March 23, 2015

DRAFT: NOT FOR DISTRIBUTION

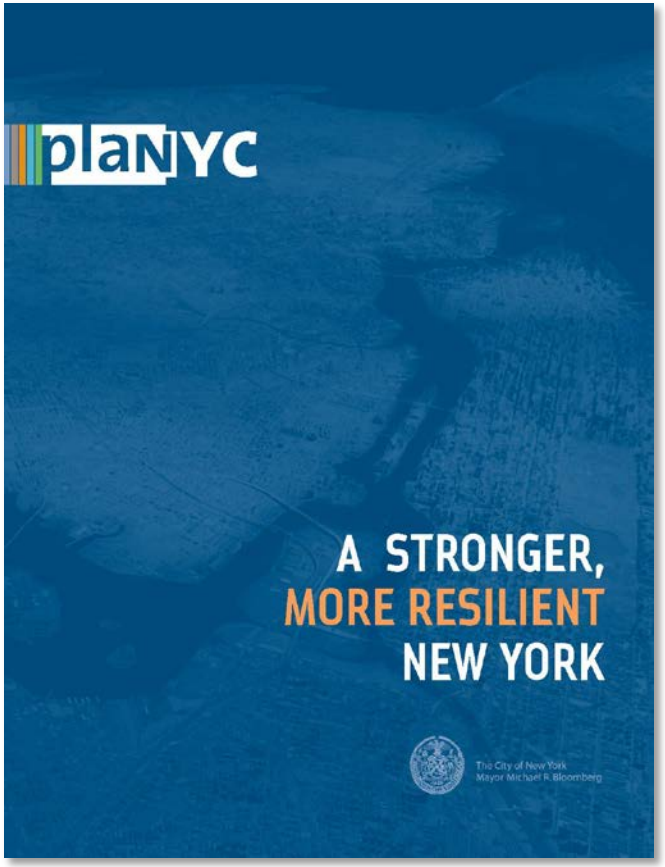
Special Regulations for Neighborhood Recovery

NYC Recovery

NYC Department of Housing Preservation & Development

NYC PLANNING
DEPARTMENT OF CITY PLANNING CITY OF NEW YORK

In response to **Hurricane Sandy**, the city modified its zoning and construction codes to facilitate a speedy **recovery**, as well as long-term **resiliency**:



SIRR Report

1. **SIRR Report** (2013) established a long-term framework for resiliency for the entire city

2. **Building Code Changes** established flood-resilient construction standards:
   - **Adoption of FEMA PFIRMS** (Preliminary Flood Insurance Rate Maps) into Code (2012)
   - **Update of Appendix G,** and adoption of freeboard, to define new flood-resilient construction methods (2013)

3. **Zoning & Land Use Changes:**
   - **Mayoral Executive Order #230** (2012) temporarily eliminated obstacles to rebuilding in the immediate aftermath
   - **Flood Resilience Text Amendment** (2013) to establish special zoning regulations for the flood zone (to be made permanent through ULURP in 2016)

Among the initiatives identified in the SIRR report was ensuring the recovery of homes damaged by Hurricane Sandy. As part of this commitment, the City established the **Build it Back** program, to assist Sandy-affected homeowners in repairing, elevating, and rebuilding their homes.

NYC BUILD IT BACK
Stronger & Safer

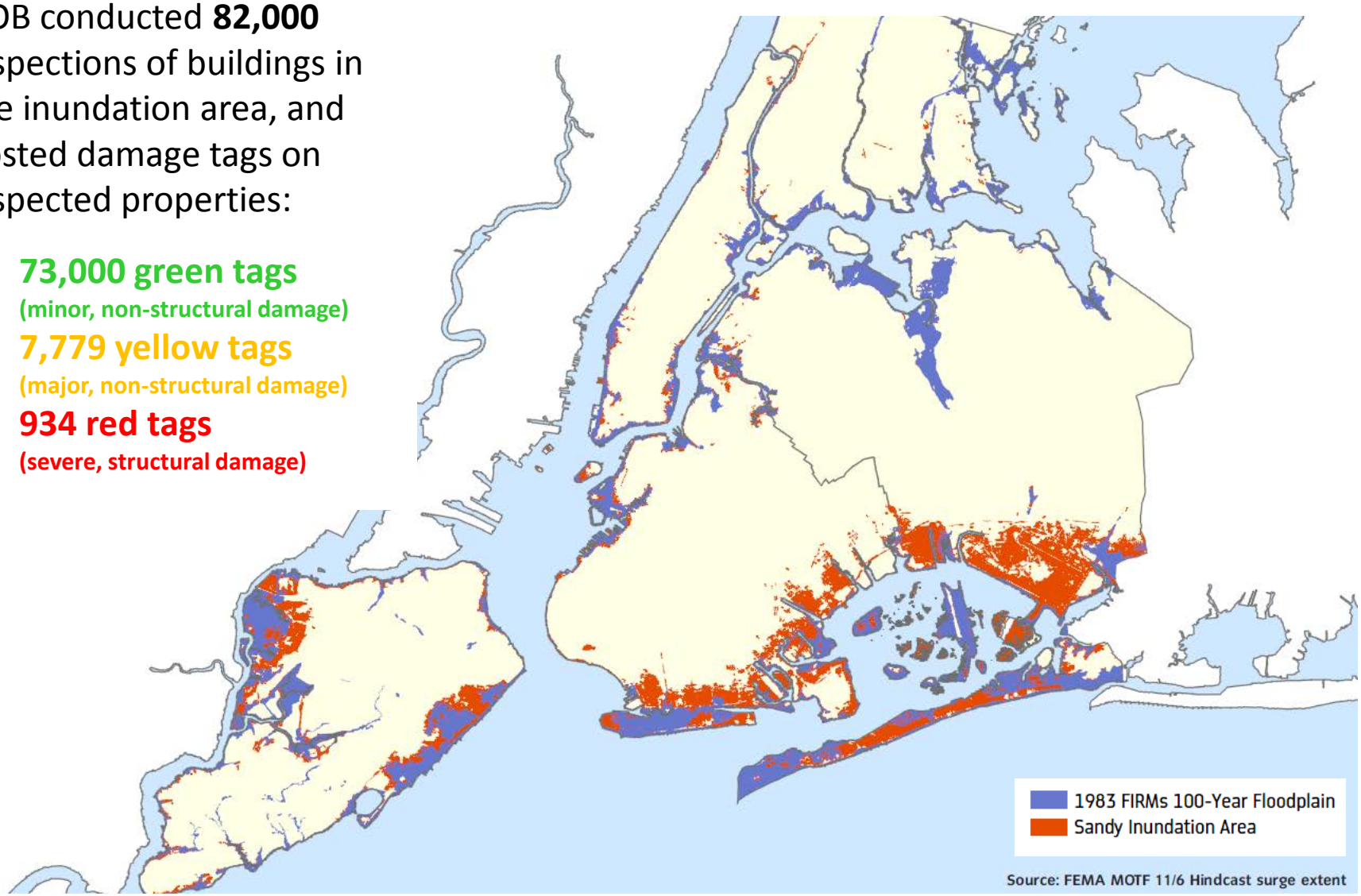
Build it Back: The City's Sandy recovery program for residents, jointly administered by the Department of Housing, Preservation, and Development (HPD) and Mayors Office of Housing Recovery (HRO), and funded by the U.S. Dept. of Housing and Urban Development.

Image: Housing Recovery Office

City-wide Recovery: Build it Back

Following Hurricane Sandy, DOB conducted **82,000** inspections of buildings in the inundation area, and posted damage tags on inspected properties:

- **73,000 green tags**
  (minor, non-structural damage)
- **7,779 yellow tags**
  (major, non-structural damage)
- **934 red tags**
  (severe, structural damage)



Among those affected, **19,827** applicants have sought assistance through the **Build it Back** Single-Family program.

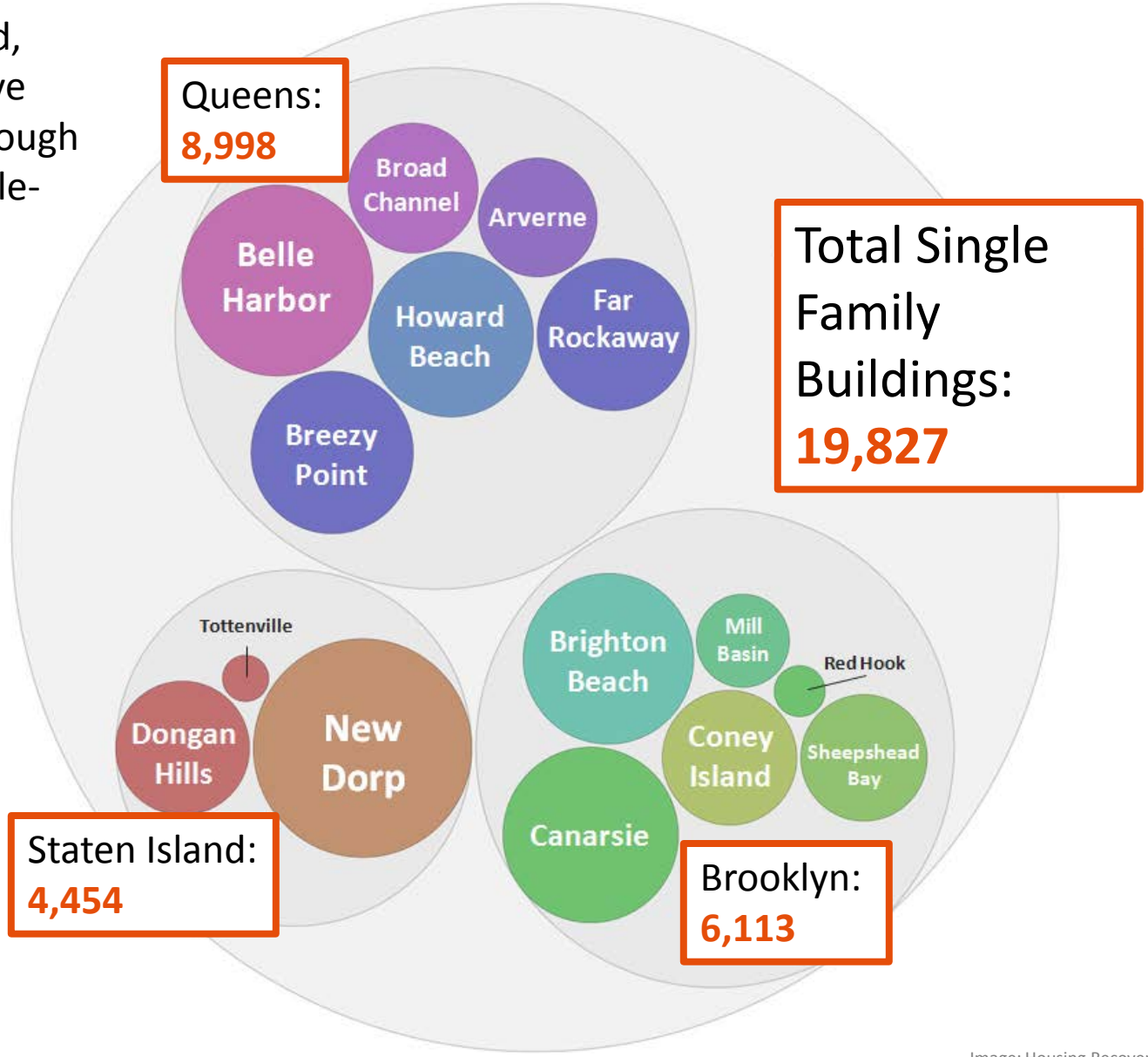


Image: Housing Recovery Office

Build it Back Single Family Program assists owners of properties with 1-4 units through **5** different pathways, depending on the home's damage and location:

Applies to substantially destroyed/improved homes

Reimbursement

BiB reimburses homeowners for repairs they conducted

Rehabilitation

BiB conducts repair work of a home which will not be elevated

Elevation

Existing home is raised to the FRCE (4500 anticipated)

Reconstruction

New home is built at the FRCE (500 anticipated)

Acquisition

for redevelopment or as part of a NYS buyout area

$47 Million in reimbursement has been distributed.

THE CITYWIDE FLOOD RESILIENCE TEXT AMENDMENT ("Flood Text") 64-00:

General Goals: to remove regulatory barriers that would hinder or prevent the reconstruction of storm-damaged properties and to encourage flood-resilient building construction throughout designated flood zones.

- **For existing buildings:** allows home and business owners to elevate and reconstruct their homes, including existing legally *non-complying* and legally *non-conforming* structures.
- **For new construction:** allows measurement of building height from the Flood Resilient Construction Elevation (FRCE), and enhances streetscapes through transparency and other design requirements.

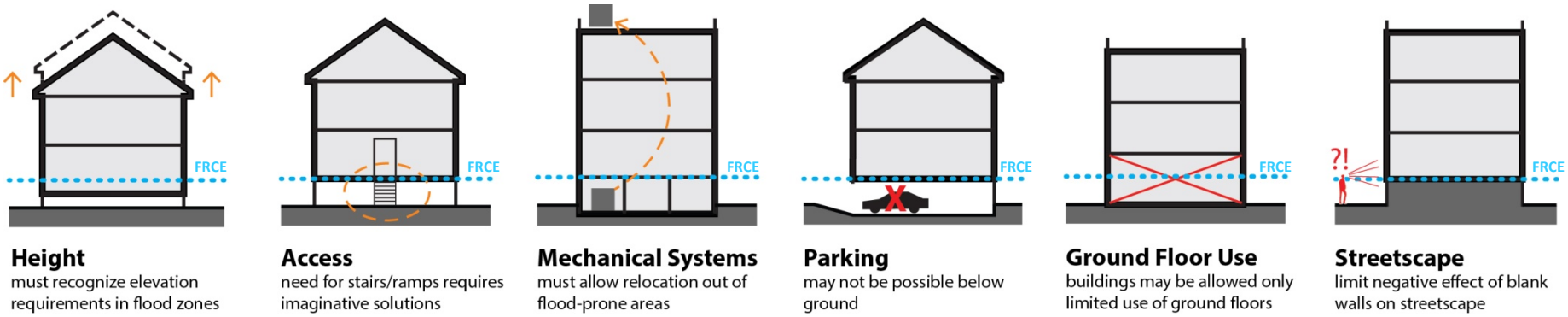


Image: Department of City Planning

City Planning recognized that these emergency provisions would need to be modified in the future based on lessons learned in the flood zone.

FLOOD TEXT ISSUES ENCOUNTERED IN WATERFRONT NEIGHBORHOODS:

The terms *non-compliance* and *non-conformance,* defined in the Zoning Resolution and on which the Flood Resilience Text Amendment depends, assume that a building's history is well-documented. This is difficult (or impossible) in many waterfront communities due to the age of homes changes in property ownership , and loss of personal records during the flood. This burden of documentation is creating a hindrance to recovery in these Sandy-damaged neighborhoods.

#NON-COMPLIANCE#

Pertains to the **physical form** of the property and its building: lot size, yards, height, and dwelling unit density which do not meet the current regulations but which **lawfully existed prior to the current zoning**.

#NON-CONFORMANCE#

Pertains to the **use** of the property and/or structure: uses that are currently prohibited but which **lawfully existed prior to the current zoning**. Examples of non-conforming uses include two-family homes in single-family districts, semi-detached/attached-homes in detached districts, stores in residence districts, or homes in manufacturing districts.

These pre-existing conditions are considered "grandfathered" (given non-compliant or non-conforming status), provided they can be fully documented.

FLOOD TEXT ISSUES ENCOUNTERED IN WATERFRONT NEIGHBORHOODS:

Many homes in the flood zone's low-density waterfront or beach neighborhoods do not comply with or conform to current zoning provisions as a result of long-standing conditions:

Bungalow colony in Rockaways, 1910.
Library of Congress

Aerial photo of Broad Channel, 2010
Microsoft Bing

Aerial photo of Cedar Grove, 1924
NYCGovMap

① These areas have an old housing stock predating most regulations, and were built on narrower and/or shallower lots than permitted now.

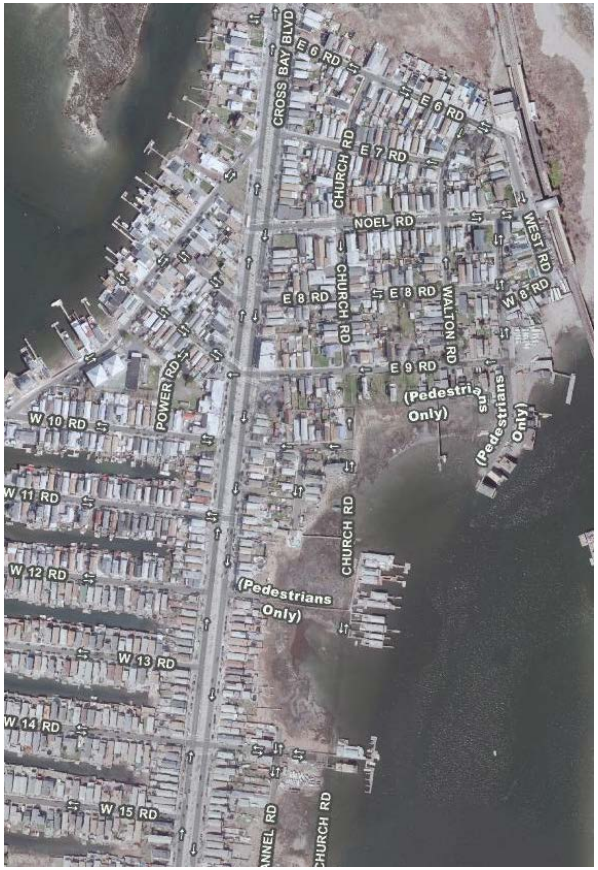
② Since 1961, zoning has imposed different standards than typically found in these neighborhoods, causing buildings and lots to become *non-compliant*

③ It is hard to document the history of these *non-compliances* (few homes have CO's, Sanborn maps may be inconsistent, some aerial photos are illegible)

Issues – *Non-compliance* and *Non-conformance*

In these areas, many buildings existing today were built decades ago, predating today's zoning code and building plan filing process.

Broad Channel, 1924



Broad Channel, 2012

Non-compliant Lots

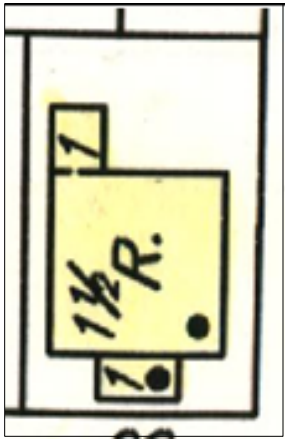
As a result, many of these properties do not meet current zoning regulations, and would need to supply extra documentation to elevate or rebuild pre-storm structures.

Images: NYCGovMap (left, middle), Dept. of City Planning (right)

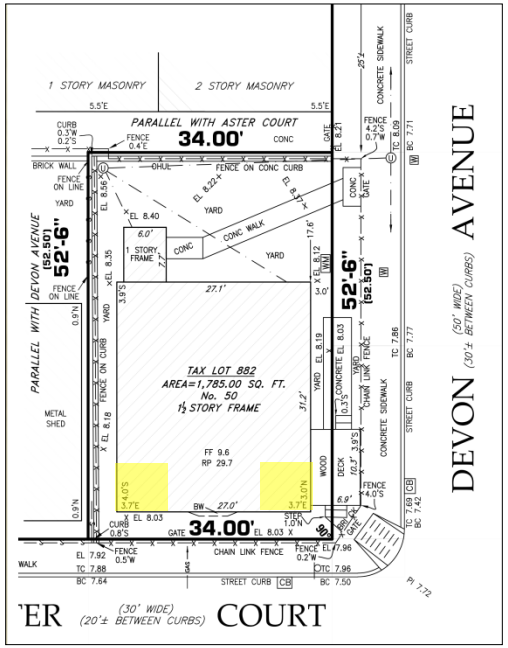
Build it Back: Elevation Case Study

Brooklyn: 50 Aster Court (Gerritsen Beach)

Images: Google Maps



1931 Sanborn Map



Current Survey

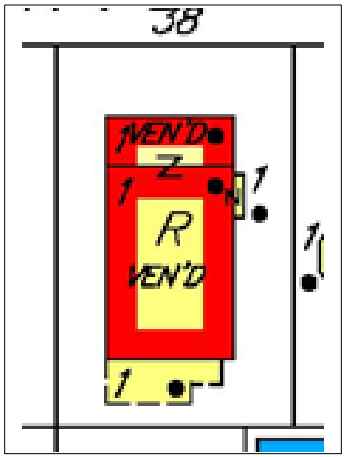
53 Aster Court (far left)
54 Aster Court (left)

The front sections (highlighted) of this home would have to be removed during an elevation.

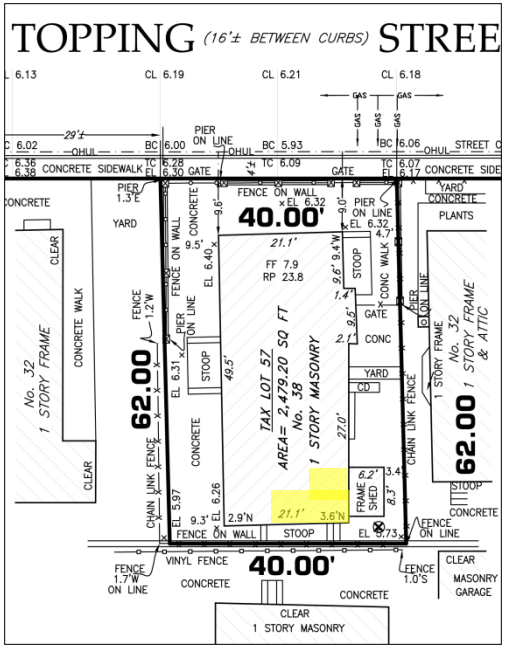
Build it Back: Elevation Case Study

Staten Island: 38 Topping Street (Midland Beach)

Images: Google Maps



1931 Sanborn Map



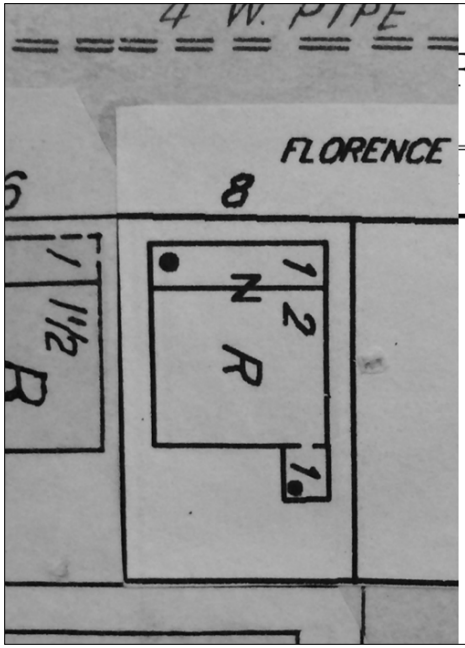
Current Survey

The rear section (highlighted) of this home would have to be removed during an elevation.

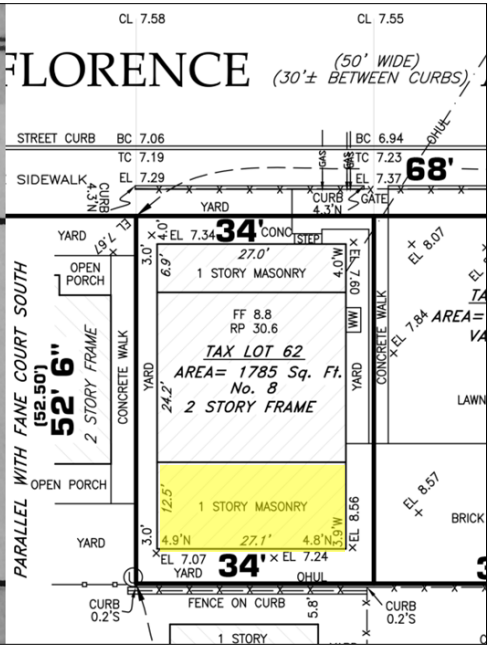
Build it Back: Elevation Case Study

Brooklyn: 8 Florence Avenue (Gerritsen Beach)

Images: Google Maps



1931 Sanborn Map

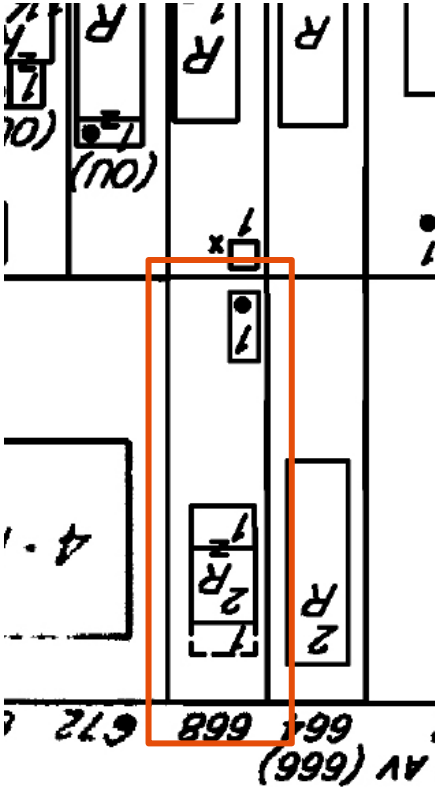


Current Survey

The rear section (highlighted) of this home would have to be removed during an elevation.

Build it Back: Reconstruction Case Study

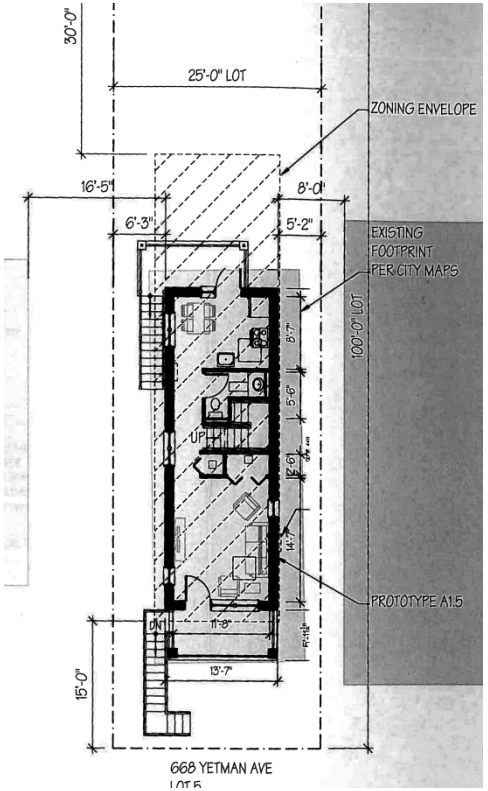
Staten Island: 668 Yetman Ave. (Tottenville)



1931 Sanborn Map

Pre-Sandy NYC Aerial (2012)

Current Google Aerial (2014)



BiB Proposed Reconstruction

The proposed home does not match the 1931 Sanborn, and is based on home's footprint prior to Sandy. Documenting the home's footprint prior to Sandy (as well as the history of the non-compliant lot) was impossible. Additionally, the home is now demolished; a survey cannot be taken to officially document "existing conditions".

Goals of Special Regulations for Neighborhood Recovery

Special rules are proposed that will accelerate recovery from Hurricane Sandy by:

1. **Simplifying the process** for documenting non-compliances for Sandy-damaged homes, including any alterations that may have been made prior to Hurricane Sandy,

2. **Remove disincentives** for property owners to make resilient investments, by allowing additional habitable space to be elevated to comply with flood-resistant construction standards, and

3. **Establishing a new zoning envelope**, where homes are to be reconstructed, that more accurately reflects the existing neighborhood character for buildings on narrow and shallow lots.

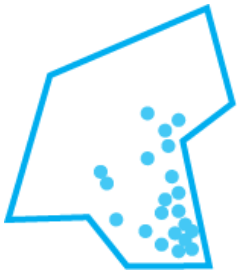
Limited Applicability

These provisions will only apply to homes that meet **all** of these criteria:

1

Residences existing on the date of Hurricane Sandy (October 28, 2012)

2

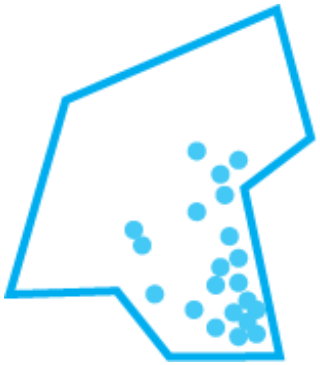


Located in targeted areas which are designated within the 100 year flood plain

3

Will be elevated / rebuilt as **single- or two-family homes** complying with flood-resistant construction standards

Limited Applicability



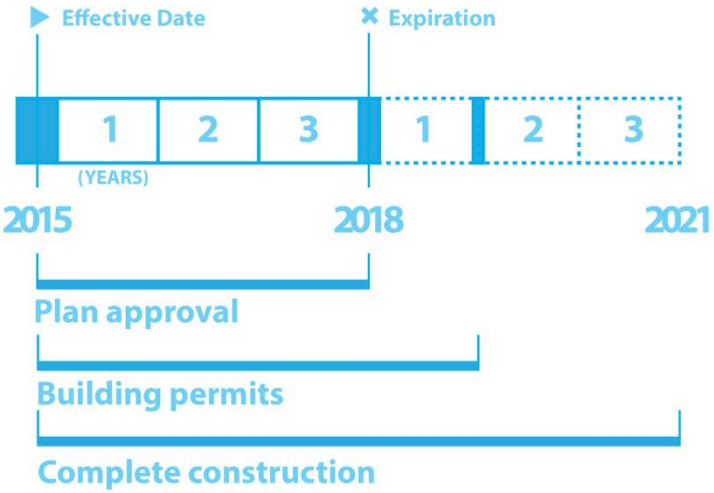
Located in **targeted areas** within the flood zone

Targeted areas are drawn around neighborhoods that:

1. Have experienced a high concentration of damage by Hurricane Sandy, **AND**

2. Have a prevalence of narrow and shallow lots developed prior to 1961 that make elevation or reconstruction challenging, **AND**

3. Contain many detached one and two family homes that would benefit from this text.



Applicants have limited time to take advantage of these provisions:

1. An applicant has **3 years** from the effective date of this text amendment to obtain plan approval.

2. Upon expiration of this amendment, applicants who have obtained plan approval have **1 year** to obtain building permits, and 2 additional years to complete construction.

Staten Island:

- Anticipated BiB Elevation
- Anticipated BiB Reconstruction
- Proposed Targeted Area (Approx.)
- Flood Zone (100 YR Flood Plain)

Community Board 2

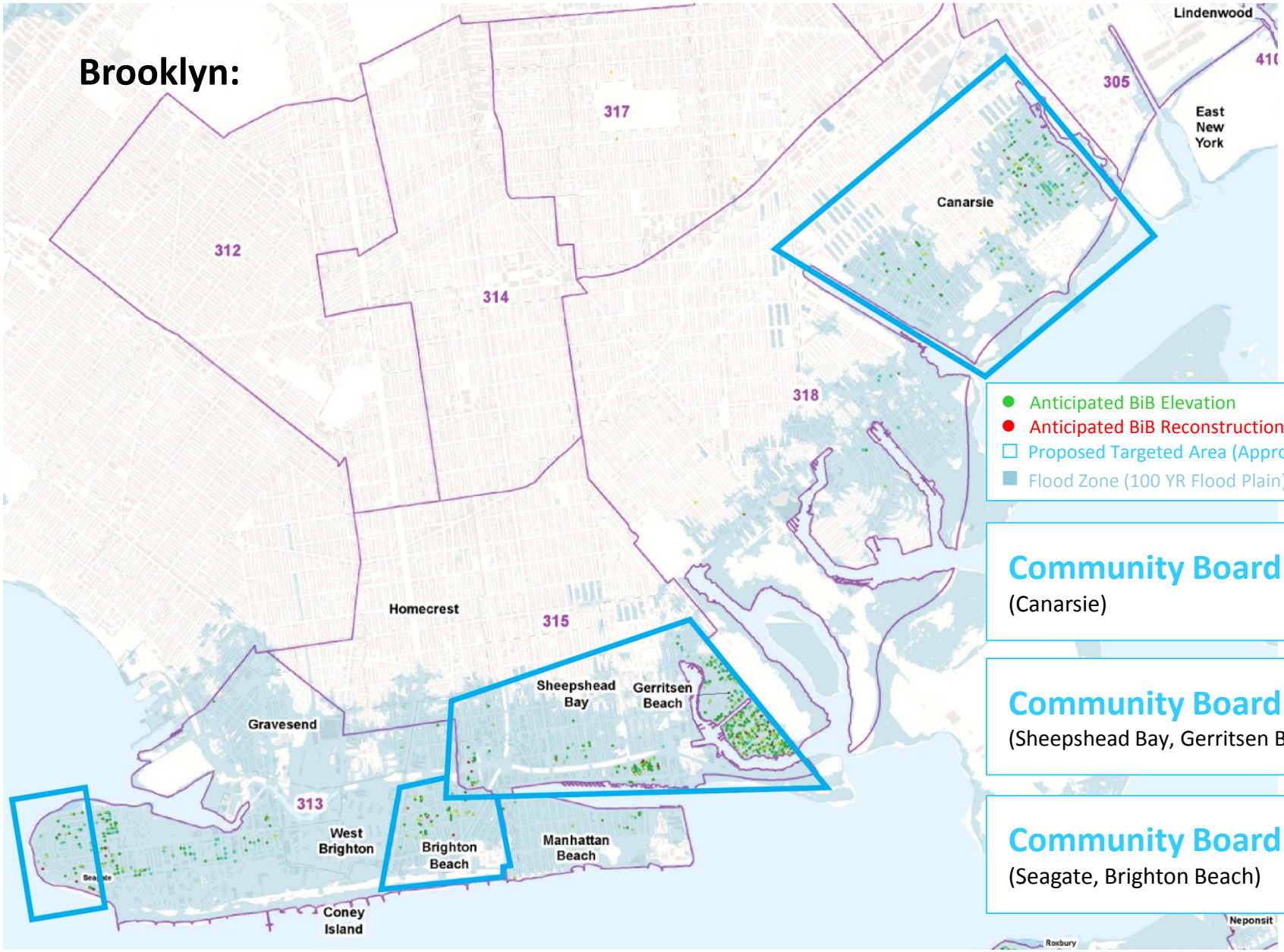
(South Beach, Midland Beach, New Dorp)

Community Board 3

(Oakwood Beach, Cedar Grove, Great Kills, Tottenville)

*** NYS Buyout Areas are excluded**

Limited Applicability – Targeted Areas



Community Board 18
(Canarsie)

Community Board 15
(Sheepshead Bay, Gerritsen Beach)

Community Board 13
(Seagate, Brighton Beach)

Limited Applicability – Targeted Areas

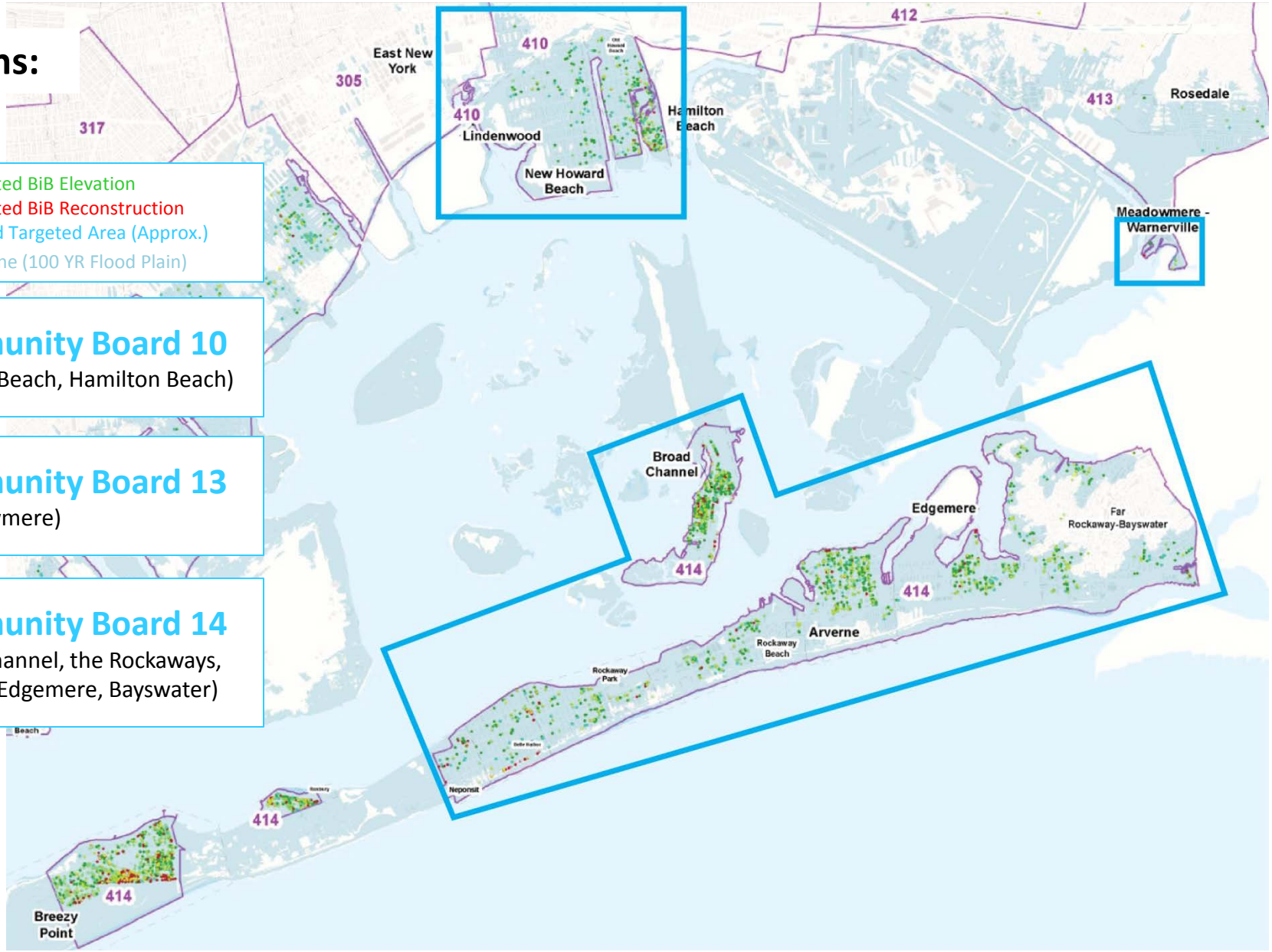
Queens:

- Anticipated BiB Elevation
- Anticipated BiB Reconstruction
- Proposed Targeted Area (Approx.)
- Flood Zone (100 YR Flood Plain)

Community Board 10
(Howard Beach, Hamilton Beach)

Community Board 13
(Meadowmere)

Community Board 14
(Broad Channel, the Rockaways, Arverne, Edgemere, Bayswater)

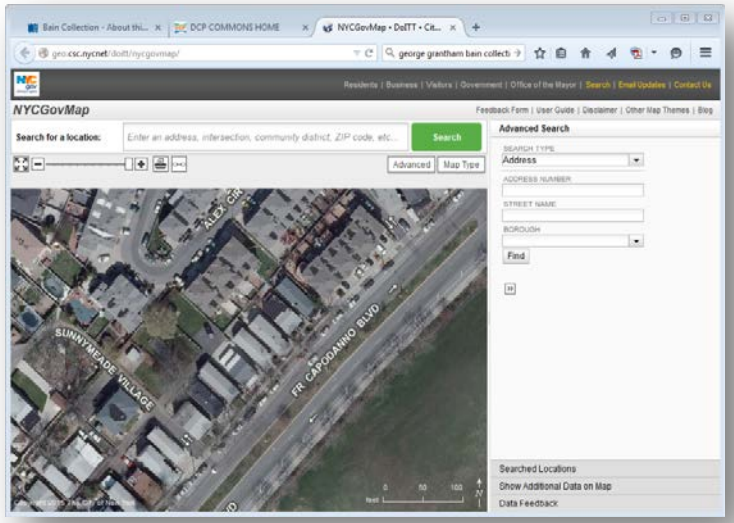


Limited Applicability – Special Requirements for Application

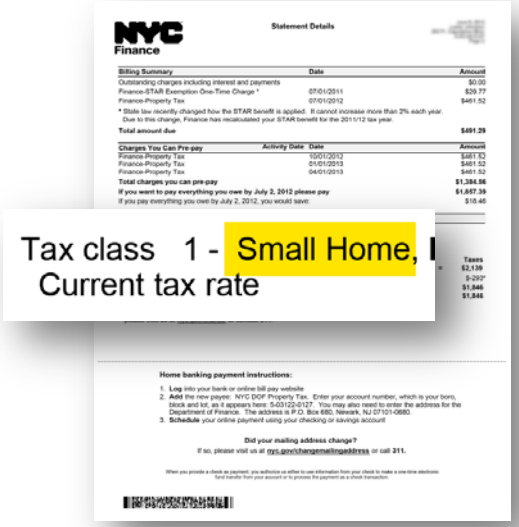
To be eligible to utilize these provisions, an applicant must provide the following proof at the time of application for **DOB plan approval**:

① An **aerial photo** showing the structure existing on or before Oct. 28, 2012; and

② A **tax bill** indicating the property was used for a residential use in 2012.



www.nyc.gov/citymap



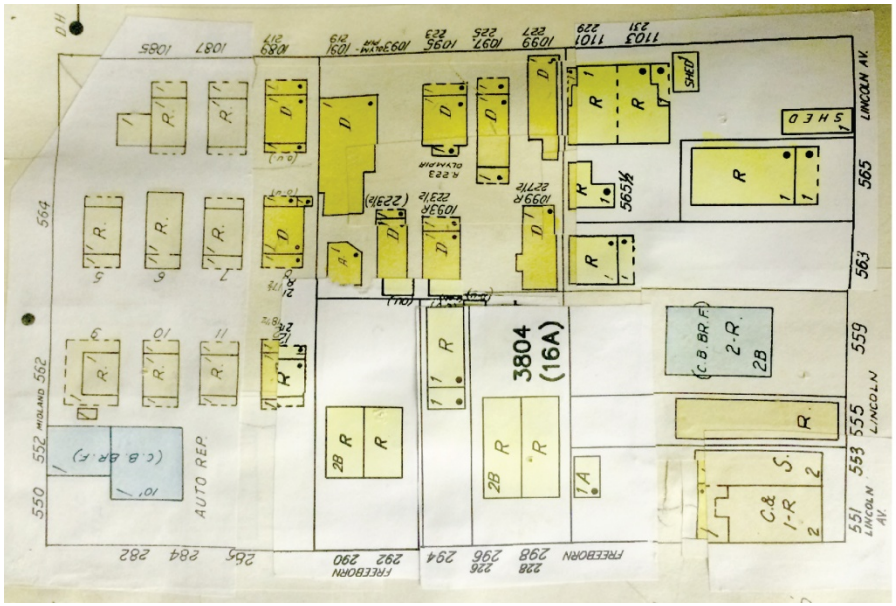
www.nyc.gov/finance

(The date of materials used to verify existence of a residence must not be older than October 28, 2011.)

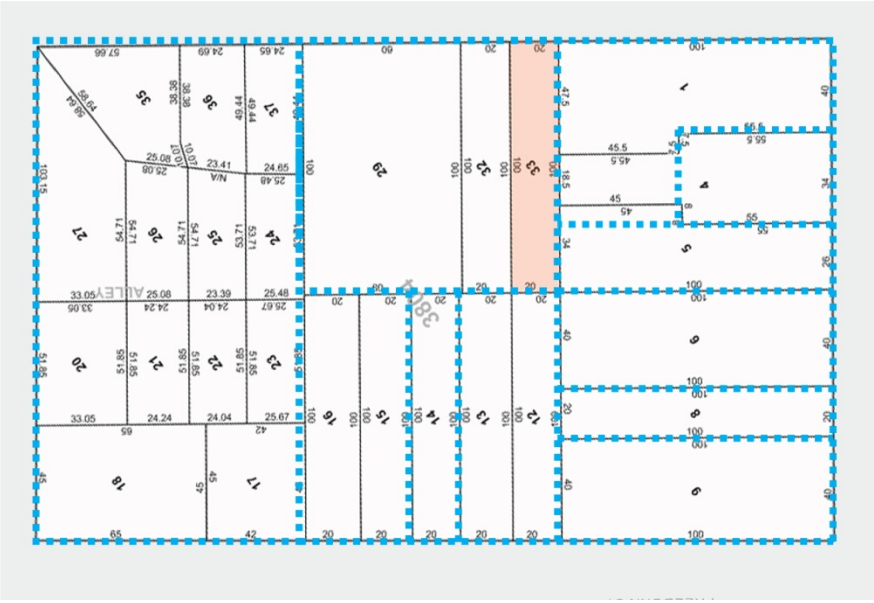
Currently: Damaged properties which attempt to rebuild face an additional difficulty in documenting the boundaries and ownership of their zoning lot, which is the parcel of land to which zoning regulations are applied but which does not necessarily correspond to the current tax lot.

Example: Olympia Blvd., Staten Island

Possible *Zoning Lot* boundaries



1961 Sanborn Map

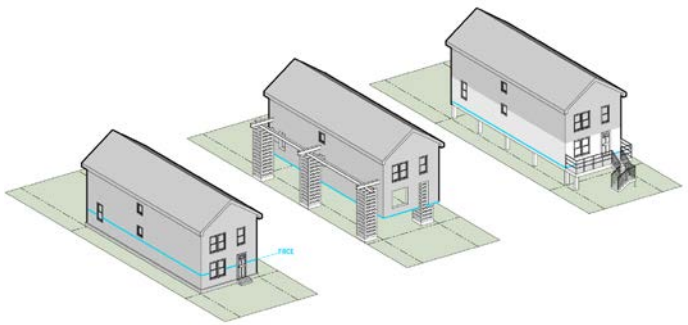


Current NYC Digital Tax Map

Proposal: Property owners may elect to use their **tax lot** as their **zoning lot** for zoning calculations; no documentation of the lot's ownership history will be required.

Special Regulations for Elevation and Reconstruction

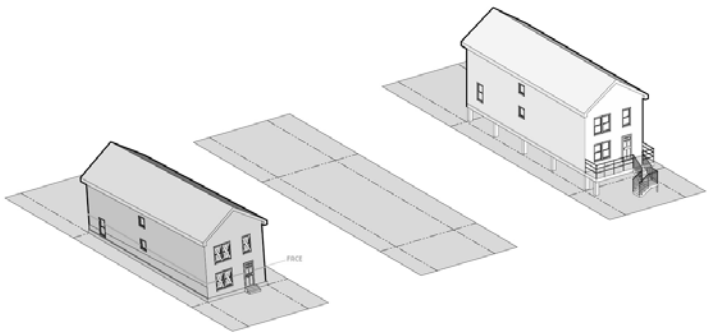
ELEVATIONS



4,500

anticipated from Build it Back's current pipeline

RECONSTRUCTIONS



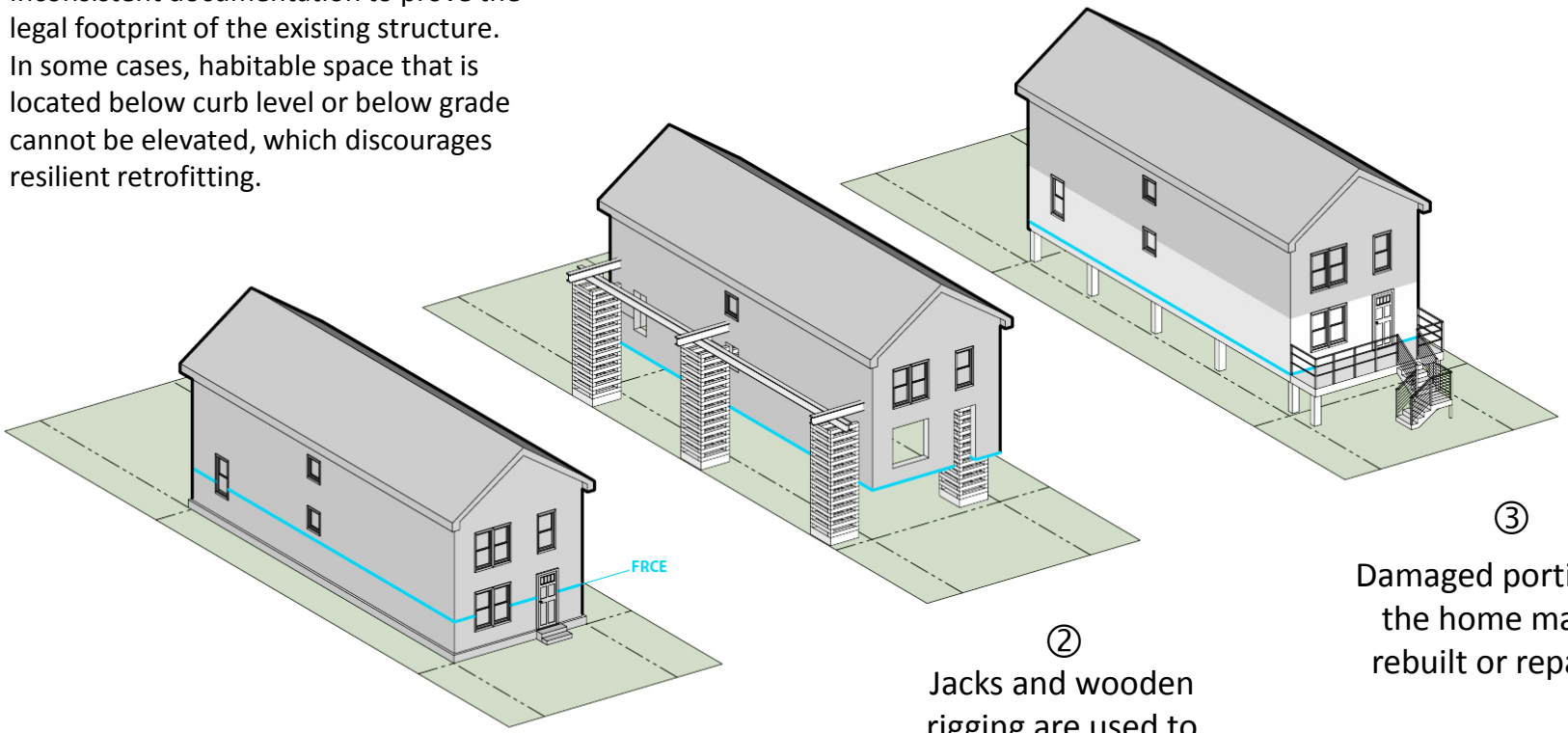
500

anticipated from Build it Back's current pipeline

Typical Elevation

Current Issues:

1. Inconsistent documentation to prove the legal footprint of the existing structure.
2. In some cases, habitable space that is located below curb level or below grade cannot be elevated, which discourages resilient retrofitting.



①
Homes are required to be **elevated** to the FRCE when they are either substantially damaged or substantially improved.

②
Jacks and wooden rigging are used to vertically lift the home in place.

③
Damaged portions of the home may be rebuilt or repaired.

Proposal:

- A **professional survey** of the site will establish the "pre-storm conditions" for purposes of building footprint and non-compliances.
- The lowest horizontal structural member supporting the lowest floor containing habitable space that was located at or above adjacent grade may be raised to the **Flood Resilient Construction Elevation** (FRCE).
- The vertical elevation may create or **increase the degree of *non-compliance*** as to height and setback, required open space, and yards.

Department of City Planning

Result: Buildings which are elevated to these standards will be considered **non-compliant** and/or **non-conforming** upon the completion of their elevation.

Currently:

Habitable space that is located **below grade** in a non-compliant building is not permitted to be elevated.

Proposal:

Allow elevation of habitable space located **below grade**, provided the resulting elevated structure is not more than 2 stories or 25’ tall.

Examples of conditions prior to elevation:

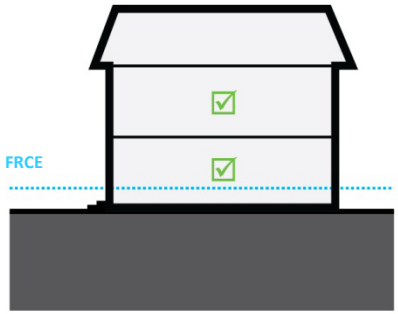


Fig. **1**

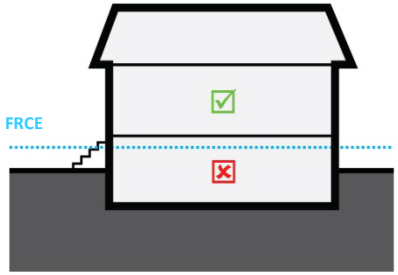


Fig. **2**

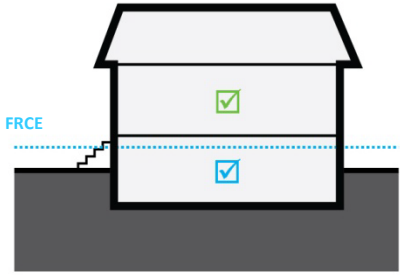


Fig. **3**

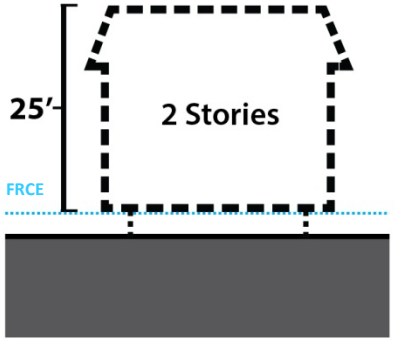
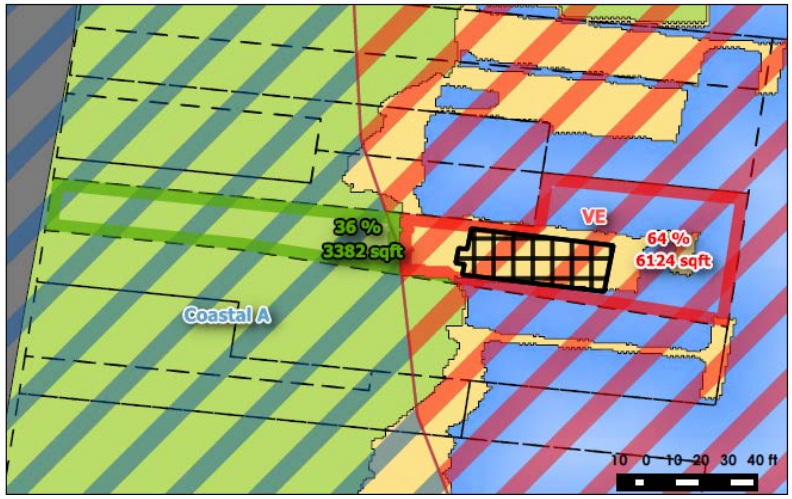


Fig. **4**

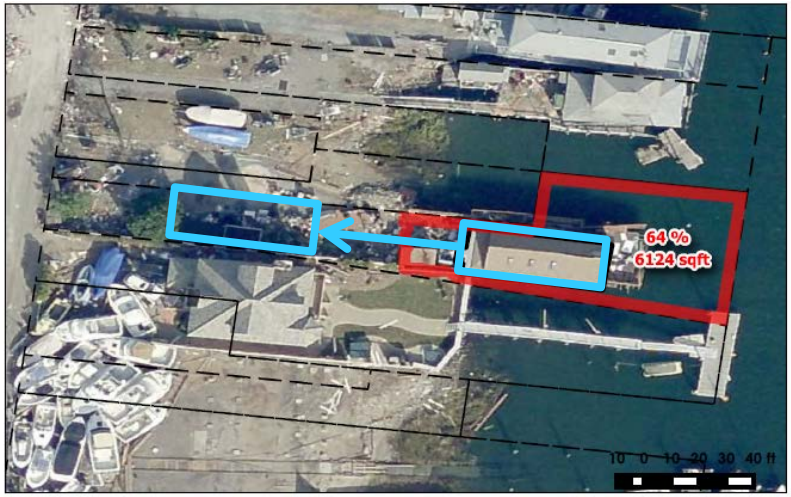
☑ - Space is currently allowed to be elevated. ☒ - Space is not allowed to be elevated. ☑ - New provisions will allow elevation.

Proposal:

Buildings which are located partially, or entirely, over water may **shift their footprint landward** during the elevation process. They will also be permitted to create or increase non-compliances in side and rear yards in order to do so. (However, buildings will not be permitted to encroach into their front yards.) Allowing the relocation of homes over water will ensure homes can be rebuilt in line with FEMA regulations and other federal requirements.



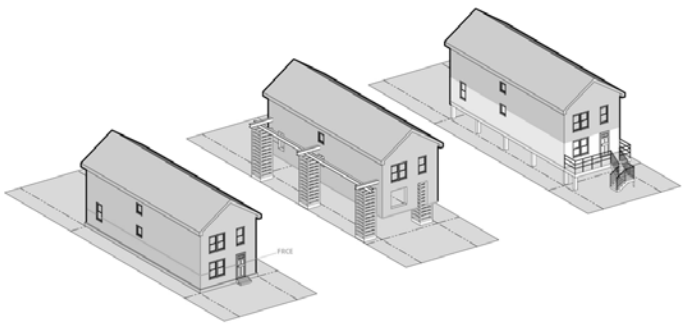
BiB Over Water Analysis of 16-12 Church Road, Broad Channel, Queens



Current aerial of 16-12 Church Road, Broad Channel, Queens

Special Regulations for Elevation and Reconstruction

ELEVATIONS



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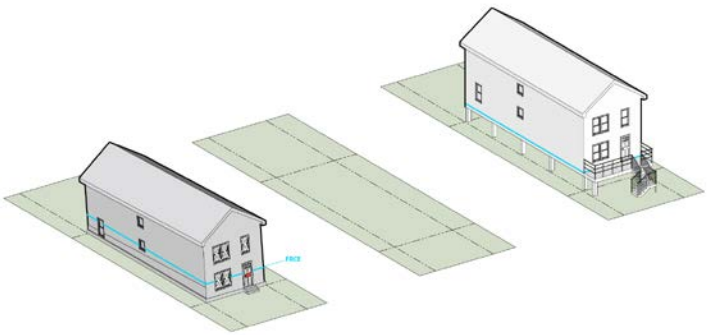

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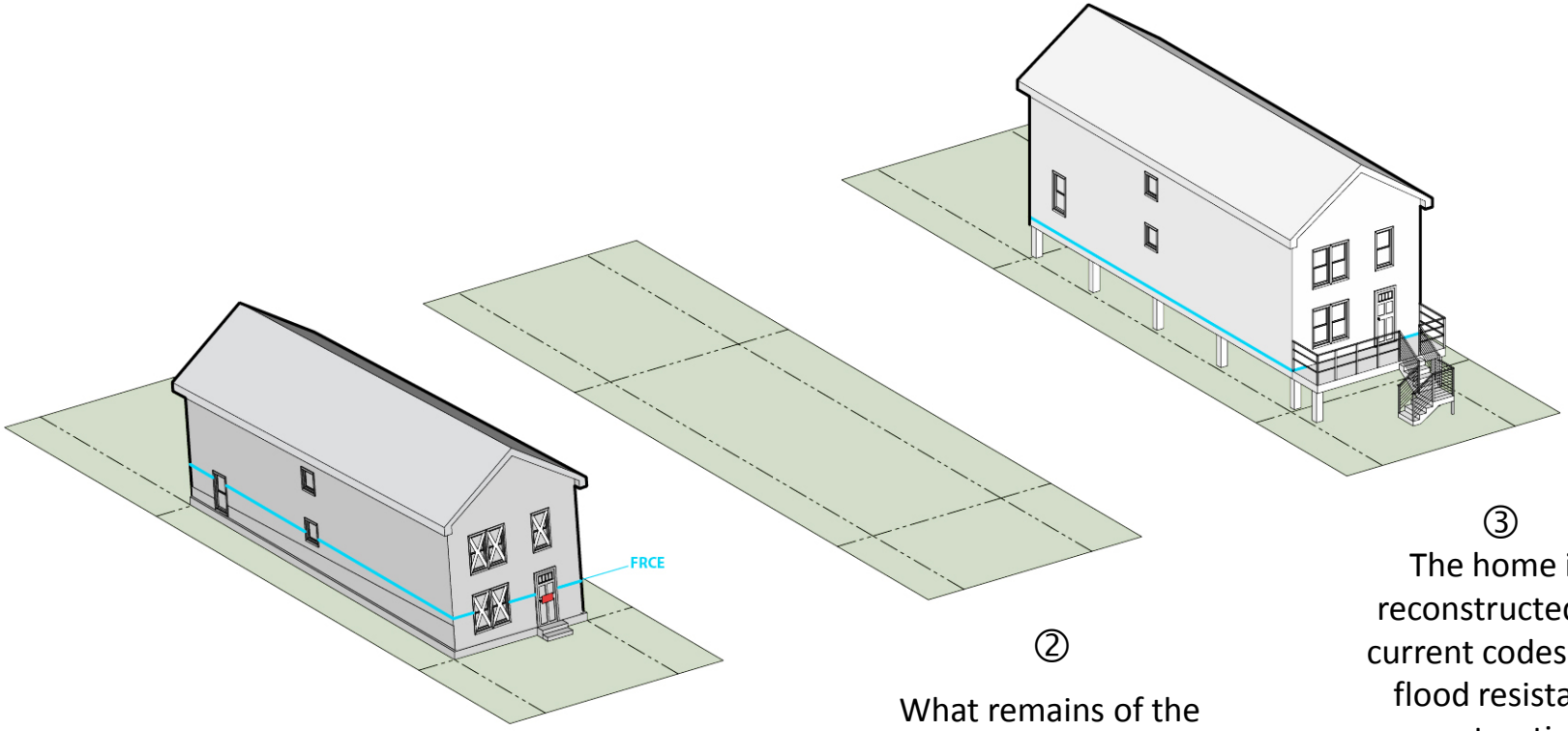
Typical Reconstruction:



①
Homes are **reconstructed** when the damage is severe, or the building is destroyed.

②
What remains of the building is completely demolished.

③
The home is reconstructed to current codes and flood resistant construction standards.

Currently:

Homes may be reconstructed in the **same footprint** (if it can be documented) or may be built within the **as-of-right envelope** (at right).

Issues faced in reconstruction:

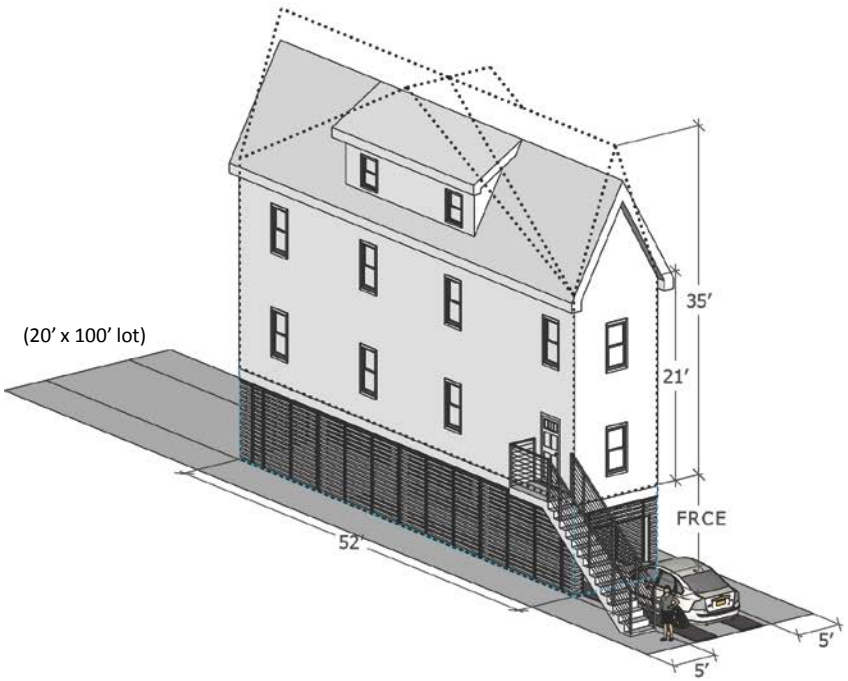
1. Development of housing under current zoning regulations often results in homes that undesirable because of the narrow permitted floor plate and extreme height.
2. To comply with the 2014 Construction Code, changes to the location of the home often require homeowners to go to the Board of Standards & Appeals (BSA), which can be a long and costly process.
3. For substandard lots, the history of the lot's ownership is difficult to document.

Example of as-of-right development that is permitted under current zoning regulations

Proposal:

Envelope Modifications for Small/Narrow/Shallow Lots:

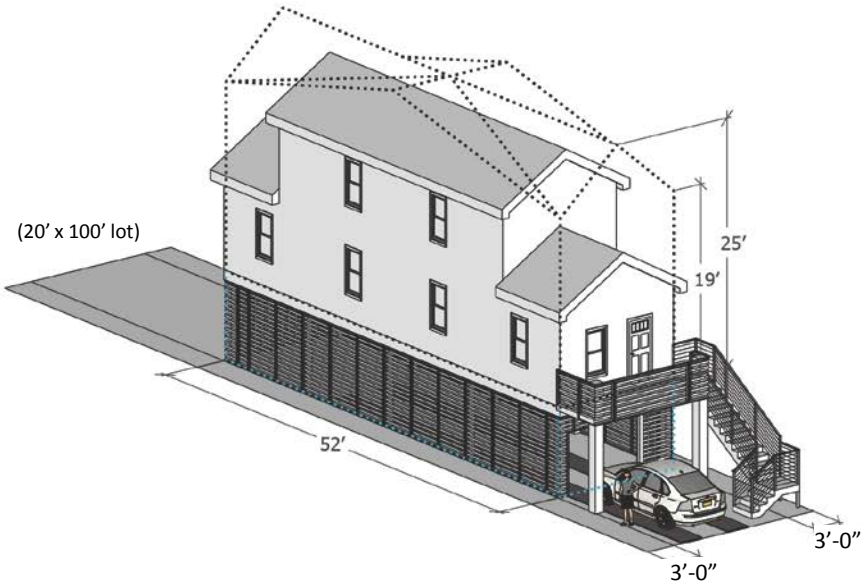
When combined with the new provisions for narrow and shallow lots, these rules will yield a shorter + wider building, which is more appropriate to the built context in these areas:



Building resulting from

Existing Regulations

(yards reduced to 5' minimum)
(no height reduction: 21' perimeter wall, 35' overall height)
522 SF + 522 SF +154 SF = 0.59 FAR



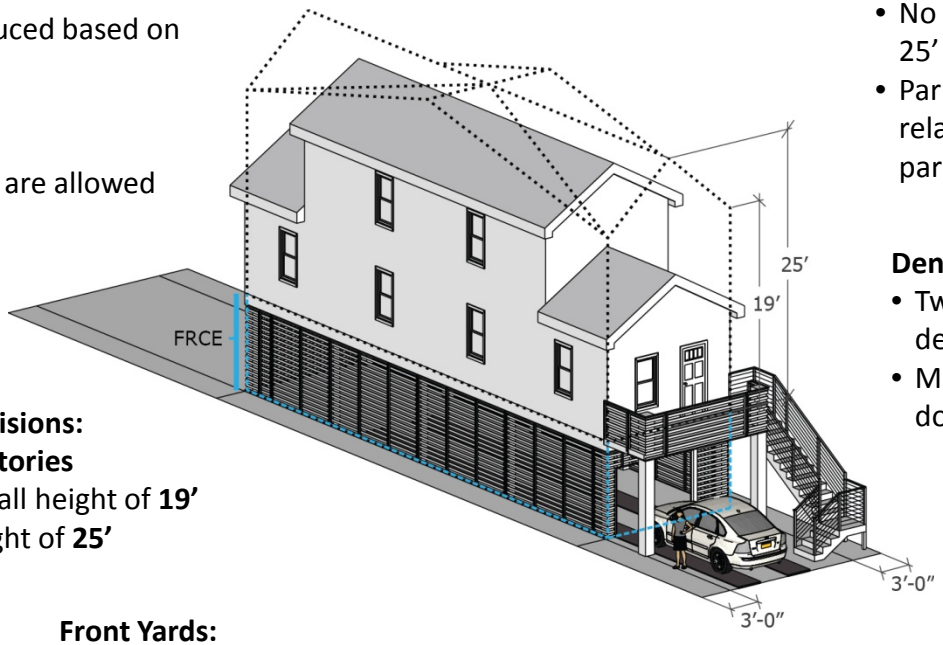
Building resulting from

Proposed Regulations

(yards reduced to new **3'** minimum)
(height reduced to: **19'** perimeter wall, **25'** overall height)
714 SF + 486 SF = 0.60 FAR

All reconstructions **are required** to utilize these new bulk and parking provisions:

Side and Rear Yards:
- Required yards are reduced based on lot width/depth
- Minimum **3'** side yards
- Minimum **10'** rear yard
- Permitted obstructions are allowed up to **3'** from a lot line



Parking Requirements:
- No parking is <u>required</u> for lots less than 25' wide based on FRCE
- Parking location requirements are relaxed to allow more lots to provide parking.

Density Regulations / Minimum Unit Size
- Two-family homes may reconstruct despite density factor
- Minimum unit size for two-family homes does not apply

Height and Setback Provisions:
- Maximum height of **2 stories**
- Maximum perimeter wall height of **19'**
- Maximum building height of **25'**

Front Yards:
- Applicable district regulations apply
- More flexible parking location provisions

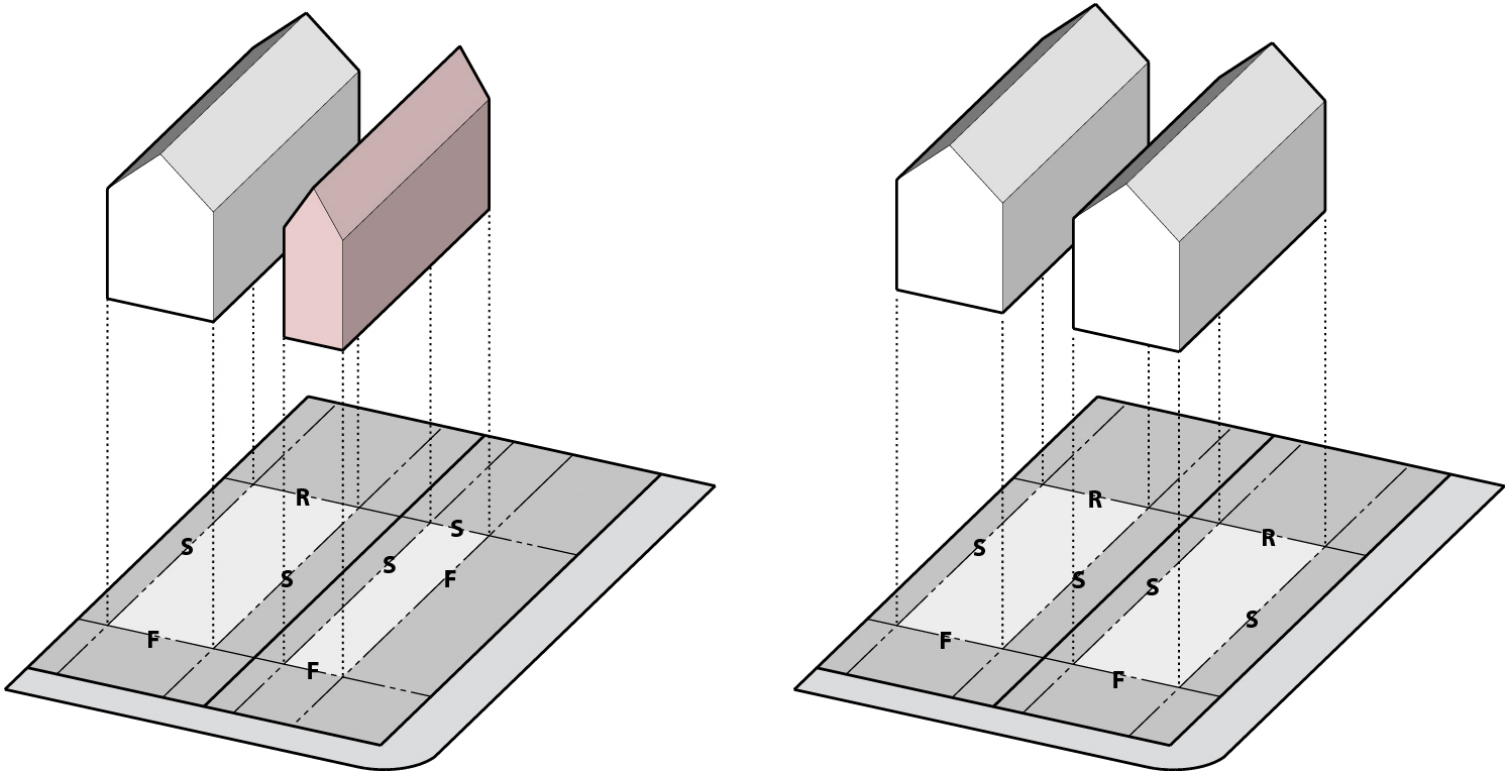
Design Requirements:
- Provide additional options for compliance with the design requirements, particularly on small lots.

Result: Buildings reconstructed to these standards will be considered **non-compliant** and/or **non-conforming** upon the expiration of the zoning text.

This new as-of-right option will reduce the number of Build it Back projects requiring zoning bulk modifications from the BSA by at least **80%.**

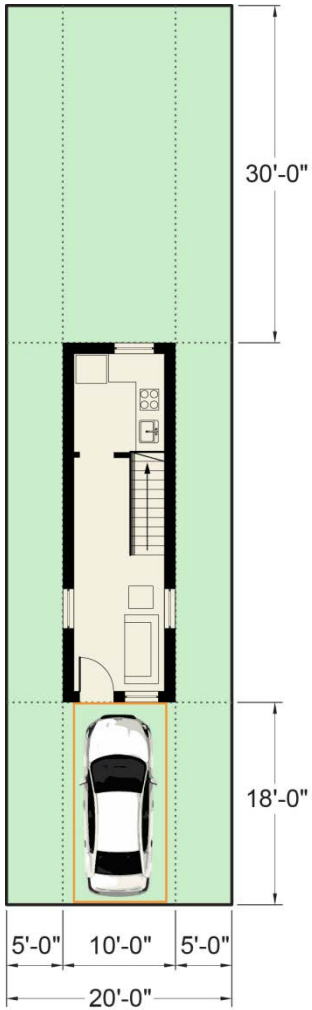
For permitted reconstruction on **corner lots**, lot lines and yard requirements shall be determined **as if the lot were an interior lot** and the front lot line shall be the short dimension of the lot. 'Side yards' may be reduced according to the new reduction.

F – Front Yard
S – Side Yard
R – Rear Yard

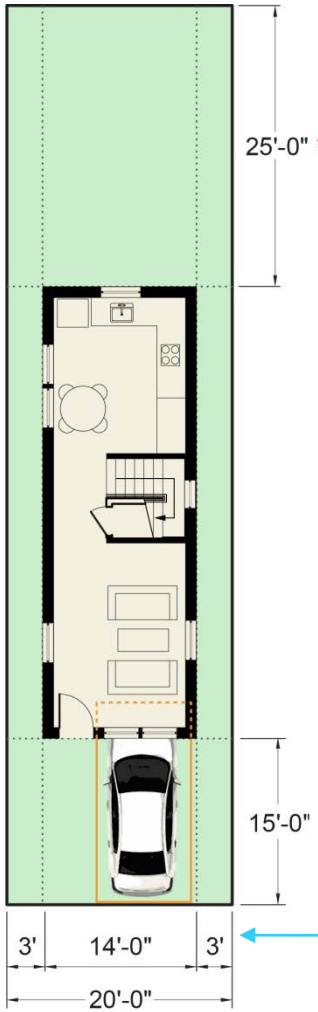


Reconstructions – Resulting home layouts

Example:
20’ x 80’ lot



Existing regulations yield a poor home layout which is very narrow. Often, **three stories** are needed to utilize FAR.



Proposed regulations yield a layout which is more usable and rational, and can accommodate the lot’s available FAR.

Rear yards may be reduced on a sliding scale related to lot depth. Lots less than 55’ deep may use a min. 10’ rear yard.

Lot Depth	**100'**	**80'**	**70'**	**60'**	**50'**
req'd rear yard	30.0'	25.0'	20.0'	15.0'	10.0'

Side yards may be reduced on a sliding scale related to lot width. Lots less than 22’ wide may use a min. 3’ side yard.

Lot Width	**40'**	**30'**	**25'**	**22'**	**20'**
req'd total side yard	13.0'	9.7'	8.0'	7.0'	6.0'

Reconstructions – Resulting streetscape character

Existing Regulations

Perimeter wall: 21’ - 25’
Overall bldg. height: 35’

Proposed Regulations

Perimeter wall: 19’
Overall bldg. height: 25’

Special Regulations for Non-conforming Uses

Two-family homes:

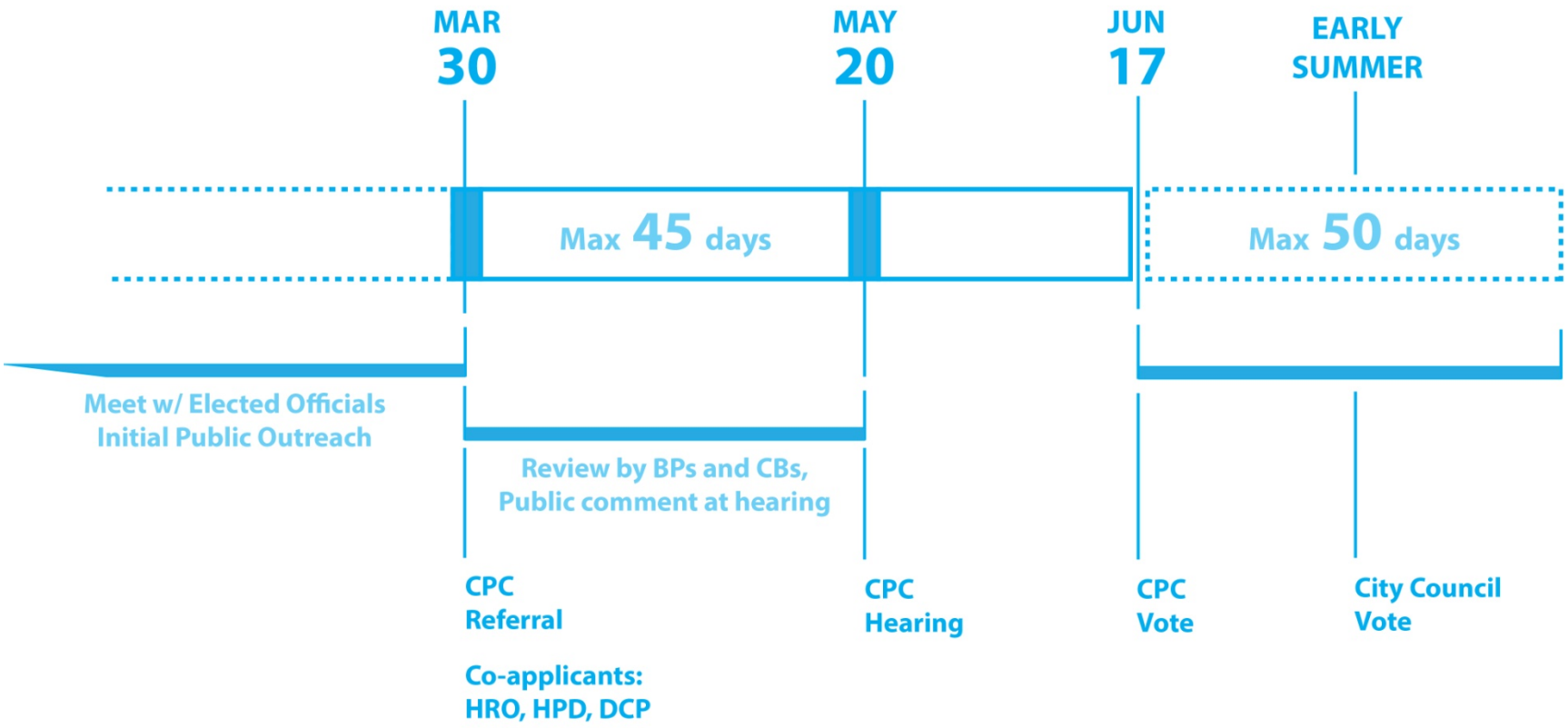
1. Where insufficient documentation is available to determine the legality of a non-conforming two-family residence, the Board of Standards and Appeals will be given the ability to permit the vertical elevation or reconstruction as a non-conforming two-family residence upon submittal of evidence to support such claim, including but not limited to: tax records, lease agreements, utility bills, etc.

Homes in M Districts:

2. Existing provisions will be modified to allow the vertical elevation or reconstruction of an existing single- or two-family residence within **Manufacturing Districts**.

Meadowmere (Queens) a flood-prone neighborhood in a Manufacturing District adjacent to JFK Airport.

Timeframe for Text Amendment



Together, these provisions will help further our goals of expediting neighborhood recovery by:

1. Simplifying the process for documenting non-compliances for Sandy-damaged homes,
2. Removing disincentives to resilient investments by allowing homeowners to retain more of their existing floor area, and
3. Providing modified rules for the reconstruction of residences that result in buildings that fit better into their surrounding context.

Image: RRSI

These special regulations, most importantly, will result in safer, more resilient homes.