may be meted out in what the district manager referred to as the informal historic preservation setting, which take place within the land use committee of the community board.

127 Ibid.
128 Ibid.
129 Ibid.
130 Hammerman, interview.
The combined effect of the contextual zoning which limits the scale of new buildings and the zealous community which weighs in on the designs of new buildings has lessened the immediacy of the campaign for an expanded historic district. One CGNA member said they feel “not quite so anxious” about the historic district because of the contextual zoning. He went on to say that contextual zoning “does serve an important goal in maintaining the scale of the neighborhood. And I think scale is the most important aspect of neighborhood context. And so I think the contextual zoning does a pretty good job at that.”

He reemphasized, however, that there is no substitute for a historic district. If scale truly is a major determinant of neighborhood character, contextual zoning is succeeding in Carroll Gardens. The fact that it takes the subjectivity out of the process is a strength in that it guarantees that new buildings will fit within a given envelope, and there is value in such certainty. However, one consequence of uniform envelope requirements is that room for creativity is compromised.

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131 Hatheway, interview.
Chapter 7: Fort Greene and Clinton Hill

The rezoning of Fort Greene and Clinton Hill took place in 2007 after years of advocacy that were initially led by community groups, especially the Fort Greene Association (FGA) and the Society for Clinton Hill, and later supported by Community Board 2 (CB2). There are two significant differences between this rezoning and that of Park Slope and Carroll Gardens. In these neighborhoods, approximately half of the rezoned blocks were already designated as historic districts. Both the Fort Greene Historic District designated in 1978 and the Clinton Hill Historic District designated in 1981 encompassed the medium-scale residential core of each neighborhood, and guaranteed design oversight by the LPC for alterations or new construction on every lot within the boundaries of the respective districts [Figures 17 and 18]. With this detailed neighborhood protection already in place, it is curious that community activists felt that an additional layer of security was needed through contextual rezoning. The other difference in this case of rezoning is that it mapped certain corridors with inclusionary zoning to promote the production of affordable housing in the area. Inclusionary zoning had been discussed in Park Slope in 2003, and it was later mapped in the Greenpoint-Williamsburg rezoning in 2005, but its use in Fort Greene and Clinton Hill was one of the earliest uses of inclusionary housing paired with a rezoning that was primarily contextual in nature.

As with the Civic Council in Park Slope, the lead advocate for the contextual rezoning in Fort Greene and Clinton Hill was the FGA, the same group who had spearheaded initial efforts for a historic district in the 1970s. There had been a longstanding interest in expanding the boundaries of the earlier historic districts almost since the time of their designation, but a new wave of interest in both expanding the districts and in achieving contextual zoning for the neighborhood began in 2003 amid increasing development pressure. As with Carroll Gardens, the perceived negative effects of one building in particular served as a catalyst.

Located on a previously vacant lot just outside the boundaries of the Fort Greene Historic District, 383 Carlton Avenue also known as the Green House Condominiums, at the corner of Carlton and Greene Avenues, unwittingly became the rallying point for contextual zoning in the neighborhood [Figure 19]. Ground broke for the new building in the spring of 2003, but residents in the surrounding area were opposed to it as soon as they saw the renderings for the glass and

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132 Although Fort Greene and Clinton Hill are two adjacent neighborhoods in Brooklyn with separate historic districts and distinct histories, they were rezoned together and will be referred to together for the purposes of this discussion.
aluminum 11-story, 27-unit luxury condominium. The building occupied a long-vacant lot which had been an eyesore to the neighborhood, and in this context a new building that would bring life to this street corner could have been viewed as an improvement. Instead, residents objected to the building outright. They opposed not only the building’s height and modern aesthetic which differed from the typical brownstone character, but residents also imbued it with a symbolism of the negative course of change to come in the neighborhood. The chair of the FGA at the time described the pervasive anxiety of residents in response to the Greene House.

When I became the chair of FGA, it was about how to get [contextual zoning] to happen as quickly as possible because development pressure was huge. This was before the Barclay’s Center but there was talk of it, and there was fear about more buildings like the Greene House. That was the catalyst… People equated the building with a can of Coor’s Light and that really lit a fire under everybody both here in Fort Greene and Clinton Hill.133

Residents framed Greene House as a stimulus for negative changes in the neighborhood. They worried that the condo signaled the “Manhattanization” of Fort Greene and feared that it would attract upscale commuters who would “sleep in Fort Greene but work, socialize, and spend their money in the city.”134 A new community group, the Carlton Avenue Steering Committee, was organized by FGA leaders and longtime residents specifically to oppose the condo building. Their strategies included a letter writing campaign to the DOB, organized protests at the construction site, numerous calls to the city’s 311 hotline, and drafting a series of alternate plans that they presented to the developers. Ultimately, because the building was located within the existing R6 zoning in place since 1961, it was built as-of-right and required no special permits or oversight from the DOB. The developers did respond to community requests to rework the facade to be somewhat more contextual with the neighborhood, but did not yield on the overall height and bulk of the building to which residents objected.135

Although contextual zoning had already been an internal priority for the FGA, the momentum created by opposition to the Greene House spurred the movement along. The unfolding of public opposition to the project also provided a way to gain support within the community for contextual zoning as a mechanism to gain more control over the neighborhood. The

133 Philip Kellogg, personal interview with author, Jan. 15, 2015.
135 Pikul, “There Goes the Neighborhood.”
district manager of CB2 described the way that Greene House motivated the community. “People were like, this is what we like about Fort Greene and things that do not conform to that conception should be stopped.” To capitalize on this momentum, FGA leaders initiated a survey project to support their request for a contextual zoning study.

It was a visual survey of every building in the potential study area for the rezoning. Normally City Planning does that but the neighbors thought it could take years… They got the tax maps and 10-20 people would gather for breakfast and then go out and survey. It was great community building. We collected basic information you could see from the street—type of building, number of stories, materials, etc. That kick-started the process.

After the survey efforts were complete, FGA presented to the CB2 Land Use committee, which made a recommendation to ask DCP to study the neighborhood for rezoning, which was ratified by the full community board. In both Park Slope and Carroll Gardens the contextual zoning preceded serious efforts to expand historic districts and was framed as a distinct land use strategy apart from preservation goals. However, in Fort Greene and Clinton Hill there was more of a sense that contextual zoning could be used to substitute formal historic preservation (i.e. historic districts) due to its lack of political feasibility at the time. The district manager of CB2 verified this.

It wasn’t the core area that was already landmarked, but these things around the perimeter that the FGA wanted to get more control over… Both FGA and Society for Clinton Hill have wanted to expand the historic districts. LPC has not been open to that… so using contextual zoning as a way to have more control over what happened outside the historic district is potentially a complement. We would have preferred to just landmark more stuff. But LPC doesn’t see the merit. Or hasn’t yet.

While efforts to achieve contextual zoning in the neighborhood were conceived as an alternate approach to established yet unattainable preservation strategies, the FGA further capitalized on the momentum against the Greene House project by initiating a campaign to expand the historic districts around the same time. Since the designation of the Fort Greene Historic District in 1978, the FGA had believed the district was incomplete. They held that the LPC should have designated a contiguous historic district between the “ragged” Fort Greene Historic District and what was designated as the “small disparate” Brooklyn Academy of Music Historic District,

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137 Kellogg, interview.
138 Perris, interview.
which was designated the same day. In 2003 the current chair of FGA and longtime preservation advocate Howard Pitsch pitched this idea to CB2, and in 2005 the FGA Historic District Extension Committee was formed. The committee hired Andrew Dolkart to compile a report to substantiate the architectural quality and significance of the entire area, which was submitted to the LPC in 2007. Although the LPC agreed to study some of the proposed areas for possible expansion of a historic district, the FGA objected to specific areas that had been excluded from consideration, and no further action took place.

Once CB2 made the formal request for a rezoning study to DCP, the process progressed quickly despite initial communication misfires between community activists and the Brooklyn office of DCP. In this situation, CB2 stepped in as an intermediary between the community and DCP. The DCP has more work than they can do, so they pick and choose. If they start a rezoning study and the community people keep changing the terms of their request, or they start acting out toward agency staff, it’s not that hard to explain why they start spending much more time on some other project… So I needed to get involved just because the thing was going to die on the vine.

In this case, the ability of the community board to act as a neutral third party served an important role throughout the rezoning process. Because the community board has a duty to respond to (and support when appropriate) the desires of its constituents but also acts as the liaison to DCP, it has a unique part to play in facilitating community-driven initiatives like contextual rezoning. The combination of community board’s function to represent the community and the formal role it plays within the land use review process (which brings it closer to a level of professionalization akin to DCP) gives it surprising power as an entity able to effectively mediate between community groups and city planning officials. Reflective of this dynamic, DCP may have been more receptive to requests to further restrict the zoning in specific segments of the study area if they were made by the community board rather than the community members themselves.

A unique facet of the Fort Greene/Clinton Hill rezoning was that approximately half of the 99 blocks within the rezoning area were already within existing historic district boundaries [Figure 20]. This invites the question of why contextual zoning was pursued for the area, both from the

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140 Ibid.
141 Ibid.
142 Perris, interview.
perspective of the community and from DCP. While it is clear that the community (at least the portion of the community who voiced their feelings through the FGA) desired greater design control over the peripheral areas not included in the historic district, contextual zoning benefits the historic district as well. By altering the underlying zoning to better match the existing brownstone character, development potential is limited in those blocks. Thus, DCP effectively removes the incentive for developers to demolish existing structures because they cannot be replaced by significantly larger structures. This affords the community a security that new construction will be of a scale that is consistent with the neighborhood, and that new buildings will not “threaten” the integrity of the neighborhood’s built character.

DCP’s motivation to pursue contextual zoning in the area already protected by historic district designation is also curious. With many medium-scale neighborhoods clamoring for contextual rezoning in the wake of Park Slope, it would seem prudent for the DCP to limit their work to areas without any existing mechanisms to preserve neighborhood character. Presumably, the DCP is not looking to be redundant in its land use strategy, and if the goal is truly to maintain existing character as stated in the CPC reports, they might prioritize neighborhoods that are not already protected in part by existing historic districts. The CB2 district manager offered his insight on this issue.

Nothing advances faster than when you have what looks and feels like to the community as a grassroots request, but it’s entirely consistent with agency goals already. I think City Planning was interested in upzoning [the commercial corridors of] Myrtle Avenue and Fulton Street, and if they could get a quid pro quo for downzoning north-south blocks that were already in the historic district and probably not at much threat of being redeveloped anyway, then the DCP thinks, “We got a small upzoning, and we didn’t give up anything.”

The suggestion that the contextual rezoning was actually a strategic move by DCP in which they achieved a desired upzoning in one area in exchange for downzoning blocks which were unlikely to be redeveloped anyway sheds light on DCP practices. While the large number of contextual zoning actions that took place during this period is evidence of a clear policy focus on maintenance of neighborhood character, the use of contextual zoning in combination with an existing historic district made it easier to sell the upzoning of commercial corridors to active communities who wanted tighter building envelope controls. Through negotiations with the community, the upzonings could be promoted as a way to balance the downzonings requested by activist residents, but when these downzonings covered areas already protected by landmark designation, the net loss of

\[143\] Ibid.
development potential is largely inconsequential to the city. In a sense, this approach satisfies both sides because residents concerned with overdevelopment get the core of their neighborhoods contextually zoned as well as certainty about future development, while corridors that can accommodate higher density are upzoned. The upzoned areas are seen as a benefit to the city because they increase opportunities for housing and commercial activity, and allow the city to accomplish particular policy goals such as the provision of affordable housing through inclusionary housing. Furthermore, in the end the community may feel satisfied that their advocacy efforts were successful, but in actuality they were likely “asking for something that City Planning was predisposed to do anyway.”

Like Fourth Avenue in Park Slope, the commercial corridors of Fulton Street, Myrtle Avenue, and the small portion of Atlantic Avenue in the rezoning area were upzoned to allow for buildings of a greater density than had been allowed under the previous zoning. However, they were still mapped with contextual districts that incorporated height limits and specific controls on bulk.

The rezoning that was approved in 2007 altered the zoning for 99 blocks in Fort Greene and Clinton Hill, replacing 85% (84 blocks) of the rezoning area with R6B zoning, the most common contextual district in rowhouse neighborhoods [Figure 21]. Most of the area zoned as R6B contained existing rowhouses of a scale similar to what is permitted under R6B, which meant that any new construction would reflect the character of the areas. However, the area north of Myrtle Avenue known as Wallabout, was zoned with a mix of R6B and R5B. Wallabout has the largest concentration of low-rise two- to three-story, pre-Civil War wood frame houses in New York City; a portion of the area was subsequently designated as a historic district in 2011.

In this area, the more restrictive R5B district would best match the existing built character and encourage consistent new construction. Because of the lower scale context, the areas of Wallabout zoned as R6B would allow for modest expansion of the smaller buildings in the area, which the DCP reasoned would encourage rehabilitation rather than demolition which was common under the previous zoning.

As previously mentioned, the commercial corridors of Myrtle Avenue and Fulton Street that were included in the rezoning were zoned from R6 to R7A. The small portion of Atlantic Avenue

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144 Ibid.
146 Fort Greene/Clinton Hill Report Rezoning Report, 15.
147 Fort Greene/Clinton Hill Report Rezoning Report, 14.
included in the study area was rezoned from M1-1 to R7A. In both cases, this constituted an upzoning to a base FAR of 3.45 which could be raised to up to 4.6 with the provision of affordable housing according to the guidelines of inclusionary zoning. Because R7A is still a contextual district, buildings could have a maximum base height of 65 feet before setback and a maximum total height of 80 feet.148

Because the city’s policy goals and the community request for contextual zoning aligned, once the rezoning proposal was picked up by the city, the process was relatively smooth. Negotiations between community groups, the community board, and DCP took place about specific zoning districts that should be applied in certain areas. The initiative for more restrictive R5B zoning in the Wallabout area stemmed from DCP, while neighborhood advocates encouraged lower zoning on the carriage house blocks of Waverly Avenue which ultimately was not successful.149 Interestingly, the desire to map the commercial corridors for inclusionary housing also came from the community. While DCP wanted to upzone these areas, there was a concern that this provision might deter developers.150

The results in terms of new construction built under the contextual zoning in Fort Greene and Clinton Hill remain to be seen. The financial crisis after the 2007 rezoning contributed to a lack of development activity over the past several years, although some infill construction has occurred and several projects have been initiated recently on the higher density corridors of Fulton Street and Myrtle Avenue.151 Most of these projects are replacing vacant lots or former parking lots. Although the buildings have a clearly modern aesthetic, the general sense is that this is acceptable outside the blocks with consistent brownstone character. One resident described the new development in a positive way, as a balance between allowing for density, which will benefit the community, and maintaining the sense of scale even on the larger streets.

It’s just extraordinarily dynamic what’s happening… It’s going to mean more people within the community and that density helps businesses, and lack of vacant lots is a public safety thing. These are being filled one after another and increased FAR made those properties more valuable but then there’s also the height limit. It’s a balancing act. We will be seeing the results in a year from now when these are completed. It’s going to be transformative.152

148 Ibid., 16.
149 Kellogg, interview.
151 Kellogg, interview.
152 Ibid.
The district manager of CB2 offered a different perspective.

[The rezoning took place] seven years ago and we’re only now getting new buildings in the ground which indicates, was the additional density not enough? It wasn’t like R7A was mapped with the inclusionary bonus was included that developers suddenly said, wow let’s do this… If this had been zoned R8A, might that have changed the numbers and made a difference? It’s a hypothesis but I think we’re going to have to see a lot more density.\(^\text{153}\)

This assessment positions the contextual zoning approach within the larger policy goals for the city. Predicting an increasing population in New York City, a major goal of the current administration is to create opportunities for housing incoming residents. While contextual zoning may support preservation goals by removing development rights in areas of cohesive neighborhood character, which often align with historic districts, there are consequences to limiting opportunities for increased residential density. The strategy of balancing tightly zoned residential blocks with higher density commercial zones does successfully direct development to those areas, but when done within the framework of contextual zoning, it still maps restrictive building envelopes with firm height limits. The CB2 district manager hypothesized that delayed development activity on Fulton and Myrtle was due to the R7A mapping which failed to produce profitable development sites. Inherent in this argument is the idea that zoning in the areas that are used to balance tight contextual envelopes should be less restrictive. Whether or not this would help the equity issue and successfully produce housing units that are affordable, there would be definite consequences in the realm of urban design. “You end up with a typology like the Upper West Side where the neighborhood is kind of a bowl. All the commercial streets around it are relatively tall and dense, and it drops down to rowhouse character on the interior of the bowl.”\(^\text{154}\)

This typology is in contrast to the relatively uniform existing character of Fort Greene and Clinton Hill, and preventing it is one of the main goals inherent in neighborhood activists working toward contextual zoning.

Many Brookylmites made decision to live in Brooklyn explicitly, not just because they couldn’t afford Manhattan. And they did that to a considerable extent based on scale—they liked the scale. CZ maintains that to a certain extent. And that’s why it’s been so popular in the Brownstone neighborhoods.\(^\text{155}\)

\(^{153}\) Perris, interview.  
\(^{154}\) Ibid.  
\(^{155}\) Ibid.
While the contextual zoning formula works to maintain the scale of interior blocks and balances it by upzoning larger corridors, this may not be a cure-all. As the city continues to grow and demand for housing intensifies, it may be necessary to create opportunities for density where it was previously limited. The case of Fort Greene and Clinton Hill demonstrates the dynamics of a rezoning when much of the neighborhood was already covered by historic district protection. Like Park Slope, the largest changes in physical character are now taking place on the margins of the neighborhoods. Unlike Park Slope, DCP was successful in mapping inclusionary housing in these areas, the outcomes of which are ongoing.
Chapter 8: Bedford-Stuyvesant

Bedford-Stuyvesant, located east of Clinton Hill, followed a distinct path to achieving contextual zoning and historic district protections. Today the landscape of neighborhood protections, with contextual zoning applied in combination with historic district designation and an ongoing campaign for expanded historic districts, resembles the current situation in Park Slope, Carroll Gardens, and Fort Greene. However the path to this point in Bedford-Stuyvesant has been far less linear. Amid a fairly straightforward progress to achieve contextual zoning, steady advocacy for expanded historic districts has been met with uneven results with mixed community support used to justify long delays in designation. In the most extreme case, a district expansion that was under consideration by the LPC sat with no action for twenty years before finally being designated in 2013. While contextual zoning was widely supported, increased economic pressures acting as a catalyst for the rezoning effort were framed as a threat not only to the built character of the neighborhood, but also to demographic makeup of Bedford-Stuyvesant, widely known as a prominent African American community.

A small L-shaped area consisting of parts of 13 blocks was designated as the Stuyvesant Heights Historic District in 1971, the fourth official historic district in the city.156 It encompassed 430 buildings on MacDonough Street between Tompkins and Stuyvesant Avenues, as well as the blocks between Lewis to Stuyvesant Avenues from MacDonough south to Chauncey Streets [Figure 22]. Like many early historic districts, the area was noted for its character distinct from the surrounding neighborhood. Rather than conceiving of historic districts as a small representative example of the overall character of the neighborhood, it was thought that historic districts designated soon after the establishment of the New York City Landmarks Law should “be possessed of a distinctive quality such that, entering it from any side, one should at once become aware of a neighborhood set apart from its surroundings.”157 Understood in this way, there is little ability to imagine how a historic district could be expanded in the future. If the area truly is “set apart from its surroundings” in an immediately visible way based on its architecture, implicit is that the adjacent area is of a distinct (lesser) quality.

In discussing the contemporary context of the neighborhood, the designation report describes the area as part of a stable, predominantly black community where property owners are

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especially proud of their homes, many of which were individually-owned.\textsuperscript{158} The designation of the district was intended to maintain the existing community by preventing the “modernization” of houses that had begun to take place by the late 1960s. Although most of the rowhouses remained intact, the application of “spurious veneers” or the occasional rooftop addition or stoop removal threatened the integrity of the neighborhood character, resulting in an “erosion of quality” and property values.\textsuperscript{159} Designation of the district was thus seen as a major step in maintaining and even enhancing the quality of the whole neighborhood.

The historic district was designated in 1971, but it had long been an outstanding priority for the LPC. The young commission held a public hearing on the proposed district in December 1966 as part of its first wave of public hearings after being established in 1965. The testimony at the first hearing indicated broad support for the designation (ten people spoke in favor, one opposed), but the agency was unable to act on all the proposed districts immediately, so it held a second hearing in May, 1970. Again the hearing suggested broad support (eleven people spoke in favor, one opposed), and the district was formally designated in the following year.

As time went on, this pattern of districts in Bedford-Stuyvesant being subject to regulatory limbo became the usual trajectory for proposed historic districts in the neighborhood. According to members of the Brooklyn Community Board 3 (CB3) Land Use Committee, there had been a feeling since the time of the original designation that the historic district should be expanded. This was supported by the LPC which reportedly undertook surveys of an expanded Stuyvesant Heights area and the Bedford area in the 1970s and 1980s.\textsuperscript{160} There was no further significant progress until the 1993, when the LPC held a public hearing for a proposed Stuyvesant Heights expanded district.\textsuperscript{161} Due to lack of community support, the LPC took no action and the district remained in a “calendared” state.\textsuperscript{162} Longtime CB3 members recalled that the discussion of expanding the district

\textsuperscript{158} Ibid., 6.
\textsuperscript{159} Ibid., 13.
\textsuperscript{160} Community Board 3 Land Use Committee meeting, Brooklyn, NY, Jan. 14, 2015.
in the 1990s was met with “resounding displeasure” from the community which allowed it to remain calendared for over a decade.\textsuperscript{163}

Beginning in the mid-2000s, action picked up on both the preservation and rezoning fronts. Increased advocacy for expanded historic districts can be traced, in part, to the founding of the CB3 Landmarks Committee and the founding of the Bedford-Stuyvesant Society for Historic Preservation (BSSHP).\textsuperscript{164} Additionally, community members started to be concerned with the new, non-contextual buildings being constructed in the neighborhood. Many of the new buildings filled in formerly vacant lots, but were viewed as aesthetically out-of-place. They tended to be more set back from the street than surrounding buildings, with driveways and garages, and sometimes with pitched roofs and illegal curb cuts to allow for parking in the front.\textsuperscript{165} The co-founder of BSSHP described the new buildings.

They were pretty much ugly, uglier, and ugliest. They were god-awful. So that was part of the feeling. People just really loved the neighborhood and the way it looked and were proud of it, and wanted to keep it that way.\textsuperscript{166}

Although efforts to rezone the neighborhood and achieve contextual zoning were happening concurrently, they occurred in largely separate spheres, one related to the community board’s Land Use Committee and one related to its Landmarks Committee. The BSSHP co-founder pointed to this separation as a weakness.

The Land Use Committee did not strongly consider the landmarking agenda. The two committees are separate on the community board. That’s one of my issues. I sit on the Landmarks Committee and I used to go to both. The Land Use Committee was looking at character and was upset about the new buildings with the bad setbacks more so than landmarking or the historic nature of the neighborhood.\textsuperscript{167}

While the disconnect between the two committees can certainly be viewed negatively from the point-of-view that a united and cohesive community board can be a more effective advocate, in this case it may have worked to the community’s advantage. By pursuing two separate strategies, the community board ultimately achieved both goals, which reinforced each other.

Additional background activity preceded the community board’s support for rezoning in the mid-2000s. In 2001, the community board worked with the Pratt Center for Community

\textsuperscript{163} CB3 Land Use meeting.
\textsuperscript{164} Ibid.
\textsuperscript{165} Ibid.
\textsuperscript{166} Claudette Brady, personal interview with author, Jan. 12, 2015.
\textsuperscript{167} Brady, interview.
Development to craft a 197-a plan for the neighborhood. This involved an articulation of the community’s needs and desires to guide future development. The neighborhood was just beginning to be seen as an area ripe for investment by newcomers after having been referred to as “Brooklyn’s next investment region” by the *New York Times* in 2000.\(^{168}\) The 197-a process was never completed by formally submitting the plan to the DCP for approval, but the rezoning that took place grew out of the community vision articulated in the plan. The other result of the 197-a process was the founding of a task force in 2002 by Councilman Al Vann. The Bedford-Stuyvesant Economic and Physical Development Task Force brought together leaders of twenty-five community organizations to respond to issues facing the neighborhood and to act as the guardian of the principles and objectives expressed in the 197-a plan.\(^{169}\) In 2005 the task force formed a new organization, the Coalition for the Improvement of Bedford-Stuyvesant (CIBS), which was meant to be a think tank to convene community leaders around the pressing economic, physical, social, and human development needs of the area.\(^{170}\) In response to the poor quality infill housing being constructed in the neighborhood, CIBS took a lead role, along with the Community Board’s Land Use Committee, in pushing for contextual zoning. According to the Land Use Committee leaders, “Once CIBS got the city to open up to the idea of rezoning, DCP came in in response to Councilman Al Vann’s request and worked with the community board directly.”\(^{171}\)

Passed in 2007, the contextual zoning encompassed the area known as southern Bedford-Stuyvesant, which is roughly bounded by Quincy Street and Saratoga, Atlantic and Classon Avenues. In subsequent years, the CB3 worked with DCP again to rezone the northern portion of the neighborhood. The stated goals were as follows:

> To preserve neighborhood scale and character, maintain opportunities for mid-rise apartment building construction along appropriate corridors, and allow for residential growth with incentives for affordable housing along the Fulton Street transit and retail corridor.\(^{172}\)

DCP also acknowledged the current neighborhood context, justifying the need for the rezoning to prevent the out-of-character development which was taking place.

\(^{170}\) Ibid.
\(^{171}\) CB3 Land Use meeting.
Today Bedford-Stuyvesant is experiencing renewed private reinvestment and is being developed with new stores and restaurants and private, market-rate housing. However, much of the new construction, with curb cuts and large parking pads in the front yards and buildings set back from the street line, is out-of-character with the existing historic brownstone building form.\textsuperscript{173}

The existing zoning in the 206-block area had been in place since 1961 and was mainly a mix of R6 (68% of the blocks) and R5 (30% of the blocks) districts [Figure 23]. The presence of R5 zoning was unusual as R6 was the most frequently mapped zoning district outside of Manhattan in the 1961 Zoning Resolution. 190 full and partial blocks (92%) in the core residential areas were rezoned to R6B, by far the most common contextual district, including the previous R5 areas [Figure 24].\textsuperscript{174} R6B districts allow a maximum FAR of 2.0 and limit street wall heights to 40 feet and overall building heights to 50 feet. This designation was aimed to protect the three- and four-story rowhouse scale, while allowing for limited expansion of existing buildings. Three small areas amounting to 12 blocks, which had been R5, were designated as R5B because of predominant two- and three-story rowhouses. Major corridors (122 full and partial blocks), with the exception of Fulton Street, were zoned as R6A which can accommodate slightly higher density and taller buildings than R6B. Fulton Street was predominantly zoned R7D, a new contextual district developed specifically for Bedford-Stuyvesant. The inclusionary housing bonus also applied in all areas mapped for R7D. The R7D district has a maximum base FAR of 4.2, with a 33% bonus if Inclusionary Housing is used, bringing the allowable FAR up to 5.6. The maximum base building height is 60-85 feet, with a maximum building height of 100 feet after a setback irrespective of FAR.\textsuperscript{175} This constitutes up to a 130% increase in density from what was allowed under the previous R6 zoning.

No significant opposition existed to the rezoning. Supporters included the local elected officials, Brooklyn Borough President, co-chair of CB3’s Land Use Committee and the CB3 District Manager, representatives from the Bedford-Stuyvesant Restoration Corporation, Pratt Center for Community Development, a local real estate developer, a local property owner, and the pastor of a local church. Speakers at the CPC hearing in September 2007 commended the DCP for its work with the community to achieve a mutual goal. Although one of the goals was to preserve the existing brownstone character of the neighborhood, and the 1971 historic district was mentioned in the

\textsuperscript{173} Bedford-Stuyvesant South rezoning CPC Report, 2007, 18.
\textsuperscript{174} Ibid., 23.
\textsuperscript{175} Ibid., 25.
description of neighborhood context, there was no discussion of the contemporaneous efforts to expand the historic district initiated by the new CB3 Landmarks Committee and the recently-founded BSSHP. Rather, speakers requested that DCP expand the preservation of Bedford-Stuyvesant’s historic character by immediately initiating the zoning study of the northern section of the neighborhood.\(^\text{176}\)

Although progress to expand the historic district was slower, advocacy began around 2007 once the contextual zoning was underway. Before starting BSSHP, the co-founder had been president of her block association. In early 2007, the idea of landmarking her block was raised at a block association meeting. Through door-to-door outreach to surrounding block association presidents and mailings to residents, community consensus developed around the desire to expand historic district protection to more of the neighborhood. Originally, the idea was to work toward the designation of an area that had been identified in the 1970s as the proposed Bedford Historic District. This was a small area several blocks away from the existing Stuyvesant Heights Historic District. Once the newly formed CB3 Landmarks Committee became involved, a Request for Evaluation (RFE) was submitted to the LPC for a bigger area based on the 1993 proposal.\(^\text{177}\) As support for landmarking grew within the community, the BSSHP was formed as a grassroots advocacy group working toward achieving expanded historic districts in the area. Like many community preservation groups, it identified several cohesive subsections of the neighborhood around which to advocate including Bedford Corners, Stuyvesant North, Stuyvesant East, and Stuyvesant West [Figure 25]. If designated, the five proposed historic districts would cover much of the central residential core of the southern half of the neighborhood, encompassing the area roughly bounded by Bedford Avenue to the west, Monroe Street to the north, Saratoga Avenue to the east, and Fulton Street to the south.

In 2011, the LPC held a hearing on the proposed expanded Stuyvesant Heights Historic District which had first been heard and then tabled by the Commission in 1993 [Figure 26]. Following the momentum of the LPC hearing, the neighborhood was selected as an advocacy priority by the citywide Historic District Council’s (HDC) Six to Celebrate Program. The LPC held a public hearing for the proposed Bedford Historic District in 2012, but took no action. In April 2013, the LPC voted to designate the expanded Stuyvesant Heights Historic District which added 825 buildings to the existing 430-building historic district, thereby tripling the number of buildings in the

\(^\text{176}\) Ibid., 37.

\(^\text{177}\) Brady, interview.
neighborhood with landmark protection. The LPC Commissioner Robert Tierney credited the work of residents, homeowners, and community leaders in building support for the designation of the district.

The only other proposed district to see progress from the LPC was the Bedford Historic District, which had been the earlier advocacy priority for the community [Figure 27]. The events surrounding the Bedford district overlapped with the Stuyvesant Heights expansion, and perhaps this combined attention from the LPC contributed to its much louder opposition. After being calendared in May 2012, the LPC held a contentious public hearing for the district in January 2013 just months before the designation of the Stuyvesant Heights expansion in April of that year. Over three dozen people testified at the hearing, many in favor of the district. However, in part due to increasingly rapid demographic changes, the proposed historic district became a symbol that would both hasten and delay the effects of gentrification. Opponents claimed that the designation would hasten gentrification by raising property values and displacing long-time residents, while advocates claimed the designation would help to maintain the character of the neighborhood, by preventing speculative developers from constructing out-of-scale buildings. In a New York Times article titled “In Effort to Preserve Bedford-Stuyvesant, Some Ask: For Whom?,” David Dunlap captured the opposing perspectives of two residents from their testimony at the LPC hearing.

“What needs to be preserved are the people of Bedford-Stuyvesant,” said Sehu Jeppe, who lives on Hancock Street, between Bedford and Nostrand Avenues. “I’d hate to see us become a Harlem, where the jewel has been extracted.”

Anna Bloodworth, who lives on Jefferson Avenue, between Nostrand and Marcy Avenues, said… “It will prevent anyone from sticking up a home or a house that they have no intention of living in,” she told the commissioners. “Developers don’t care about people who live in neighborhoods. They care about money.”

According to the co-founder of the BSSHP, some high profile opponents to the district were handpicked by the Real Estate Board of New York (REBNY) to speak against the district. These included the Rev. Johnny Ray Youngblood of the Mount Pisgah Baptist Church located outside the

district, and Kirsten John Foy, president of the Brooklyn chapter of the National Action Network, whose 2013 City Council campaign had been supported by REBNY.\textsuperscript{181}

The argument against the designation centered on a claim that residents had not been provided with enough information about the proposed district, and that they knew too little to make an informed decision. In Foy’s testimony, he cited the scheduling of the hearing during working hours and its location in the Municipal Building as benefiting the “architectural elite,” not the residents of the neighborhood.\textsuperscript{182} Representatives from the Community Board and preservation groups countered that there had been several large, well-attended public meetings. In addition to public testimony, 355 people submitted letters to the Commission in support of the designation and 220 people submitted letters seeking more information (only 37 of which were from property owners in the district).\textsuperscript{183} The belief of advocates is that due to the controversy around the district, the LPC took no action on the proposed district.

With only moderate success in pursuing additional landmark protection in the neighborhood, the contextual zoning has been successful in preserving the character of the area in terms of scale. As described by the co-founder of the BSSHP, contextual zoning is “better than nothing at all because you get harmony in the scale. You may not get it from building to building but at least there’s harmony in the scale.”\textsuperscript{184} The constraints of contextual zoning have become even more important as the area has become increasingly desirable. A BSSHP member described the changing dynamics of development.

My thinking is that nobody expected this boom. I don’t think people expected the change in population. At the time of the contextual zoning in 2007, people weren’t building high rises. They were building cheap one- and two-family houses and ripping people off. The developers here now are not the same as in 2007. The expectations might have been different as to what might have been built. No one expected the boom we have now with apartments and studios selling for $500,000. The higher zoned areas were more about creating affordable housing and more retail.\textsuperscript{185}

Reflecting on the contextual zoning in a \textit{Capital New York} article in 2014, Tremaine Wright, the chair of CB3, affirmed that no one had been expecting Bedford-Stuyvesant to become a booming area for

\textsuperscript{181} Dunlap, “In Effort to Preserve Bedford-Stuyvesant, Some Ask: For Whom?”
\textsuperscript{182} Dunlap, “In Effort to Preserve Bedford-Stuyvesant, Some Ask: For Whom?”
\textsuperscript{183} Rosenblum, “Argument Over a Brownstone Neighborhood: The Case for and Against a Bed-Stuy Historic District.”
\textsuperscript{184} Brady, interview.
\textsuperscript{185} Ibid.
real estate at the time of the rezoning. Rather, the rezoning was a “response to some buildings that stuck out.” She went on to say, “it was about preserving that brownstone community. If we had waited until developments started going up to 20-story doorman buildings, it’d be too late.” The BSSHP member explained further.

We got contextual zoning and then the market went kaboom. Before we were seeing small developers. Now it’s huge developers, Australian guys who own half of Bed-Stuy and half of Chelsea. Big money guys who are building big along the corridors… Bedford Avenue used to be 4 stories tall. Half of that has new high rises.

Because of the changing real estate dynamics in the neighborhood, the contextual zoning has been significantly more important in the neighborhood. In the core brownstone blocks, it allows for modest development that is mostly in keeping with the existing scale and removes development pressure that would threaten the character of the neighborhood, while also providing opportunities for larger building within a prescribed envelope on the larger corridors. The recent controversies over expanded historic districts in the neighborhood demonstrates the importance of the contextual zoning in helping to maintain the physical character in the core of the neighborhood amid intensive development pressure.

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187 Ibid.
188 Brady, interview.
Chapter 9: Findings and Recommendations

This thesis sought to answer the following questions: how does contextual zoning currently function as a de facto preservation planning strategy in New York City? Does the broad level preservation it fosters provide a useful alternate strategy to pursue beyond traditional historic districts? How well does it perform in terms of producing new buildings that are visually compatible with existing neighborhood character? In other words, is contextual zoning actually contextual? The narratives of land use actions in four Brooklyn neighborhoods have provided answers to the first two questions. This chapter will draw conclusions by comparing across neighborhoods and identifying the strengths and weaknesses of the contextual zoning approach. A discussion of current critiques will address whether buildings produced under these guidelines are truly contextual.

The use of contextual zoning in “Brownstone Brooklyn” neighborhoods has three distinct functions with regard to historic preservation—as an overlay, an extension, or a transition. In each case, the role of contextual zoning differs. In areas where historic districts and contextual zones overlap with each other, the contextual zoning functions as an additional layer of preservation protection. The contextual rezoning of Fort Greene and Clinton Hill exemplifies the overlay function; the contextual zoning covered much of the same physical area that was already protected by the historic districts. By changing the zoning to roughly match the existing physical environment, the contextual zoning reinforces the goals of the historic district by removing additional development potential. This alignment of LPC and DCP policy reduces conflict over development. It also relieves the LPC of the burden of regulating the design of new construction in historic districts for projects that may be significantly out-of-scale. In the overlay function, contextual zoning effectively supplements historic districts, a land use regulation which is arguably analogous to a kind of zoning. Absent the ideological basis for historic districts, they comprise areas in which as-of-right construction is prohibited and new construction is required to conform to a general standard as determined by the LPC.189 By bringing the regulatory goals for the two agencies into closer alignment and reducing the likelihood of “teardowns,” the strategy of contextual zones overlaid with historic districts offers the highest level of regulatory protection for the built environment available in New York City. This also creates the highest level of certainty about future development and explains why neighborhoods across the city have fought strongly to achieve contextual zoning in their communities.

The second function that contextual zoning serves with respect to historic preservation is to extend broad preservation goals to areas outside of historic districts. In the way that contextual zoning districts have been mapped across the city, this is a common scenario. In all four case study neighborhoods, the boundaries of contextual zoning included the historic districts but encompassed much larger swaths of the neighborhood and, in most cases, the rezoned area included the entire neighborhood. For example, the rezoning of Carroll Gardens covered the whole neighborhood, not only the historic district; this extended regulatory oversight of the scale of new construction to the entire area. Although the ‘preservation’ fostered by contextual zoning is far more limited in what it can regulate than historic districts, limited to regulation of the size, shape, and location of the building envelope on the lot rather than the aesthetic characteristics, its emphasis on the scale of new construction can successfully maintain this significant element of neighborhood character. Because new construction in contextual districts is as-of-right, there is a guarantee that new construction will roughly conform to the historic scale of the neighborhood, even if its design elements may be contemporary in style. This function of contextual zoning is to extend a concern for scale, a key element of neighborhood preservation, beyond the limited boundaries of historic districts. This constitutes a major benefit for preservation in the city. While there is no assurance that new construction in contextual districts will be of the quality that would meet LPC criteria, the combination of the fact that the scale of neighborhoods will be maintained and that less unused development potential reduces the incentive for teardowns helps to sustain the neighborhood’s integrity. The extension function staves off development that would threaten the integrity of areas which either may be considered for historic district status in the future, or which constitute areas of distinctive character but are not meritorious of historic district designation. While less than 4% of the city’s building stock is protected by historic district designation, almost 40% of the city was rezoned during the ten years of the Bloomberg administration, and many of those rezonings were contextual in nature.  

190 The widespread use of contextual zoning to maintain neighborhood character in terms of scale significantly raises the proportion of the city where some aspect of

neighborhood character is maintained through a combination of zoning and historic district measures.

The third function of contextual zoning as applied in “Brownstone Brooklyn” neighborhoods is transitional; contextual zoning districts act as a buffer around the existing historic districts. Often, the areas immediately adjacent to the historic district boundaries exhibit similar character, architectural integrity, and historical merit as those within the boundaries. This contributes to advocacy for extensions of the historic district. However, the mapping of contextual zoning just outside district boundaries ensures that development will be constrained by building envelope and density restrictions that are closer to buildings within the district. This has the effect of creating a buffer of controlled development that acts as a transition between the most restricted (historic district) and the least restricted (1961-era height factor zoning) areas for development. The transitional function of contextual zoning can be illustrated by the rezoning of Bedford-Stuyvesant.

The use of contextual zoning in the residential midblocks prohibited the erection of larger buildings that would have created a poor juxtaposition in terms of scale with the existing built fabric. Because the rezoning covered much of the neighborhood including the existing Stuyvesant Heights Historic District, blocks that were beyond the historic district boundaries but still covered by the R6B contextual district served as a transition between the heavily-restricted historic district (two layers of protection by historic and contextual districts), the less-restricted upzoned R6A corridors, and the height factor districts beyond the rezoned area.

The concept of transition districts in New York City was the subject of a planning report prepared by Abeles Phillips Preiss and Shapiro in 1990 for the Municipal Art Society titled “Zoning and Historic Districts,” which examined the intersections between zoning and historic districts in a number of cities and proposed a series of recommendations to bring zoning and historic districts into better alignment in New York. A key recommendation was to expand the use of contextual zoning within and around designated historic districts, as well as to broaden the range of available contextual districts to better match the variety of extant building types.191 While the increased use of contextual zoning in combination with historic districts over recent years has not fulfilled all of the report’s recommendations and the application of contextual zoning may not have been conceived with the transitional effect in mind, the two tools do function as transitional zones when applied in the described pattern.

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**Strengths**

Across all four neighborhoods, stakeholders agree that contextual zoning is a valuable tool that supports the preservation of neighborhood character, but does not take the place of a historic district in terms of its capacity to protect the aesthetic qualities of a place. It supplements preservation goals when used in existing historic districts, and it extends modest preservation protections to other areas, but is a poor substitute. In some cases, the application of contextual zoning may also function as a kind of holding mechanism that maintains the scale of the neighborhood until it is considered for future historic designation. In areas that are not part of historic districts, contextual zoning is better than no protection at all, and it is successful in preventing huge outliers in terms of scale. The shifting of development potential from mid-density residential blocks to wider corridors helps to relieve development pressure on the areas of cohesive character, whether or not they are historic districts. Additionally, the fact that construction under contextual zoning is as-of-right and therefore administered through the standard DOB permitting process guarantees ‘contextual’ buildings (at least in terms of scale) more expediently than the discretionary process of the LPC. Even if the resulting building is uninspired in terms of design, compliance in terms of scale is guaranteed.

There are also clear benefits from the perspective of city agencies. From the DCP perspective, rezoning conveys a more rational plan for predictable neighborhood growth and paths to development. The rezoning functions as an articulation of the agency’s goals in a clear way and this predictability has value to those with a stake in local land use, including developers, property owners, and residents. The barrier to entry for contextual zoning is also lower than a historic district; politically, it is easier to achieve because it tends to be more palatable for all stakeholders. Additionally, the fact that DCP is a significantly larger agency with more resources than the LPC means that it can process more regulatory change. More rezonings can be passed than new historic districts designated in a given period because of a combination of these factors. Despite being a blunt tool, the certainty that development is controlled by a limited envelope is valuable.

From the LPC perspective, contextual rezoning may be the appropriate tool when an area possesses distinct character that is worthy of preservation but lacks the integrity to meet the high threshold of historic district designation. In such a case, contextual zoning will provide a minimum security that the scale of future development will be somewhat sympathetic to the existing neighborhood. However, when contextual zoning is applied in an area that is already a historic
district, there is little net effect on the district itself, according to a former staff member of the LPC. Because the criteria for landmark designation is much stricter and more fine-grained than zoning’s attempt to preserve mass and scale, the LPC is already regulating those areas at a much stricter level than what is guaranteed by contextual zoning. A common strength of contextual zoning cited by community activists is that within historic districts the downzoning removes development potential and relieves the LPC of struggling to decide whether an out-of-scale building is appropriate in a historic district. However, from the perspective of a former LPC staff member this benefit is marginal and the downzoning of a preexisting historic district may amount to regulatory overkill.

If you already have the historic preservation overlay and then you are making that same district contextually rezoned, there may be some marginal benefit to that. But I think mainly it would be a waste of resources... City Planning will make an expert decision on whether it’s an appropriate rezoning... but hypothetically, you’re diverting resources to doing a rezoning that doesn’t have much of a net effect. Those resources could probably be used for another rezoning.

Weaknesses

Apart from the consensus that contextual zoning cannot substitute for a historic district, its drawbacks are focused around the quality of buildings that result from these regulations. A main factor is that contextual zoning lacks the fine-grained approach fostered by the design review process. Because the regulations crafted by the DCP in the Zoning Resolution are carried out by the DOB, the rules are followed rigidly to fulfill the DOB’s mandate to “ensure the safe and lawful use of buildings.” This differs from the LPC which issues and enforces its own permits. While the contextual zoning regulations impact the look of a building, aesthetic issues fall outside the purview of the DOB and are not its concern when zoning compliance is evaluated in the permitting process. This results in buildings that conform to the contextual zoning envelope in terms of height and scale but otherwise may be completely a-contextual in appearance.

Additionally, several critics of contextual zoning have concluded that it yields mediocre buildings that are often not contextual at all. Indeed, the very meaning of ‘contextual’ in this approach to neighborhood preservation is ill-defined. CPC rezoning reports repeatedly mention the goal of preserving the existing built character while providing modest opportunities for growth. Discussions of neighborhood character generally provide a brief history of the neighborhood under

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193 Fernandez, interview.
study, including the size and frequency of predominant building types, and an overview of demographic and transit information. In all but one rezoning studied (Carroll Gardens), the existing historic districts were mentioned as part of the initial context. But the question of the aesthetics of new construction that meshes with existing neighborhood character is never explored.

Through the development of a discrete set of contextual zoning districts which DCP maps strategically across the city, there is an assumption that contextual development should somehow mimic existing buildings in terms of scale and setting on the lot. However, from the set of districts available to be mapped, the districts actually utilized by DCP tend not to be a perfect fit with the scale of existing buildings. Aside from the fact that it would be virtually impossible to have generic zoning districts which would replicate all the building types that exist in the city, the reasoning provided by the DCP is that there must be “room to grow.” The effect is that new buildings are permitted to be larger than existing buildings, calling into question whether this can truly be defined as ‘contextual.’ The executive director of the Historic Districts Council, a prominent voice for neighborhood preservation in New York City, described this issue.

Each individual contextual district could always be fixed better. Plus there’s the added hilarity of the CPC willfully misjudging things. For example, in Park Slope they are convinced that R6B is a rowhouse district. It’s not. It’s a low apartment district. They’re like, no it’s a rowhouse district. I’m like, typical rowhouses are 30 feet tall – you’re doing something that allows for 40 feet with 50 foot setback. That’s 10 extra feet – you’re going to end up with something that looks a lot different... R5B is a rowhouse district [because the maximum height is 33 feet]... which actually develops a rowhouse. But they’re like, well you need room to grow, Simeon. I’m like, ok but say that out loud!

While one issue is districts which permit larger buildings than the existing context when DCP’s goal is to preserve that very context, there is also the underlying intent of the DCP to create opportunities for growth even within ‘preserved’ areas. This may be acceptable in areas which are not historic districts, but in areas which overlap with LPC boundaries these modest growth prospects create a regulatory issue for the agency. While a single protuberance in the form of a rooftop addition on a rowhouse within a historic district may not be a problem, over time the accumulated impact of such additions will detract from the neighborhood character and threaten the integrity of the district as a whole. Over time, a district of four-story rowhouses could become a neighborhood of five- and even six-story rowhouses with additions of varying quality as a result of unwelcome aesthetic intrusions that diminish the quality of the neighborhood’s character.

195 Bankoff, interview.
196 Ibid.
In addition to the way that contextual districts are strategically mapped by the DCP, the contextual zoning tool ironically lacks a mechanism that requires architects to consider the actual context of adjacent buildings. If the zoning district mapped in the area does not precisely match the physical qualities of existing buildings (which is impossible with a limited number of discrete zoning districts), a new building will comply with the shape and placement mandated by the zoning district rather than its immediate surroundings. In this way, so-called contextual zoning can be used to introduce a new context to an area which previously lacked a strong (or desirable) neighborhood character.

The upzoning of Fourth Avenue in Park Slope is a prime example; the corridor mainly consisted of auto-oriented commercial and light industrial buildings with some medium-density residential structures. When it was rezoned to R8A in the 2003 rezoning, and thereby designated as the area for directed growth to balance the maintenance of the residential core of Park Slope, the new regulations superimposed a form which permitted buildings of 120 feet, or about 12 stories, where no buildings of this scale had existed previously. While this in itself is not necessarily a weakness, the rigidity of contextual districts can sometimes force the construction of buildings with adverse physical characteristics. A veteran of the DCP who helped to craft the language of the contextual zoning amendment to the Zoning Resolution provided an anecdote by way of example.

Choosing the right set of contextual packages in many locations is part of the answer. I don’t think it’s always the answer. It has troubled me that if you’re building next to an elevated line, the contextual envelope pushes the wall to the street line. While you might want that for ground floor retail, it’s not good for the people in the building to be so close to the elevated. It would be better to set them back, which implies they would get taller. If you’re building near a highway, like on Third Avenue near the Gowanus Expressway, building close to the street isn’t the best answer for a residential building. Being set back might be better. The noise you hear is in direct relationship to the distance. If you double the distance you quarter the noise.197

The rigidity of contextual zoning also means that within each contextual district, there is a generic fixed response that makes the most sense in order to maximize FAR and the building envelope. When that fixed response is a building that resembles an existing building, it is viewed as compliant with historic preservation goals. But in a sense, the way that form is prescribed by contextual zoning districts is no different than the way that “tower in the park” was prescribed by the 1961 Zoning Resolution, which contextual zoning was intended to challenge. Michael Kwartler,

an architect and zoning consultant, offered his opinion on the outcomes of contextual zoning in terms of the quality of the built environment.

The 1916 zoning regulations produced, as-of-right, better buildings and simpler regulation by not predetermining the form of the building in advance. That is about the worst thing you could do. What that kind of form-based zoning has to do in NYC is ridiculous. It homogenizes all these neighborhoods. One of the reasons for [contextual zoning] was that tower in the park was homogenizing neighborhoods because it was a building typology. Once you legislate building type, you’re going to get it. Developers aren’t going to fight you – if that’s what we can build, we build that – and everything self-adjusts around that.198

Kwartler also made the point that contextual zoning often fails to produce the housing typology of the neighborhood where it is mapped, except in cases of infill construction where a single historic lot (approximately 25 feet wide) is being redeveloped. He pointed out that if a wider lot is assembled, for example between 50-75 feet, the response is not going to be three rowhouses. Instead the result will be an apartment house, which lacks the interval and stoops of a unified row of houses.199 This one size fits all approach to zoning, some architects feel, stifles creativity by making the building envelope prescriptive. In the old Housing Quality performance zoning based on points or in a less form-based model of zoning, there was more of a push-and-pull in the decision-making process. As certain decisions were made in the design process, they were balanced out in other ways by the architects to achieve a creative result. In the current contextual system, “there is only one right answer… so it stifles innovation… Why we’re stuck with this one size fits all zoning is beyond me. In makes no sense, when we could be much more fine-tuned [with a performance-based system].”200

According to many practicing architects, another major weakness of the contextual zoning tool is termed the “building envelope conundrum.” The concept is that owing to many different types of FAR bonuses granted by DCP to meet policy goals and provide public benefits (like affordable housing produced via the Inclusionary Housing program), it is impossible to fit the allotted FAR into the building envelopes which are constrained by contextual zoning. This cause was articulated by the Citizens Housing and Planning Council in a 2014 report which analyzed seventeen residential buildings across the city and concluded that about half of the projects left an

198 Kwartler, interview.
199 Ibid.
200 Ibid.
average of 11% of unbuilt floor area due to contextual envelope rules.\textsuperscript{201} In total, approximately 57,000 square feet of floor area were lost from these projects. In the context of the constant need for more housing, this can easily be characterized as a negative. From the perspective of developers seeking to maximize return on investment, lost floor area amounts to a loss in profit. While the small sample size of the project limits its applicability to the city as a whole, the report demonstrates some of the criticisms of contextual zoning from architects working within its constraints on a daily basis. The report concludes with a preliminary set of suggestions of ways to adjust the contextual zoning regulations to better accommodate allotted floor area in residential projects.

While the report makes no mention of the impact on neighborhood character of proposed reforms, perhaps a more concerning outcome of the report is that it highlights a lack of comprehensive planning supervision over allowed development potential in the city. If the city continues to use density bonuses to incentivize public policy goals, but fails to make it possible to use the bonuses, it is indicative of a larger problem. Not only does it lessen the value of floor area incentives, but it also demonstrates a lack of communication and transparency around city objectives. Additionally, the fact that this type of bungled development issue exists with an entrenched and undisputed goal of city government, the provision of housing, underscores the even greater latent disconnect between city government and the desire for neighborhood preservation.

\textit{Recommendations}

A first recommendation would be for the Mayor’s office to establish direction for DCP and LPC so that the two agencies’ neighborhood character policy approaches can reinforce each other whenever possible. In many cases, the planning tool of contextual zoning has been supported and even fought for with the purpose of supplementing traditional historic preservation and providing an alternative neighborhood preservation strategy. Likewise, communities have, at times, advocated for historic districts with an underlying goal of redirecting development away from a particular location. According to the former director of intergovernmental relations for the LPC, the two agencies think of themselves as “sister agencies” and “do work well together and communicate constantly.”\textsuperscript{202} Despite this there is a public perception of disconnection between the agencies which mirrors the perceived dichotomy between urban planning as forward-thinking and historic

\textsuperscript{201} Mark Ginsberg, Sarah Watson, and Jerily Perine, “Insight: The Building Envelope Conundrum,” Citizen’s Housing and Planning Council New York City, June 2014, 11.
\textsuperscript{202} Fernandez, interview.
preservation as preoccupied with the past. In reality, both fields and their respective mayoral agencies are critical in shaping a healthy future for the city. While communication and collaboration occurs internally between the two agencies when appropriate, the public positioning of them as two extremes fails to consider the instances in which they have complementary goals. If the Mayor’s office were to publicly establish a direction for the agencies with regard to policy approaches which support the preservation of neighborhood character, this public disconnect could be mended. This could occur in conjunction with other policy goals and statements that are articulated at the beginning of a mayoral term.

A second recommendation concerns the range of tools available for neighborhood preservation in New York City. While contextual zoning is imperfect in many ways, including as a preservation tool, it serves a useful purpose in the three preservation functions it serves: (1) as an overlay which reinforces the intent of preservation in historic districts, (2) as an extension which broadens the regulation of scale to a greater percentage of neighborhoods, and (3) as a transitional zone which mediates between historic districts and areas of unfettered development rights. However, the preservation toolbox could benefit from new offerings, and creative new approaches could aid in more effective preservation of neighborhood character. Approaches in particular which, like contextual zoning, offer a middle ground between highly-regulated historic districts and default as-of-right development, could help to frame preservation benefits as forward-thinking while expanding the range of available strategies. To that end, the preservation community should become more informed on the feasibility of alternative preservation tools to New York City.

The use of neighborhood conservation districts (NCDs), in particular, in other cities across the country may hold useful local lessons. NCDs are an approach that developed in the 1970s but there has been a recent resurgence in their application. By 2011, 96 cities across the country had adopted some form of NCD regulation. NCDs are accomplished through either a zoning overlay or an independent zoning district in residential neighborhoods which have a distinct physical character and where preservation of this character is a goal. NCDs have been established to address a variety of neighborhood-specific development issues: conservation districts in Nashville, TN were intended to stabilize existing neighborhoods; in Phoenix, AZ they were used to increase or preserve the supply of affordable housing; and in Davis, CA they were implemented to revitalize

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203 Lovelady, 154.
204 Yeston, 1.
particular neighborhoods. The ability to craft the NCD ordinance to address the needs of each jurisdiction is one of the tool’s strengths.

The administration of NCDs generally conforms to either a historic preservation model or a neighborhood planning model. In the former, the focus of the NCD is to preserve the neighborhood’s architectural character, often accomplished through design review of new structures. NCDs of this type operate much like a less strict historic district, with more lenient standards of appropriateness. Conservation districts which follow the neighborhood planning model are also interested in preserving neighborhood character but do so through zoning controls such as lot coverage, setback requirements, and permitted uses—not unlike the way that contextual zoning operates in New York. Neighborhoods may also adopt specific neighborhood plans against which new development may be reviewed either by the city’s zoning commission or by a neighborhood commission. In a study of NCDs for the National Trust for Historic Preservation, Julia Miller described the utility of the neighborhood planning model.

By regulating new construction or even serving as a catalyst for new construction, this approach provides a neighborhood-level, land-use tool that can preserve neighborhood character, retain affordable housing, and protect an area from the potentially harmful or expulsive effects of more intensive or inappropriate development. These programs rely heavily on planning and zoning criteria and insist on a high level of neighborhood involvement and support.

The concept of neighborhood involvement, possibly through the Community Boards, in developing local guidelines for balancing areas of growth with areas for preservation, could hold some relevance for New York City. Charging the existing Community Boards with coming to consensus within each community district about areas for viable growth, in addition to areas where preservation is essential, could help to address the city’s likely population growth in the future while ensuring the viability of strong existing neighborhoods.

A third recommendation is that DCP modify existing contextual zoning regulations to make them somewhat more flexible for architects, which would help to encourage better design. Tweaks would be minor and would change details in the regulations that have become more difficult to satisfy as there are fewer regularly-shaped developable lots in the city. Mark Ginsberg, a practicing architect who has been involved in thinking around revisions to contextual zoning, offered his perspective.

206 Lubens and Miller, 1005.
207 Ibid., 1006.
208 Ibid., 1009.
We seem to go to extremes. I understand why height factor was done, but we forgot about the ground plane and streetwall. So we went to contextual zoning which was all about the streetwall but in a very simplistic way. Since then we’ve been trying to create flexibility… I don’t think contextual zoning was bad, I think we just created too much of a straightjacket.209

Modifications to current contextual zoning regulations could include a relaxation of streetwall and setback provisions which would not only encourage additional creativity by architects, but would also allow developers to take full advantage of floor area incentives offered in exchange for affordable housing and other laudable (and necessary) city priorities. For example, the contextual zoning regulations currently limit corner lot coverage to 80% across all contextual districts.210 Eliminating the corner lot coverage restrictions for contextual buildings would provide further flexibility in the design of buildings which ultimately could help to ensure that contextual buildings contribute to or enhance neighborhood character, rather than weaken it. Ginsberg cited unintended consequences of the regulations which lessen the quality of new buildings and could be easily revised. New buildings next to height factor buildings, which are usually set back from the street, are required to line up with existing buildings, which are “destroying the streetwall in the first place.”211 Because no one thought of height factor buildings as “context,” such new buildings are perversely required to perpetuate the altered streetwall. Loft buildings in Chelsea provide an additional example, most of which rise 120-150 feet from the streetwall without setbacks. Under contextual zoning, the building would be required to set back repeatedly as the building gets taller, which produces a structure unlike its surroundings. Revisions of this type would help to correct these unintended consequences.

Some of these modifications have recently been proposed by the DCP in a large-scale zoning text amendment. The proposal, titled “Zoning for Quality and Affordability,” is a key piece in Mayor de Blasio’s plan to build and preserve affordable housing throughout the city, and has three broad goals, one of which concerns reforms to contextual zoning regulations. While several of the proposed modifications address the issues articulated in the CHPC report, “The Building Envelope Conundrum,” other proposed changes are much more far-reaching. In particular, the proposal to raise height limits in contextual districts citywide has been deeply troubling to

210 §23-145 For Quality Housing Buildings, Article II: Residence District Regulations, Chapter 3: Residential Bulk Regulations in Residence Districts, Zoning Resolution, City of New York, as amended through February 26, 2015.
211 Ginsberg, interview.
preservationists and neighborhoods across the city who fought for contextual zoning in large part because of its restricted height limits.

A fourth recommendation concerns the ongoing tension between discretionary and as-of-right approvals in the development process, which has been an underlying theme in this research. Planning experts repeatedly noted the unique reliance on as-of-right approval in New York City, in contrast to other cities which commonly employ some type of discretionary process. Commonly the discretionary process used elsewhere is design review, whether for all projects or those which meet criteria such as size or location. Part of what makes contextual zoning so interesting is that it seeks to preserve neighborhood character in a way that maintains as-of-right development approval. One way of increasing the efficacy of contextual zoning as a preservation tool would be to link it to a modified design review which could regulate limited aesthetic issues with the goal of raising the quality of design in contextual districts. While it might be impractical to require modified design review for all construction in contextual districts, another approach would be to rethink the as-of-right paradigm more broadly. Perhaps a simplified discretionary process would be triggered by something other than simply being in a contextual district; perhaps it would be triggered for buildings over a certain size or additions which are seeking to add a certain percentage of existing bulk. This strays from the issues of contextual zoning and into the arena of urban design more broadly. However, a reconsideration of the city’s reliance on as-of-right approvals, and a study of the way that comparable cities handle the approval of development process could yield useful results.

Conclusion

As applied in the neighborhoods of “Brownstone Brooklyn,” contextual zoning is an imperfect tool that serves several useful functions for historic preservation. But no system is perfect, and New York City should continue to look to other cities for innovative ways to balance the preservation of neighborhood character with the growth of those neighborhoods and the city. The use of contextual zoning for preservation planning in New York City, alongside neighborhood conservation districts and form-based codes in other cities, represents a critical departure from historic districts as the traditional tool for preservation. Greater involvement in the mutual interest in neighborhood character by planners who are willing to engage the preservation sphere and preservationists who are willing to adopt the tools of planning, can only benefit a city’s urban realm in the future.
Images

Figure 1: Height Factor vs. Contextual Zoning

Credit: Department of City Planning

Figure 2: R6 vs. R6B Zoning District

Credit: Department of City Planning
Figure 3: Park Slope Historic District, 1973

Credit: Landmarks Preservation Commission
Figure 4: First Park Slope Contextual Rezoning, 1993

Credit: Department of City Planning
Figure 5: Existing Park Slope zoning, 2002

Credit: Department of City Planning
Figure 6: New Park Slope zoning, 2003

Credit: Department of City Planning
Figure 7: Park Slope Civic Council Phased Expansion Plan

Credit: Park Slope Civic Council
Figure 8: Park Slope Civic Council Phased Expansion Plan

Credit: Park Slope Civic Council
Figure 9: Park Slope Historic District Expansion I

Credit: Landmarks Preservation Commission
Figure 10: Proposed Park Slope Historic District Expansion II

Credit: Landmarks Preservation Commission

[Map showing the proposed expansion of the Park Slope Historic District]
Figure 11: Carroll Gardens Existing Zoning, 2009

Credit: Department of City Planning
Figure 12: Carroll Gardens Historic District

Credit: Landmarks Preservation Commission
Figure 13: 11 Second Place
Credit: Google Maps

Figure 14: Sackett Union Development, 340 Court Street
Credit: Rogers Architects
Figure 15: Carroll Gardens Proposed Zoning, 2009

Credit: Department of City Planning
Carroll Gardens Historic District Expansion
Potential Landmark Zones

Credit: Carroll Gardens Neighborhood Association
Figure 17: Fort Greene Historic District, 1978

Credit: Landmarks Preservation Commission
Figure 18: Clinton Hill Historic District, 1981

Credit: Landmarks Preservation Commission
Figure 19: Greene House Condominium, 383 Carlton Avenue

Credit: Google Maps
Figure 20: Fort Greene/Clinton Hill Existing Zoning

Credit: Department of City Planning
Figure 21: Fort Greene/Clinton Hill Proposed Zoning

Credit: Department of City Planning
Figure 22: Stuyvesant Heights Historic District map, 1971

Credit: Landmarks Preservation Commission
Figure 23: Bedford-Stuyvesant Existing Zoning, 2007

Credit: Department of City Planning
Figure 24: Bedford-Stuyvesant Proposed Zoning, 2007

Credit: Department of City Planning
Figure 25: Proposed Historic Districts

Credit: Bedford-Stuyvesant Society for Historic Preservation
Figure 26: Expanded Stuyvesant Heights Historic District

Credit: Landmarks Preservation Commission
Figure 27: Proposed Bedford Historic District

Credit: Landmarks Preservation Commission
Bibliography


“Quality Housing Program General Purposes.” Zoning Resolution of the City of New York, Article II, Chapter 8. Amended 2/2/11.


Department of City Planning. “Guide to Housing Quality Provisions.” New York City Department of City Planning, date unknown.


Appendix 1: List of Interviews*

(in alphabetical order)

- Gabriella Amabile, former planner at Department of City Planning and Department of Housing Preservation and Development, current planner at U.S. Department of Housing and Urban Development
- Simeon Bankoff, Executive Director, Historic Districts Council
- Richard Barth, former Executive Director, Department of City Planning
- Claudette Brady, Bedford Stuyvesant Society for Historic Preservation
- Peter Bray, Trustee and Chair of Historic District Committee, Park Slope Civic Council
- Brooklyn Department of City Planning Staff
- Winston von Engel, Director of Brooklyn office, Department of City Planning
- Jenny Fernandez, former Director of Intergovernmental and Community Relations, Landmarks Preservation Commission
- Mark Ginsberg, Partner, Curtis + Ginsberg Architects, President and Board Member Citizens Housing and Planning Council
- Craig Hammerman, District Manager, Community Board 6
- Phillip Kellogg, former chair Fort Greene Association
- Michael Kwartler, President Environmental Simulation Center
- Sandi Hornick, former Deputy Executive Director of Strategic Planning, Department of City Planning
- Jeff Mulligan, former Executive Director Board of Standards and Appeals
- Regina Myer, former Director of Brooklyn office, Department of City Planning
- Robert Perris, District Manager, Community Board 2
- Doris Pinn, Land Use Committee Co-Chair, Community Board 3
- Vicki Weiner, Deputy Director, Pratt Center for Community Development
- Tom Wargo, former Director of Zoning Division, Department of City Planning

*Interviews conducted between January and April 2015.
### Appendix 2: Housing Quality Scoring System

<table>
<thead>
<tr>
<th>Housing Quality Zoning</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Neighborhood Impact</strong></td>
<td></td>
</tr>
<tr>
<td>Off-site sunlight</td>
<td>8.0</td>
</tr>
<tr>
<td>relates the front of the new building to the facades of the adjoining properties</td>
<td></td>
</tr>
<tr>
<td>Street wall length</td>
<td>3.1</td>
</tr>
<tr>
<td>encourages visual activity facing the street</td>
<td></td>
</tr>
<tr>
<td>Ground floor activity</td>
<td>4.9</td>
</tr>
<tr>
<td>uses setbacks to integrate a new building into a district where adjoining buildings are of different sizes</td>
<td></td>
</tr>
<tr>
<td>Street wall height</td>
<td>3.1</td>
</tr>
<tr>
<td>regulates the average height of a project so it conforms to the median height of adjacent buildings</td>
<td></td>
</tr>
<tr>
<td>Building height</td>
<td>3.1</td>
</tr>
<tr>
<td>Street trees</td>
<td>2.8</td>
</tr>
<tr>
<td>assures shaded and attractive sidewalks</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>25.0</td>
</tr>
</tbody>
</table>

| Recreation Space               |        |
| Type and size                  | 9.4    |
| lists the requirements for the different recreation spaces including minimum sizes |        |
| Sunlight onsite                | 5.5    |
| ensures that as much outdoor spaces as possible receives sunlight between 9 am and 3 pm during the equinox |        |
| Parking                        | 4.1    |
| encourages enclosed and underground parking provides landscaping within outdoor recreation areas and as buffers between such areas and other areas |        |
| Planting                       | 3.1    |
| specifies the preferred total inches of tree diameter in recreation areas |        |
| Trees                          | 2.9    |
| **Total**                      | 25.0   |

| Security and Safety            |        |
| Density of public corridor     | 5.0    |
| limits the number of rooms per corridor in order to facilitate recognition among neighbors makes it possible to see the elevator waiting area from the sidewalk |        |
| Visibility from public space to elevator doors | 5.0    |
| Visibility of private outdoor space from the lobby space | 5.0    |
| Surveillance from apartments   | 4.4    |
| floors in order to maximize surveillance of outdoor space |        |
| Entry of building from parking garage or lot | 3.1    |
| forbids direct access into a building from an uncontrolled point |        |
| Visibility from elevator door to apartment door | 2.5    |
| secures visibility of all apartment entries from the elevator door |        |
| **Total**                      | 25.0   |

| Building Interior              |        |
| Size of apartment              | 4.5    |
| sets up a schedule of desirable gross square footage |        |
| Sunlight in apartments         | 3.9    |
| building or by the use of bay windows |        |
| Window size                    | 3.8    |
| relates window size to gross floor area |        |
| Visual privacy onsite          | 2.7    |
| ensures visual privacy from other tenants |        |
| Visual privacy offsite         | 2.7    |
| protects ground floor tenants from the view of passersby |        |
| Cross ventilation              | 2.6    |
| establishes natural ventilation as a goal for all apartments specifies that public hallways should have windows at a given ratio |        |
| Daylight in public corridors   | 1.8    |
| requires a certain amount of storage space for each bedroom, either within the apartment or in common storage rooms located elsewhere than the basement |        |
| Pram, bicycle and bulk storage | 1.6    |
| requires a garbage disposal room with garbage chute for each floor |        |
| Waste storage                  | 1.4    |
| **Total**                      | 25.0   |

Credit: Guide to Housing Quality Provisions, Department of City Planning.
Appendix 3: Zoning Districts

### R6–R7 Medium-Density Residence Districts

<table>
<thead>
<tr>
<th></th>
<th>R6HF</th>
<th>R6QH</th>
<th>R6A</th>
<th>R6B</th>
<th>R7HF</th>
<th>R7QH</th>
<th>R7-3</th>
<th>R7A</th>
<th>R7B</th>
<th>R7D</th>
<th>R7X</th>
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</thead>
<tbody>
<tr>
<td>Residential FAR (max)</td>
<td>Wide street</td>
<td>0.78–2.43 (range)</td>
<td>3.0(^1)</td>
<td>3.43(^2)</td>
<td>2.2</td>
<td>2.0</td>
<td>0.87–3.44 (range)</td>
<td>4.0(^3)</td>
<td>3.44(^4)</td>
<td>5.0(^5)</td>
<td>4.0</td>
</tr>
<tr>
<td>Narrow street</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community facility FAR</td>
<td>4.8</td>
<td>4.8</td>
<td>3.0</td>
<td>2.0</td>
<td>8.7:1</td>
<td>4.8</td>
<td>R7:2:6.5</td>
<td>8.7:1</td>
<td>4.8</td>
<td>R7:2:6.5</td>
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<tr>
<td>Open space ratio</td>
<td>27.5–37.5 (range)</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>15.5–25.5 (range)</td>
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<td>—</td>
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<tr>
<td>Lot coverage (max)</td>
<td>Corner lot</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
<td>70%</td>
<td>80%</td>
<td>80%</td>
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<tr>
<td></td>
<td>Interior lot</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
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<td>—</td>
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<td>—</td>
</tr>
<tr>
<td>Building height (max)</td>
<td>Wide street</td>
<td>Sky exposure plane</td>
<td>70 ft</td>
<td>65 ft (^6)</td>
<td>70 ft</td>
<td>50 ft</td>
<td>Sky exposure plane</td>
<td>80 ft</td>
<td>75 ft (^7)</td>
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<td>Rear yard depth (min)</td>
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<td>Off-street parking (min)</td>
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<td>50%</td>
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\(^1\) Wide street outside Manhattan Core
\(^2\) Wide street within Manhattan Core

### R8–R10 Higher-Density Residence Districts

<table>
<thead>
<tr>
<th></th>
<th>R8HF</th>
<th>R8QH</th>
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<th>R8B</th>
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<th>R10QH</th>
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<tbody>
<tr>
<td>Residential FAR (max)</td>
<td>Wide Street</td>
<td>0.94–6.62 (range)</td>
<td>7.2</td>
<td>6.02(^2)</td>
<td>6.02</td>
<td>6.02</td>
<td>4.0</td>
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<td>0.99–7.52 (range)</td>
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<tr>
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<td>Community facility FAR (max)</td>
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<td>6.5</td>
<td>6.5</td>
<td>6.0</td>
<td>6.0</td>
<td>10.0</td>
<td>Wide Street</td>
<td>R9QH: 10.0</td>
<td>R9A: 7.5</td>
<td>9.0</td>
<td>9.0</td>
<td>9.0</td>
<td>10.0</td>
<td>10.0</td>
<td>10.0</td>
</tr>
<tr>
<td>Lot coverage (max)</td>
<td>Corner lot</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
<td>80%</td>
<td>70%</td>
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<td>70%</td>
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<tr>
<td>Indoor lot</td>
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<td>—</td>
<td>100%</td>
<td>100%</td>
<td>—</td>
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<td></td>
</tr>
<tr>
<td>Base height (min/max)</td>
<td>Wide Street</td>
<td>60–85 ft (wide st)</td>
<td>55–60 ft (wide st)</td>
<td>60–85 ft (wide st)</td>
<td>60–102 ft</td>
<td>90 ft</td>
<td>60–85 ft</td>
<td>60–120 ft</td>
<td>125–150 ft</td>
<td>60–85 ft (wide st)</td>
<td>60–120 ft</td>
<td>125–150 ft</td>
<td>60–125 ft</td>
<td>60–85 ft (wide st)</td>
<td>60–125 ft</td>
</tr>
<tr>
<td>Building height (max)</td>
<td>Wide street</td>
<td>Sky exposure plane</td>
<td>120 ft</td>
<td>120 ft</td>
<td>75 ft</td>
<td>150 ft</td>
<td>Sky exposure plane or tower rules</td>
<td>145 ft</td>
<td>280 ft</td>
<td>210 ft</td>
<td>160 ft</td>
<td>185 ft</td>
<td>145 ft</td>
<td>135 ft</td>
<td>135 ft</td>
</tr>
<tr>
<td>Narrow street</td>
<td>105 ft</td>
<td>105 ft</td>
<td>105 ft</td>
<td>105 ft</td>
<td>105 ft</td>
<td>105 ft</td>
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<td>105 ft</td>
<td>105 ft</td>
<td>105 ft</td>
<td>105 ft</td>
</tr>
<tr>
<td>Rear yard depth (min)</td>
<td>30 ft</td>
<td>30 ft</td>
<td>30 ft</td>
<td>30 ft</td>
<td>30 ft</td>
<td>30 ft</td>
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<td>30 ft</td>
<td>30 ft</td>
<td>30 ft</td>
</tr>
<tr>
<td>Off-street parking (min)</td>
<td>40%</td>
<td>40%</td>
<td>40%</td>
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</tr>
</tbody>
</table>

\(^1\) Wide street outside Manhattan Core
\(^2\) Wide street within Manhattan Core
\(^3\) FAR may differ in Inclusionary Housing designated areas
\(^4\) 5.10 permitted in Manhattan Community District B
\(^5\) Waived within Manhattan Core, except within Special Hudson Yards District
\(^6\) 40% in Brooklyn

Credit: Zoning Handbook, Department of City Planning.

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