

# Chapter 1 : PROJECT DESCRIPTION

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## A. ZONING FOR QUALITY AND AFFORDABILITY

As part of the City's coordinated efforts under Housing New York – the Mayor's ten-year, five-borough housing plan – the Department of City Planning is proposing a set of targeted changes to zoning regulations to support the creation of new affordable housing and encourage better residential buildings.

Zoning establishes limits on the use, size, and shape of buildings, with numerous zoning districts mapped in the city's diverse neighborhoods to reflect their varying density and character. These limits help give shape to neighborhoods and predictability to their future. But sometimes they also have unintended consequences, discouraging the very types of outcomes they were intended to encourage. This proposal aims to address several ways in which current regulations, drafted a generation ago, have in practice discouraged the affordability and quality of recent buildings. The Proposed Text Amendment which was formerly included in its entirety in Appendix F of the Draft Environmental Impact Statement is incorporated herein into the Final Environmental Impact Statement (FEIS) by reference. As described in the Alternative Chapter, the Modified Text Amendment Alternative which is under active consideration by the City Planning Commission is included in its entirety in Appendix F of this FEIS.

Since the release of Housing New York, the Department of City Planning, working with the Department of Housing Preservation and Development (HPD), communities, nonprofit housing groups, architects, affordable housing developers, and other practitioners, has identified a set of zoning changes that would address the needs of affordable housing, aid efficient use of housing subsidies, and encourage higher-quality residential buildings in the city's medium- and high-density neighborhoods.

The Zoning for Quality and Affordability text amendment (ZQA) serves numerous goals of Housing New York, including making the city more affordable to a wide range of New Yorkers and fostering diverse, livable communities with buildings that contribute to the character and quality of neighborhoods. While the various elements of the proposal work together to achieve these goals, they are described separately below, starting with changes that serve to promote affordability, followed by changes designed to encourage better buildings that contribute to the quality of neighborhoods.

## B. PROMOTING AFFORDABILITY

In order to make zoning work better with financial and other programs to create more affordable housing for a wider range of New Yorkers, ZQA proposes modifications to the rules affecting various forms of affordable housing identified in the Zoning Resolution. The primary categories of changes under the proposal would:

- Make it easier to provide the range of affordable senior housing and care facilities needed to meet the varied needs of an aging population, and to help seniors remain in their communities;
- Enable Inclusionary Housing buildings, which provide mixed-income housing, to construct high-quality buildings that fit the full amount of housing they are allowed under zoning; and
- Free up resources to create more affordable housing by enabling cost-effective, transit-accessible affordable housing, through modifications to parking requirements.

Specific changes to the rules for affordable senior housing and long-term care facilities are detailed in the sections below, followed by changes related to the height and setback regulations for Inclusionary Housing buildings, and changes to parking requirements for various forms of affordable housing.

## Affordable Senior Housing

Older New Yorkers are a diverse and rapidly growing segment of the city's population. The 2010 census documents that the population 65 years and over consisted of about 1 million people, and by 2040, this population is projected to increase to 1.4 million, a 40 percent increase. In recent years, around the country, a wider range of housing and facility types have emerged for seniors that offer specialized living arrangements targeted to accommodate elderly lifestyles and higher care needs. The growth in older New Yorkers has already resulted in an increased demand for affordable senior housing and related long-term care facilities like nursing homes.

Affordable senior housing is designed specifically to meet the needs of seniors, with smaller individual units with more common areas and amenities for residents. Eligibility is limited by age and by income. The development of affordable senior housing normally requires public subsidies, and traditional federal capital funding for this type of housing has recently been eliminated. There have been approximately 3,500 affordable senior housing units constructed in the city since 2003. Under Housing New York, Mayor de Blasio has set a target of 5,000 new units in the next decade.

Today in zoning this use is defined as a "non-profit residence for the elderly," a Use Group 2 residence. The use requires a funding agreement with a city or state agency, and at least 90 percent of the space must be occupied by an elderly family, the head of which is 62 years or older. In addition, a minimum of 4 percent of the space must be dedicated to shared facilities for residents, like cafeterias and community rooms. If the use meets these various requirements, it is permitted a higher floor area ratio than a typical residence in many low- and medium- density zoning districts and a slightly lower "dwelling units factor" in low-density districts that allows a slightly greater number of units to be included in the building than would be for ordinary residences.

This zoning framework has not been updated in over 40 years, and housing advocates and affordable senior housing providers have pointed out a number of ways in which it unnecessarily limits the creation of these facilities. This is particularly important at a time when new development models may be necessary to replace the traditional federally funded approach to creating affordable senior housing. ZQA proposes a number of changes to make it easier to construct and maintain these facilities, in order to help seniors remain in their communities throughout the city. Specifically the proposal would update the following:

*Definitions* – The zoning definition "non-profit residence for the elderly" would be replaced by "affordable independent residence for seniors." This change would allow a wider range of non-profit and for-profit entities to provide affordable senior housing. However, the existing age restrictions described above would remain in place. Incomes would be restricted to seniors making less than 80 percent of area median income. The zoning would require a regulatory agreement from a City or State agency with a minimum term of 30 years, to be consistent with typical requirements of public agencies providing housing subsidies. The requirement for shared facilities would be retained, but the proposal would clarify that the recreation space required under the Quality Housing program can count toward this requirement.

*Floor area ratio* – Zoning today specifies a higher FAR (by approximately 20%) for "non-profit residences for the elderly" as compared to other residences in most low- and medium-density zoning districts. These provisions were established to promote the use and recognize its low-impact nature as compared to other residences. However, this pattern does not extend to all zoning districts where affordable senior housing is permitted and where it is constructed. This includes high-density districts (R8 through R10) and a number of medium-density contextual zoning districts that did not exist when the original framework was put in place more than 40 years ago. In order to support the creation of affordable senior housing in neighborhoods throughout the city, ZQA would provide a higher FAR for "affordable independent residences for seniors" in those zoning districts, and maintain the existing higher FARs where they currently exist. As shown in Table 0-1, the new floor area ratios would generally be 20 percent higher than what is permitted for other residences, in line with the existing framework, and generally consistent with the FAR permitted through the Inclusionary Housing program.

*Unit density controls* – Zoning regulates the maximum number of units permitted in a building through a "dwelling unit factor," by which total floor area is divided to determine the maximum number of units permitted. Today, "non-profit residences for the elderly" are granted a different, generally lower, factor than other residences in some low-

and medium-density districts, but it is inconsistent. Allowing higher unit counts is consistent with the fact that low-income seniors typically live in smaller dwelling units, reflecting their smaller household size, incomes, and the desirability of simplified housekeeping. However, the lower dwelling unit factors only exist in certain zoning districts, and even these are not always consistent with current best practices or the standards of various regulating agencies. Under ZQA, affordable senior housing would not be subject to a dwelling unit factor, allowing other regulations and programmatic needs to control unit density and appropriate unit sizes for this use. This would allow for a broader range of unit sizes, and for more affordable and more appropriately sized units for seniors, which are offset by the availability of community spaces.

**Table 1-1: Existing and proposed maximum FAR for Affordable Independent Residences for Seniors**

	Non-profit residences for the elderly	Residential	Proposed for Affordable Independent Residences for Seniors	Change
Zoning District	Max FAR	Max FAR	Max FAR	
R3-2	0.95		0.95	0.00
R4	1.29		1.29	0.00
R5	1.95		1.95	0.00
R5B	n/a	1.35	1.35	0.00
R5D	n/a	2.00	2.00	0.00
R6	3.90		3.90	0.00
R6A	3.90		3.90	0.00
R6B	2.00		2.20	0.20
R7	5.01		5.01	0.00
R7A	5.01		5.01	0.00
R7B	3.90		3.90	0.00
R7D	5.01		5.60	0.59
R7X	5.01		6.00	0.99
R8	n/a	6.02	7.20	1.18
R8A	n/a	6.02	7.20	1.18
R8B	n/a	4.00	4.00	0.00
R8X	n/a	6.02	7.20	1.18
R9	n/a	7.52	8.00	0.48

R9A	n/a	7.52	8.50	0.98
R9D		9.00	10.00	1.00
R9X		9.00	9.70	0.70
R10		10.00	12.00	2.00
R10A		10.00	12.00	2.00
R10X		10.00	12.00	2.00

**Long-Term Care Facilities**

Long-term care facilities are a group of uses that provide services to their residents at different levels of care. These include uses like assisted living facilities, nursing homes and certain continuing care retirement communities. Nursing homes offer the highest level of care and 24-hour nursing services, while assisted living facilities are typically independent apartments with optional personal services and support. Continuing care retirement communities combine independent living with assisted living and nursing care services under a single contract that allows residents to move within a facility to increasing levels of care as their needs dictate. All of these facilities can be made up of single or shared apartments or rooms with support spaces. All of these are licensed and regulated by the New York State Department of Health.

Most of the city’s existing facilities were developed in the 1970s when funding sources were at a peak. However, since the 1970s, government funding and support has steeply declined and the construction of new facilities has not kept up with the demands of the city’s aging population. The State Department of Health estimates an unmet need of 8,300 long-term care facility beds in New York City today. The city has half as many assisted living units per capita as other counties in New York State.

Zoning today impedes the creation of these community facility uses by referring to outdated state programs, limiting the as-of-right FAR to less than what is permitted for affordable senior housing or even other community facilities, and imposing layers of land use review that are not required for other uses. These issues make it difficult to renovate or expand existing facilities or provide new ones. ZQA proposes a number of changes to make it easier to construct and maintain these facilities as appropriate in each zoning district in order to help seniors remain in their communities throughout the city. Specifically, the proposal would update:

*Definitions* – the proposal creates a new defined term, “long-term care facility,” to replace obsolete terms and account for the wide range of care facilities licensed by the State Department of Health. This would be a Use Group 3 community facility use and would replace the current “nursing homes and health-related facilities” use. The broader term will also account for assisted living facilities and continuing care retirement communities, which are not clearly categorized in zoning today. Long-term care facilities will be required to secure the necessary certificate of authority or licensure from the State Department of Health under the applicable state programs for either nursing homes, assisted living facilities, or continuing care retirement communities.

Requirements for Nursing Homes – Zoning today requires certifications and special permits to develop or renovate nursing homes. The certification requirement (current Section 22-42) applies both to new buildings and enlargements or substantial renovations of existing buildings, and requires that applicants demonstrate that the concentration of nursing home beds in the community district will not exceed the citywide average. If the construction of the nursing home would increase the concentration in the Community District above the citywide average, then the applicant must also apply for a City Planning Commission special permit (Section 74-90), and demonstrate that the new facility would not negatively impact traffic or neighborhood support services. These requirements were put in place in the 1970s to address concerns about excessive levels of nursing home construction



in limited areas of the city. Today, the State’s licensing process for nursing homes includes a Certificate of Need requirement, intended to limit investment in duplicative or unnecessary facilities and services, and now serves a similar purpose to the 1970s-era requirement in the Zoning Resolution. These zoning requirements now create an unnecessary obstacle for renovating or building new nursing home facilities by increasing costs, uncertainty, and the time needed for review. Therefore, in order to make it easier to provide these uses, ZQA would remove these requirements and instead allow all “long-term care facilities” in R3 through R10 districts, including nursing homes, as-of-right.

Floor area ratios – While community facility uses are generally permitted a higher as-of-right FAR than residential uses are in non-contextual residence districts, nursing homes are today only permitted the residential FAR associated with non-Quality Housing buildings. A special permit (Section 74-902) is required to use the higher permitted community facility FAR. The permit was created in the 1970s to consider whether the higher FAR would be out of context or would negatively impact neighborhood support services. Since then, 49 facilities have applied for this special permit, and all have been approved by the City Planning Commission. However, the permit adds costs, uncertainty, and time which make it more difficult to develop and maintain these facilities. To enable these facilities to be provided at an FAR commensurate with that allowed for housing, ZQA would allow the higher floor area ratio permitted for “affordable independent residences for seniors” (as described above) to all “long-term care facilities” in R3 through R10 districts as-of-right, as shown in Table 0-2. Long-term care facilities are similarly low-impact uses with a great deal of space devoted to support spaces such as clinical services and common areas. The higher, community facility FAR would remain available to these uses only by special permit.

R1 and R2 districts – In these low-density, single-family zoning districts, long-term care facilities would only be permitted through discretionary actions intended to ensure the facility is compatible with the area’s character. For large campus-like sites over 10 acres, a City Planning Commission authorization would be required (Section 22-42). For smaller sites, a Commission special permit (Section 74-901) would be necessary.

**Table 1-2 Existing and proposed maximum FAR for Long Term Care facilities**

	Existing FAR for Community Facility: UG 3 (Nursing Homes and Health Related) per 24-11 or 24- 111	Proposed FAR for <del>Affordable Independent Residences for Seniors</del> and Long-Term Care facilities	Change
District	Max FAR	Max FAR	
R3-2	0.50	0.95	0.45
R4	0.75	1.29	0.54
R5	1.27	1.95	0.68
R5B	1.27	1.27	0.00
R5D	2.00	2.00	0.00
R6	2.43	3.90	1.47
R6A	3.00	3.90	0.90
R6B	2.00	2.20	0.20
R7	3.44	5.01	1.57

R7A	4.00	5.01	1.01
R7B	3.00	3.90	0.90
R7D	4.20	5.60	1.40
R7X	5.00	6.00	1.00
R8	6.02	7.20	1.18
R8A	6.02	7.20	1.18
R8B	4.00	4.00	0.00
R8X	6.00	7.20	1.20
R9	7.52	8.00	0.48
R9A	7.50	8.50	1.00
R9D	9.00	10.00	1.00
R9X	9.00	9.70	0.70
R10	10.00	12.00	2.00
R10A	10.00	12.00	2.00
R10X	10.00	12.00	2.00

**Mixing of Residences and Care Facilities**

Contemporary facilities for seniors, in New York and nationwide, often look to provide a mix of uses on the same site so as to allow a "spectrum of care" for residents. This allows seniors to stay within the same facility (and neighborhood) as they age, by providing independent living, assisted living, and nursing home levels of care in the same building. Existing zoning is based on older models for senior facilities, where different uses were isolated in separate buildings. These current rules are unclear and make the mixing of uses difficult.

To make it easier to mix affordable senior housing and long-term care facilities on the same zoning lot in line with today's best practices, ZQA would allow both uses the same maximum FAR and require that they utilize the same building envelope in certain low-density districts, and the "Quality Housing" building envelope in medium- and high-density districts (as described further in the next section). To further bring zoning into line with contemporary best practices, ZQA includes other changes to make it easier to mix these uses together, as well as with other residential and related community facility uses. These include changes to

*The applicability of the Quality Housing program* – The Quality Housing program includes requirements for recreation space and modest floor area incentives for amenities like laundry rooms and daylight in shared corridors. These requirements are mandatory in contextual R6 through R10 districts and for buildings in non-contextual districts that follow the optional Quality Housing regulations. However, while community facilities in these situations are required to follow the Quality Housing bulk regulations, it is unclear how these provisions are supposed to apply to community facility uses with residential attributes like long-term care facilities, or philanthropic or non-profit

institutions with sleeping accommodations (NPISAs). ZQA would clarify that buildings containing these uses can calculate the various requirements and permitted floor area deductions available under Quality Housing based on the overall combined floor area. For example, if there is daylight in a corridor that provides access to long-term care uses and residential uses, the whole corridor could be included and not just the part that is specifically a residential use.

*Mixing restrictions* – While nursing homes and NPISAs are currently permitted FAR that is comparable to what is permitted for residential uses, in R6 and R7-1 districts, zoning further restricts the amount of community facility use permitted on a zoning lot that contains residential uses. While the permitted FAR for a stand-alone nursing home would be 2.43 (in R6) or 3.44 (in R7-1), in a building with residential floor area, the nursing home would be restricted to 1.0 FAR. This restriction was intended for other types of community facilities for which substantially higher FARs are allowed in these districts than is allowed for residences, but is needlessly restrictive for long-term care facilities and NPISAs, which are harmonious with and function similarly to residential uses, and would be allowed as-of-right only the same FAR available to affordable independent residences for seniors. To better accommodate use mixing, the restriction applicable in R6 and R7-1 districts would be made applicable only to other types of community facility uses.

*Number of units* – Zoning regulates the maximum number of units permitted in a building today through a dwelling unit factor; however, it is unclear today how this should be calculated in buildings that have a mix of residential and community facility uses. These rules would be modified so that the number of regular residential units is calculated by first excluding the floor area of affordable senior housing, long-term care facilities, and NPISAs. This would provide clarity on the mixing of uses and ensure that the maximum number of regular residential units is not distorted by the provision of these other uses.

*Special districts* – The provisions for a number of special districts state that “non-residential” uses cannot be located on the same floor or above residential uses. These regulations inadvertently restrict community facility uses from being mixed with residential uses, which is in line with today’s best practices, and which is permitted by underlying zoning regulations. As such, ZQA proposes to modify these various special district requirements to match their original intent to only restrict the location of commercial and residential uses.

## **Affordable Senior and Long-term Care Facility Building Envelopes**

As described above, zoning allows a higher maximum FAR for affordable senior housing and long-term care facilities as a way to promote the uses in neighborhoods throughout the city. However, some zoning rules that regulate the size and shape of buildings make it difficult to develop that full permitted floor area in a high-quality building. In order to make it easier to develop these uses, ZQA proposes a series of modifications to the building envelope controls that apply to these two uses. The proposed changes are different in different zoning districts, as described below.

*R6 through R10 contextual districts* – As shown in Table 01-3, ZQA would accommodate the higher FAR permitted for both these uses (generally about 20 percent higher than for ordinary residences) by permitting limited additional height for buildings that provide affordable senior housing or long-term care facilities in these zoning districts, where building envelopes include a maximum building height and (through ZQA; see ‘Building Envelopes and Number of Stories’ below) number of stories. For buildings that provide at least 20 percent of their floor area as either affordable senior housing or long-term care facilities, the proposal would:

- Permit a higher maximum height and number of stories to allow the full development of the permitted FAR in a high-quality building form. The additional height would only be permitted in districts that allow a higher maximum floor area ratio for these uses than for other residential uses (generally, districts other than “B” districts). The additional height is based on the volume necessary to accommodate the higher permitted FAR for the use and differs in each zoning district, but in 95 percent of the city’s contextual districts this results in an increase in height not exceeding 1 or 2 stories (10 to 20 feet).
- Allow increases in the maximum base heights in some zoning districts to maintain the current proportionality of the building envelope, which often serves to conceal the additional height above the base from street-level view.

- Allow for the development of shared accessory spaces for affordable senior housing on the ground floor in the rear yard area, so as to allow for more efficient buildings. This would only be permitted in districts other than “B” districts. This matches the flexibility already afforded to commercial or community facility uses or accessory off-street parking today.
- Remove an impediment to the creation of affordable senior housing or long-term care facilities on narrow sites by removing the special height restrictions placed on narrow lots (those that are less than 45 feet wide). Zoning today generally restricts the height on these sites to the width of the abutting street. The proposal would allow them to be developed to the maximum height permitted by the contextual envelope available in that zoning district.

**Table 1-3: Proposed maximum heights for Inclusionary Housing and Affordable Independent Residences for Seniors and Long-Term Care Facilities with Qualifying Ground Floors (Contextual Districts)**

MAXIMUM HEIGHTS FOR IH, AIRS and LTC: CONTEXTUAL DISTRICTS			
Zoning District	Maximum Base Height	Maximum Overall Height	Maximum Number of Stories
R6A	65'	85'	8
R7A	75'	105'	10
R7D	95'	125'	12
R7X (AIRS only)	105'	145'	14
R8A	<del>105' (10 stories)</del> <u>95' (9 stories)</u>	145'	14
R8X	105'	175'	17
R9A	125'	175'	17
R9X	145'	205'	20
R10A	155'	235'	23

*R6 through R10 non-contextual districts* – In non-contextual districts, two sets of building envelope controls exist: a “height factor” option, which allows tall buildings which are set back from the street and surrounded by open space; and a contextual Quality Housing option, which encourages buildings closer to the street and subjects them to height limits as shown in Table 01-4. To receive the higher floor area permitted for affordable senior housing and long-term care facilities, the proposal would require they utilize the applicable Quality Housing option, subject to the same modifications described above for R6 through R10 contextual districts. However, sites located close to infrastructure that poses a significant barrier condition, like highways or elevated train lines, would be permitted a more flexible, alternative Quality Housing building envelope, so that the units in the affordable senior housing or long-term care facility can be shifted away from this infrastructure. In addition, today, sites with existing buildings are only able to utilize the optional Quality Housing regulations if the existing buildings on the site comply with the contextual height

and setback requirements. ZQA would allow sites with affordable senior housing or long-term care facilities to comply based on the higher permitted heights described above.

**Table 1-4 Proposed maximum heights for Inclusionary Housing and Affordable Independent Residences for Seniors and Long-Term Care Facilities with Qualifying Ground Floors (Non-Contextual Districts)**

MAXIMUM HEIGHTS FOR AIRS and LTC: NON-CONTEXTUAL DISTRICTS			
Zoning District	Maximum Base Height	Maximum Overall Height	Maximum Number of Stories
R6 (narrow street)	45'	55'	5
R6 (wide street w/in Manhattan Core)	55'	65'	6
R6 (wide street outside Manhattan Core)	65'	85'	8
R7 (wide street w/in Manhattan Core)	65'	75'	7
R7 (narrow street)	65'	75'	7
R7 (wide street outside Manhattan Core)	75'	105'	10
R8	105'	145'	14
<u>Zoning District</u>	<u>Maximum Base Height</u>	<u>Maximum Overall Height</u>	<u>Maximum Number of Stories</u>
<u>R6</u>	<u>65</u>	<u>85</u>	<u>8</u>
<u>R7</u>	<u>75</u>	<u>105</u>	<u>10</u>
<u>R8</u>	<u>105</u>	<u>145</u>	<u>14</u>

*R3-2, R4 and R5 non-contextual districts* – In these low-density multi-family districts, affordable senior housing is permitted a higher FAR, but affordable senior housing is restricted to the district’s maximum height of 35 feet as-of-right, with lower maximum perimeter wall heights (community facilities, such as nursing homes, are not subject to this height limit today). These height restrictions make the construction of apartment buildings served by elevators – an indispensable feature for senior housing – impractical. In environments of this density, both within the city and

in nearby communities, these uses are typically developed as elevator buildings that are 4 to 6 stories in height (45 to 65 feet). Buildings providing affordable senior housing must therefore apply for a City Planning Commission authorization to be granted a building envelope that accommodates this 4-6 story form. While the Commission has never turned down such an application, these requirements add costs and time to the project. To make it easier to construct affordable senior housing in these districts, ZQA would permit them to be developed using a special as-of-right building envelope that would permit a maximum height of 45 feet close to the street and a maximum height of 65 feet for portions of lots more than 25 feet from the street. Long-term care facilities would also be subject to this new building envelope. Yard requirements would continue to apply. The current Commission authorization would remain for sites that require additional flexibility.

## **Inclusionary Housing Building Envelopes**

In specifically designated medium- and high-density areas, the Inclusionary Housing program promotes mixed-income housing. Like affordable senior housing and long-term care facilities, buildings participating in the Inclusionary Housing program are allowed a higher FAR than is permitted for other types of housing. However, for Inclusionary Housing areas in contextual zoning districts, zoning doesn't provide enough room for this floor area all to fit in a high-quality building. This results in less participation in the existing Inclusionary Housing program, and therefore less affordable housing. ZQA would address this problem by allowing buildings that provide on-site affordable housing through the Inclusionary Housing program to utilize the more flexible building envelope permitted for affordable senior housing and long-term care facilities (described above). More specifically, the proposal would:

- Permit a higher maximum height and number of stories to allow the full development of the permitted FAR in a high-quality building form. The additional height is based on the volume necessary to accommodate the higher permitted FAR through participation in the program, and differs in each zoning district, but in most contextual Inclusionary Housing districts this results in an increase in height permitting an additional 1 or 2 stories (10 to 20 feet).
- Allow increases in the maximum base heights in some zoning districts to maintain the current proportionality of the building envelope, which often serves to help hide the additional height above the base.
- Allow for the development of shared spaces on the ground floor in the rear yard area, so as to allow for more-efficient buildings. This would only be permitted in districts other "B" districts. This matches the flexibility already afforded to commercial or community facility uses or accessory off-street parking today.
- Remove an impediment to the creation of affordable housing on narrow sites by removing the special height restrictions placed on narrow lots (those that are less than 45 feet wide). Zoning today generally restricts the height on these sites to the width of the abutting street. The proposal would allow them to be developed to the maximum height permitted by the contextual envelope available in that zoning district.

## **Parking Requirements for Affordable Housing**

Existing requirements for accessory off-street parking make it harder to meet the city's need for affordable housing. Off-street parking, particularly in structured facilities, is quite expensive to construct – costing as much as \$30,000 to \$50,000 per space. Residents of affordable housing cannot pay the fees necessary to recoup the cost of constructing these spaces, approximately \$200-\$300 per month, and in many instances these provided spaces sit empty, as the limited number of low-income residents who do own cars park them on street. In less-dense areas, parking may be provided as surface parking that costs less to build, but nonetheless takes up considerable space that might otherwise be used for housing, open space, or other uses. In addition, data collected by the Department of City Planning and verified by affordable housing providers show that lower-income households own fewer cars, with low-income seniors owning extremely few. This is particularly true for locations in the city that are well served by transit. By imposing a cost that cannot be covered by project revenues, these requirements for parking therefore make the financing of affordable housing more difficult and they reduce the amount of affordable housing that can be built with available funding. ZQA therefore proposes modifications to the existing parking requirements for affordable housing in certain portions of the city, as described further below.

Zoning today generally recognizes the lower car ownership rates of affordable housing residents with a lower parking requirement for affordable senior housing and other forms of affordable housing. About half as many parking spaces are required for affordable housing as for other forms of housing. Buildings where only a small number of spaces are required can waive out of parking requirements altogether. The parking requirements for affordable senior housing are today set even lower (about 1/3 the rate for other forms of housing). However, affordable senior housing does not currently have a waiver option. No parking is required for any housing in the Manhattan Core (Manhattan Community Districts 1-8, except for Roosevelt Island) or Long Island City, and no parking is required for affordable housing in Downtown Brooklyn.

ZQA proposes to modify parking requirements for affordable housing particularly in those areas that are served by a variety of public transportation options, and are generally within one-half mile of a subway station. These areas, described as the “Transit Zone” in the proposal, have car ownership rates that are among lowest in the city and encompass some of the city’s denser residential neighborhoods. Within this Transit Zone, parking for new affordable senior housing and affordable housing would become optional. This would also be true for new units that satisfy the affordable housing requirements of the Inclusionary Housing program. Existing affordable senior housing developments would be allowed to remove existing parking as-of-right, while other existing affordable housing could apply for a new Board of Standards and Appeals (BSA) special permit (Section 73-434) to remove previously provided parking that is not needed. In addition, through a separate BSA special permit, new buildings could apply to reduce or eliminate their parking requirements to facilitate a mixed-income development (Section 73-433), provided there would not be an adverse effect on the surrounding area. Comparable modifications would be permitted by the City Planning Commission as part of a General Large Scale Development special permit.

Outside of the Transit Zone, parking requirements for new affordable senior housing would be lowered to 10 percent, to reflect car ownership rates the Department’s analysis found at existing developments. However, developments requiring a small number of spaces would be able to waive out of the requirement, which is already allowed for other types of housing (for example, in R6 districts, a maximum of 5 spaces can be waived). Existing affordable senior housing buildings outside the transit zone could reduce their parking amounts to the 10 percent figure if spaces are not needed, through a new Board of Standards and Appeals (BSA) special permit. Parking requirements for other affordable housing in multi-family zoning districts outside the Transit Zone would remain unchanged.

The proposal includes no changes to the as-of-right parking requirements for market-rate housing.

## **C. CHANGES FOR QUALITY**

In order to encourage better buildings that contribute to the fabric of their neighborhoods, ZQA proposes a series of modifications to the rules for housing in medium- and high density zoning districts. These changes predominantly modify the Quality Housing regulations that are required in contextual zoning districts and are optional in non-contextual districts.

These regulations were established in 1987 to promote housing that fit better within the city’s medium- and high-density neighborhoods than the previous “tower-in-the-park” model. They generally require buildings to be located close to the street, and include requirements for street walls and specific maximum heights. These rules have generally worked well to enable the creation of buildings that are mostly consistent with the general form of the surrounding neighborhood fabric. However, development under these rules has also demonstrated their shortcomings. These regulations have remained largely unchanged since they were first put in place and have not been updated to keep pace with other changing regulations, the rise of green technologies and other best practices for residential design and construction, and the increasing prevalence of irregular building sites. Because of these issues, these zoning controls now tend to limit design flexibility and too often result in buildings that are flat or dull, fail to enliven the pedestrian environment, and lack the variation and texture typical of older apartment buildings.

The proposal would maintain the essential contextual rules for residential buildings in medium- and high-density districts that work well today, but would make modifications to:

- Encourage better ground-floor retail spaces and residential units with adequate ceiling heights raised off of the street
- Change rules that lead to flat, dull apartment buildings, to accommodate and encourage façade articulation, courtyards, and other elements that provide visual variety and make the pedestrian experience more interesting
- Better address irregular site conditions that are not well considered by zoning rules today

Specific changes are detailed in the sections below, starting with ground floors and rising to upper levels of the building, followed by regulations affecting unit size and configuration, and rules for irregular site conditions.

## Ground Floors

The main interface between buildings and the public realm of the sidewalk takes place at the ground level. ZQA proposes a series of changes to the Quality Housing bulk regulations to promote better, more active ground floors in both residential and mixed-use buildings. Key to this is ensuring that enough space exists in the building envelope to provide a ground floor with sufficient height. For buildings with residential units on the ground floor, this would allow the units to be raised above street level, as is common in older apartment buildings. For buildings with retail or other uses on the ground floor, it would allow sufficient height to provide a usable, high-quality space entered from the sidewalk at grade. Under the current Quality Housing requirements in medium- and high-density districts, both of these possibilities are discouraged by the current building envelope, which forces trade-offs between designing buildings that would contribute to their neighborhood at ground level, and accommodating the full permitted FAR.

To address this, ZQA would allow the maximum height of Quality Housing buildings to be increased by 5 feet if the second level of the building begins at a height of at least 13 feet. The proposed allowance would be applicable in all contextual zoning districts except R7B and R8B, their non-contextual equivalent and commercial equivalent districts, which already allow sufficient height for these features. This additional height would allow for a raised ground floor residential unit or a better ground floor retail space, while retaining sufficient flexibility to accommodate construction issues above the ground floor, such as the need for limited additional height for transfer beams at setbacks. While the elements of the proposal relating to building quality are generally applicable in R6 through R10 districts, this height allowance would also be extended to the R5D zoning district to encourage better ground floors in that district.

Another factor making it more difficult to provide raised residential units at ground level in today's buildings is the need to provide accessibility. To accommodate this, the proposal would allow interior ramps in the residential lobby a floor area exemption of 100 square feet for each foot the ground floor is raised above curb level. (Changes to the street wall and court regulations described in the next section would be sufficient to accommodate a ramp on the exterior of the building.)

To better promote active ground floors, ZQA also tries to simplify and improve the ground-floor use requirements that exist in many special districts and certain commercial zoning districts, which vary in small but numerous ways. These requirements typically include minimum depth requirements to promote usable ground floor spaces, requirements for transparency and limits on the width of ground floor lobbies, and parking wrap requirements. Today, these requirements all slightly differ from one another, making compliance with them challenging for practitioners. In order to promote better retail spaces, the proposal would replace this myriad of confusing regulations with a new set of model ground floor requirements based on the regulations applicable in the Special Enhanced Commercial District.

## Street Walls

After the ground floor itself, the main way a building interacts with the public realm is through its street wall – generally that area of the building between the ground and the top of the building's base. Older buildings typically had a great variety of building articulation in the street wall including bay windows, court yards, and other architectural features. Quality Housing regulations today include rules that regulate where the street wall can be



located, how much design flexibility is permitted for building articulation, and what kind of articulation (like courts) is permitted.

While these regulations have achieved a degree of consistency in streetwalls, there are certain instances where the existing regulations are producing results that contradict their original intent. Sometimes the existing rules are forcing the street wall to be lined up with non-contextual buildings, or are instead allowing buildings to be built at the property line where small setbacks may be more in keeping with the surrounding context. In other instances, the allowances for building articulation are unclear, while in others they restrict more traditional design features, all of which inadvertently make building facades appear flat or dull when compared to older buildings. ZQA proposes a series of modifications to these various street wall regulations to better ensure that buildings can contribute positively to their neighborhood context. More specifically, the proposal would modify:

**Line-up provisions** – The Quality Housing street wall regulations include separate street wall requirements for medium-density contextual districts, high-density contextual districts, and for the “B” districts. For medium-density districts, ZQA proposes to modify the existing line-up provisions, which allow buildings to be located no closer to the street line than any building within 150 feet, to instead require buildings to locate their street wall in relation to only directly adjacent buildings (similar to the rule in “B” districts). The current provision inadvertently allows buildings close to corners to line up with corner buildings when the rest of the buildings on the block are set away from the property line. The proposal would also adjust the maximum setback from the property line to 10 feet (from 15 feet), so that buildings in these districts are not inadvertently required to line up with non-contextual buildings set far back from the street (such as buildings constructed under the alternate front setback provisions of height factor zoning). In these zoning districts and in “B” districts, greater clarity is provided as to how line-up provisions are determined for adjacent buildings with architectural features like bay windows. Finally, in the high-density districts, the proposal includes street wall requirements beyond 50 feet of a wide street, where no street wall requirements currently exist.

**Articulation** – In order to provide greater clarity as to how a street wall can be articulated, ZQA includes new rules for building articulation. Window recesses and structural expression would be permitted within depths or projections of 12 inches from the street wall. Deeper recesses or projections, for larger architectural features like bay windows and building courts, would be allowed for a limited percentage of the street wall’s overall width.

**Court regulations** – in order to permit more flexibility for courts and courtyards, which are typical features of older apartment buildings in the city, ZQA would create more flexible court regulations for buildings in R6 through R10 districts that would support the availability of light and air. For outer courts, the proposal would modify the required width-to-depth ratio to 1:1 for courts less than 30 feet wide, and allow courts that are 30 feet or wider to have no depth restrictions. It would also create a new class of small (inner and outer) courts to accommodate courts with non-legally required windows, such as those found in kitchens or bathrooms.

**Commercial districts** – High-density commercial districts generally require new buildings on a wide street to be located directly on the street line. While this requirement has supported an active retail environment, it has also produced unnecessarily flat buildings. ZQA would provide some limited flexibility to allow for ground-level articulation along wide streets. In high-density commercial districts, the proposal also includes street wall requirements beyond 50 feet of a wide street, where today no street wall requirements exist. The proposal would also require that wholly residential buildings in commercial districts comply with the more stringent street wall regulations of commercial districts, rather than those of the comparable residential district, and would remove the special line-up provision for narrow buildings in commercial districts that inadvertently forces these buildings to line up with adjacent buildings even when this is contradictory to the prevailing condition of the commercial environment.

## **Corner Buildings**

Older apartment buildings in the city on corner lots tend to “wrap” the corner, providing a consistent street wall along both street frontages. Zoning today makes it difficult, if not impossible, to match this condition in new buildings. ZQA seeks to address this issue to allow for better corner buildings.

Typical “wrapped” corner buildings were effectively made unbuildable by the 1987 Quality Housing regulations, which limited the lot coverage on corners to a maximum of 80 percent. (Traditional corner buildings generally have lot coverages of 85 to 90 percent.) As a result, recent buildings on corners tend to front on only one street and leave open spaces along their lot lines, effectively breaking the street wall in many neighborhoods. The 1987 Quality Housing proposal did not identify a rationale for prohibiting corner buildings exceeding a coverage of 80 percent; rather, it was not believed that anyone would try to build traditional corner buildings again.

Since 1987, DCP has updated these corner provisions in many Special Districts to allow for more traditional corner lot buildings, but has never done so for the citywide Quality Housing regulations. Therefore, to allow better corner buildings in R6 through R10 districts, ZQA proposes to increase the maximum permitted corner lot coverage for “Quality Housing” buildings from 80 percent to 100 percent within 100 feet of a corner. All currently applicable court and yard regulations would continue to apply. The coverage requirements for other interior lots would remain unchanged.

In addition, today, corner lots in medium and high-density districts located next to lower-density districts (R1 through R6B) have to comply with an additional “transition rule,” which makes wrapping the corner difficult. Today, within 25 feet of the lower-density district, the maximum height of a building is limited to the maximum permitted height of the lower-density districts – typically 35 feet. The intention of the rule was to provide a transition between the lower- and higher-density districts, but since the permitted height in this 25-foot-wide area is quite low, and leads to inefficient structures, many buildings simply front on one street and leave an open area between the two buildings that again breaks the street wall in many neighborhoods. As a result, this provision also tends to emphasize the height difference between the lower and higher density districts, rather than providing an effective transition. To address this, ZQA proposes to allow the portions of buildings within that 25-foot zone to reach the maximum base height of the zoning district, or a height of 75 feet, whichever is less. This would better allow buildings to “wrap” the corner and provide for a more balanced transition between buildings.

## Setback Requirements

Above the maximum base heights in Quality Housing buildings, specified minimum setbacks are required in the front and rear of the building before it can continue to rise to its maximum permitted height. The intent of these setback requirements was to keep as much of the building’s upper bulk away from the street and surrounding areas, and to mimic the front setbacks found in older apartment buildings. However, as currently written, these separate requirements are inadvertently working in concert to force many residential buildings to be built directly at the property line so as to avoid the required rear yard setback. This is particularly an issue for residential buildings where a ground-level setback with planting would be more appropriate and in keeping with its context. The current requirements are also inadvertently making buildings less efficient and more costly to construct.

Today, the front and rear setbacks of Quality Housing are measured differently. The front setback rules require upper stories above the maximum base height to set back 15 feet from the street wall of the building base on narrow streets and 10 feet on wide streets. Since this is measured from the street wall, even if the entire building is set back 5 feet or 10 feet from the street line to create a separation from the sidewalk, the minimum 10-foot or 15-foot setback is still required. This creates a strong disincentive to set the building back at ground level to provide planting and improved streetscapes, because upper stories can be seriously constrained by the limited depth imposed by the setbacks on both sides. Rear yard setbacks require upper stories above the contextual base to set back 10 feet from the rear yard line, which is 30 feet from the rear lot line on an interior lot. Since the location of the rear yard setback is fixed, shifting the building toward the street can also eliminate the need for a setback and the additional costs it entails – at the expense of the streetscape and the quality of ground floor units.

In order to remedy these complementary problems, ZQA first proposes to remove the rear yard setback requirement for Quality Housing buildings. The typical 30-foot rear yard (often totaling 60 feet of open area, where two 30 foot yards abut each other) would continue to ensure adequate light and air to rear-facing portions of buildings. Secondly, in order to accommodate a separation between the sidewalk and the building (and reduce costly structural reinforcing below the setback) ZQA would allow the front setback to be reduced by one foot for every foot that the building is set back from the property line. A setback of 5 feet must be provided from the street wall, to maintain

architectural articulation. For example, a building on a narrow street located on the street line would continue to require a 15 foot setback, whereas a building that was set back from the sidewalk by 5 feet would be able to reduce the upper level setback to 10 feet from the street wall (5 foot setback at grade + 10 foot upper level setback = 15 foot total setback).

The combination of these provisions would allow buildings to provide greater separation and plantings between ground floor units and adjoining sidewalks, and would allow upper story units to be designed with greater variety, cost effectiveness and efficiency.

## **Building Envelopes and Number of Stories**

Buildings in contextual zoning districts, and other Quality Housing buildings, are subject to base and maximum height provisions that define the overall shape of a building. These regulations are generally sufficient to allow high-quality residential buildings, but in some instances improvements to the regulations are warranted to further their original intent. More specifically, the proposal would make adjustments to:

**Maximum Base heights** – Buildings in contextual districts are subject to both minimum and maximum base heights intended to ensure the building relates well with the sidewalk and surrounding context. However, the maximum base heights in some districts end in a zero, allowing an average of 10 feet per story, which makes it difficult to accommodate an active ground floor (as described in Section 1) since these spaces typically require more than 10 feet of height. As a result, many buildings skimp on ground-floor or upper-floor ceiling heights, or drop commercial ground floors below grade to accommodate higher ceilings, which can disrupt the quality and continuity of the street environment. In order to better accommodate more active ground floors, the maximum base heights applicable in some zoning districts would be increased by 5, consistent with the changes to maximum overall height described above.

**Stories** - The maximum height requirements are all measured in feet, but the current rules offer little guidance as to the number of stories that can be developed in a new building. In order to better ensure that buildings cannot use the additional flexibility created through this proposal to create additional floors, for instance by decreasing ceiling heights, ZQA adds a maximum number of stories that can be constructed in a contextual zoning district. The proposed number of stories differs in each zoning district based on the maximum permitted height, but generally corresponds with the maximum height, accommodating additional height for the ground floor – thus the maximum number of stories permitted in an R7B district (max height 75 feet) would be seven stories.

**Maximum height in R9 and R10 districts** - In the highest-density contextual districts, it is difficult for buildings to fit their *full* permitted floor area in a well-designed building. The existing building envelope offers little room for articulation and many resultant buildings have flat, dull facades and deep floor plates. To promote better buildings in these limited, high-density districts, ZQA would increase the applicable maximum building heights by 5 or 10 additional feet, as necessary to accommodate comparable design flexibility as compared to other districts. The maximum number of permitted stories in these districts would be based on these adjusted heights.

**Optional Quality Housing bulk regulations** – In non-contextual districts, two sets of building envelope controls exist. First, a “height factor” option that allows tall buildings set back from the street and surrounded by open space, and a contextual Quality Housing option that encourages buildings closer to the street and subjects them to maximum base and overall heights. These Quality Housing base and overall heights are mostly similar to the heights permitted in comparable contextual districts, but are sometimes slightly misaligned, reflecting their creation at different times. ZQA generally seeks to better align the “Quality Housing” optional regulations on wide streets with the comparable “A” zoning districts, and align the narrow street regulations with the comparable “B” zoning districts, as they typically have the same permitted FAR. For example, a building on a wide street in an R6 district utilizing the Quality Housing option has the same FAR as that of an R6A district, and so the proposal gives it the same zoning envelope option. The proposal would also match the maximum number of stories and the allowance for additional height to facilitate improved ground floors.

**Study Areas** – When the Quality Housing program was established in 1987, certain non-contextual areas of the city were restricted from using the new building controls. Instead, the existing tower-in-the-park zoning regulations were

the only permitted building form. Many of these “study areas” have since been rezoned to contextual districts and had this restriction removed, but it is still applicable in some limited geographies. The proposal would fully remove this restriction on the contextual Quality Housing option.

Special Districts – In some Special Districts, the building envelope controls mimic the controls of a comparable contextual zoning district. For consistency, when the Special District does not include any special FAR or building envelope rules, ZQA would adjust the maximum building envelopes to bring them in line with the changes proposed for the Quality Housing option.

**Table 1-5: Existing and proposed maximum heights for contextual districts**

HEIGHT CHANGES FOR ALL BUILDINGS IN CONTEXTUAL DISTRICTS				
	Base Height		Overall Height	
Zoning District	Existing Max Height	Proposed Max Height	Existing Max Height	Proposed Max Height (stories)
R6B	40'	45' (4 stories)	50'	55' (5 stories)
R6A	60'	65' (6 stories)	70'	75' (7 stories)
R7B	60'	65' (6 stories)	75'	75' (7 stories)
R7A	65'	75' (7 stories)	80'	85' (8 stories)
R7D	85'	85' (8 stories)	100'	105' (10 stories)
R7X	85'	95' (9 stories)	125'	125' (12 stories)
R8B	60'	65' (6 stories)	75'	75' (7 stories)
R8A	85'	<del>105' (10 stories)</del> <u>95' (9 stories)</u>	120'	125' (12 stories)
R8X	85'	95' (9 stories)	150'	155' (15 stories)
R9A (narrow street)	95'	105' (10 stories)	135'	145' (14 stories)
R9A (wide street)	95'	105' (10 stories)	145'	155' (15 stories)
R9X	120'	125' (12 stories)	160'	175' (17 stories)
R10A (narrow street)	125'	135' (13 stories)	185'	195' (19 stories)
R10A (wide street)	<del>125'</del> <u>150'</u>	155' (15 stories)	210'	215' (21 stories)

## Unit Size and Configuration

While the provisions of ZQA focused on quality primarily relate to improving the height and setback regulations for medium- and high-density buildings, the proposal also includes some changes that affect the interior configuration of buildings. These changes are intended to rationalize currently inconsistent regulations.

Zoning today regulates the number of units that are permitted in a residential building through a “density factor” calculation. The maximum number of units is determined by dividing the permitted residential floor area by a specified factor. This factor starts out quite high in the lowest-density zoning districts and gradually drops to 680 square feet in R6 and R7 districts, allowing for incrementally higher concentrations of dwelling units as overall permitted density increases. Thus, a 6,800 square foot residential building in an R6 district is permitted a maximum of 10 units (6800/680) all of which can be of varying sizes. However, after the R6 and R7 districts, the factor increases again to 740 for most R8 and R9 districts and to 790 in R10 and remaining R9 districts. Additionally, the Quality Housing regulations require no single residential unit be smaller than 400 square feet.

Some housing advocates have pointed out that the 400 square foot requirement limits the ability to provide some smaller units in a building, balancing them out with larger units to better serve a more-varied population. ZQA therefore would remove this 400 square foot minimum unit size requirement to provide greater flexibility in the sizes of units. The Building Code and other regulations would effectively limit the minimum size of any unit, and the “density factor” requirement would continue to limit the total number of units that can be provided in a building.

In addition, ZQA would change the increasing density factors in R8 through R10 districts to make them consistent with what is already required in R6 and R7 districts – 680 square feet. Though most buildings today are providing larger units in these high density areas and are well below the maximum number of units they are permitted to build today, there is no rationale for requiring larger average unit sizes today in the city’s highest density residential districts. This change would allow buildings in these districts greater flexibility to provide a somewhat smaller average unit size if they choose to do so.

Zoning today includes a number of different regulations affecting windows in residential units. The “Quality Housing” program and a few special districts, such as the Special Union Square District, require residential windows to be made of double-paned glass. These were meant to improve the quality of spaces for tenants at the time these regulations were enacted, but are now a minimum standard needed to comply with energy standards in the City’s Building Code. Additionally, these double-paned glass requirements also may make it difficult to provide windows of higher standards, like triple-paned glass. Therefore, ZQA proposes to remove these various double-pane window requirements.

Additionally, in Special Mixed Use (MX) districts, zoning today requires special sound-attenuated windows for any residential units. The requirements were designed to address MX districts located next to loud places like highways, but as written, the windows are required in any MX district, even in places where such noise conditions don’t exist. These requirements have been found to be add unnecessary cost in locations where the windows are not needed. To better account for the varied conditions of the city’s MX districts, the proposal would allow the City’s Office of Environmental Remediation to modify the sound-attenuated window requirement based on site conditions through a process similar to what already exists for sites with (E) designations.

## Irregular Site Conditions

There is a wide variety of site conditions that exist in the city today - shallow lots, angled streets, varying topography, or sites with multiple buildings - to name a few. While the Manhattan grid results in many regular sites, irregular conditions prevail in many locations in the outer boroughs. Most zoning rules that shape residential buildings were designed with regular site conditions in mind – lots were assumed to be rectangular, with little topography or other irregularity. Because of this, construction on these irregular lots is not well considered in zoning, often making it unnecessarily difficult, and leading to buildings that are forced directly onto the property line with little room for design articulation. ZQA proposes a series of modifications to zoning rules for R6 through R10 districts to better address these irregular site conditions and allow for better buildings on them.

Shallow lots – Zoning rules for rear yards and lot coverage were designed with the assumption that most lots in the city are 100 feet deep. Over time, some limited changes were made to address much-shallower lots (ranging between 50 and 70 feet deep), but the dimensions in between must continue to utilize regulations based on an assumption of 100-foot lot depth. This causes many problems for lots that are only slightly shallow (90-95 feet deep), and generally forces new buildings to be located directly on the street line. ZQA proposes a comprehensive framework that adjusts rear yard and lot coverage requirements in concert with lot depth. Shallow lots would be permitted to provide a shallower rear yard with the change in the requirement based on the depth of the lot. The permitted coverage on interior lots would be permitted to increase in relationship to this. The proposed changes would result in more regular buildings that are more consistent with existing, older buildings.

Acutely-angled sites – Quality Housing rules that require street walls along entire street lines in high-density commercial districts offer little flexibility for sites that are located on acutely-angled streets that cut into the more typical rectangular grid. This sometimes forces inefficient building configurations and poor street-level conditions in the building. ZQA would provide greater flexibility in street wall location for buildings that are located on acutely-angled sites.

Sloping sites – Similar to shallow lots, zoning today provides some flexibility for steeply- sloping sites, but makes no accommodations for sites with more limited topography changes. Today, sites that have slopes of greater than 10 percent can utilize a sloping base plane to determine maximum base and building heights. ZQA proposes to modify this allowance to 5 percent, to better address these topographic conditions.

Distance between buildings – The rules that regulate the minimum distance between multiple apartment buildings on a single are from the original 1961 Zoning Resolution, and are in keeping with the large-scale tower-in-the-park developments of the time. Under today’s rules, multiple buildings on a single lot that are not connected must be separated by a minimum of 60 feet (the width of a typical narrow street). In some instances, these vast separations make it difficult to construct new, efficient buildings on a lot with existing structures. ZQA would reduce this 60 foot separation requirement to 40 feet to be in line with the required separation in the New York State Multiple Dwelling Law.

BSA special permit – Lastly, ZQA proposes a new BSA special permit for Quality Housing buildings on irregular sites, to allow limited modifications to the rules that shape residential buildings to address more unusual constrained site conditions that cannot be addressed as of right. Where it finds that practical difficulties exist and that relief would not have an adverse effect on surroundings, the BSA would be able to modify a limited number of requirements, including lot coverage and streetwall location requirements, to address difficult site conditions. In addition, in order to accommodate the needs of developments including predominantly affordable housing, buildings with more than 50 percent of their residential floor area devoted to affordable housing would have additional flexibility to address difficult site conditions.

## **D. OTHER CHANGES**

In addition to the proposed changes described above, ZQA includes modifications to the language of the Zoning Resolution to make its provisions clearer to the reader and remove obsolete terms. Specifically, the proposal removes a series of obsolete uses including “domiciliary care facilities” and “sanitariums,” and removes references to “rooming units”, which are no longer permitted by State or other City law. The proposal also includes a major reorganization of the residential bulk regulations found in Article II, Chapter 3 in order to separate the regulations for R1 through R5 districts from the regulations for R6 through R10 districts, and better organizes the various FAR and height and setback controls for these medium- and high-density zoning districts. More limited organizational changes are made to the community facility bulk regulations of Article II, Chapter 4, and the commercial zoning district regulations found in Article III, Chapters 2 through 5.

## E. BACKGROUND

The current affordable housing crisis is rooted in many factors. A household spending more than 30 percent of its gross annual income on rent is considered “rent-burdened.” In 2012, almost 55 percent of all households living in rental units were “rent-burdened,” which is more than an 11 percent increase from 2000. This decreased housing affordability is largely due to the increasing gap between rapidly growing population and slow new housing construction that is failing to catch up with the increased demand.

In response to this crisis, Mayor De Blasio has made the creation and preservation of affordable housing a priority. The *Housing New York* plan, released in May 2014, is Mayor De Blasio’s five-borough, ten-year plan to build and preserve affordable housing throughout New York City. Increases to Capital Plan funding and 421-a reform are two recent accomplishments towards the fulfillment of the Mayor’s housing goals.

### The need for more housing

Because of the technical requirements of dense development, scarcity of sites, cost of land, and high costs of materials and labor, producing new multifamily housing is expensive in New York City. This cost structure means that unsubsidized new construction occurs at housing prices that are accessible only to more affluent households. As a consequence, new housing cannot be created for lower-income New Yorkers through private investment alone.

Long-term population and employment projections show continued growth in the segments of the population and labor market that are driving current trends in housing demand, including continued increase in the number of households and workers at both higher and lower incomes. The current dynamics of the housing market, in which the supply of housing is expanding only for households at higher income levels, would not support the needs of future growth. Expanding the availability of housing for households at a range of income levels, in neighborhoods around the city, is crucial to ensuring that populations can move to the city to prosper from its opportunities and meet the labor force needs of employers at a range of locations. Absent changes that increase the supply of housing sufficiently to respond to the demands created by these population changes, the long-term consequence of these trends is that the city’s neighborhoods would become less economically diverse, and the workforce needed to power the city’s economy would be unable to find adequate housing.

Many young families and empty-nesters are increasingly finding the city’s vibrant culture and transit-oriented lifestyle more attractive than the suburbs. The senior population is finding New York City to be a more hospitable and preferred location in which to age-in-place. People from every corner of the nation and globe continue to pour into the city, seeking opportunities for themselves and their families. As a result, the city grew to 8.4 million people by 2013 and the population is expected to continue to rise, surpassing 9 million residents by 2040. This population growth is a reflection of the city’s success in attracting and retaining people from all over the world, but it also brings with it a growing need for housing.

The city’s households also are changing in size, and there is no longer a good match between the type and size of available apartments and the housing demands of modern households. There are 1.9 million one- and two-person households in the city (more than 60 percent of all the city’s households), but only 1.25 million studios and one-bedroom apartments. Of course, some of the households would prefer to stay in, or move to, larger apartments. But the demand for smaller units also comes from individuals who would prefer to form their own household, but who are forced by high rents to live with roommates or family. When individuals can’t afford studios and join up to rent multi-bedroom apartments, they also drive prices for those apartments out of the reach of families with children. To address these challenges, the city needs not only more housing, but also a mix of new housing types that reflects the diversity of New Yorkers’ needs.

## F. HOUSING PRODUCTION

The *Housing New York* plan lays out a set of strategies to preserve and create 200,000 units of affordable housing, with 120,000 units tapped for preservation, and the remaining 80,000 targeted for creation. Among the issues the



housing plan identifies in facilitating the achievement of such goals is the need to modernize zoning regulations that are outdated and often impede the production of new affordable housing.

More recently, in the Mayor's State of the City address on February 3, 2015, a goal of another 160,000 market-rate units, to be developed over the next ten years, was established. These new market rate units, in addition to the 80,000 new affordable units were pledged to be developed over the next ten years, amount to a total of 240,000 new residential units anticipated through the next decade. Over the ten years between 2005 and 2014, New York City saw a total 188,000 new residential units constructed; the rate of development over the next decade is expected to increase by nearly 30%.

Since the release of *Housing New York*, the Department of City Planning, working with the Department of Housing Preservation and Development, communities, nonprofit housing groups, architects, developers, and other practitioners, has identified a set of zoning barriers that constrain new housing creation and add cost, and strategies to address them, most of which are included in this proposal. At the same time, *Housing New York* identifies several initiatives in addition to zoning changes that would help in the production of more housing, and more affordable housing.

One key initiative of *Housing New York* is the establishment of a Mandatory Inclusionary Housing program, which would require a share of new housing to be affordable in areas that are rezoned to support new housing production. As currently proposed, under that program, affordable housing would be required, not optional, when developers build in a newly rezoned area – whether rezoned as part of a City neighborhood plan or a private rezoning application.

## **NYC Ten Year Capital Strategy**

City funding has also been increased to provide additional support for new development, as well as ensure key city agencies have the staff and resources to implement the plan, and for infrastructure investments needed to make land available for significant new housing opportunities. The Ten Year Capital Strategy, announced in May 2015, commits \$7.5 billion towards the construction and preservation of 200,000 units of affordable housing, and over \$1 billion for investments in neighborhoods where the city plans to permit greater density through zoning. An additional \$1.17 billion was committed to affordable housing infrastructure, recognizing that the anticipated new housing and population growth would require improvements to local infrastructure.

The Capital Strategy includes additional funding for schools and libraries, water and sewers, and transit and transportation improvements, to ensure that critical city resources can keep up with the growing population.

### **421-a**

Most new construction built today is currently eligible for a property tax exemption under the City's Section 421-a program. In many, but not all, neighborhoods, this tax exemption is only available if the developer ensures that a portion of the project be dedicated to affordable housing. The program has been moderately successful at creating affordable housing; however, revisions were approved in June 2015 at the NY State Legislature to make 421-a more effective. The revised plan extends the length of tax abatements from 25 to 35 years, but requires that all new developments receiving the abatement include affordable housing. Moreover, the percent of units required to be affordable in order to receive the abatement was increased from 20 percent, to 25-30 percent depending on the incomes targeted.

The updated 421-a program alone is expected to double the number of affordable units produced over the next decade as compared to the previous, from 12,400 to 25,000 units.

## **Zoning for Quality and Affordability**

The supply of new housing in the city is constrained by the high cost of building. In many neighborhoods, land values are at record highs, leading to very high upfront costs to acquire land for new buildings. The City is also one of the



most expensive construction markets in the country. As the cost of building increases, housing developers respond by building fewer housing units, charging more to rent or buy a home, or both.

Because of changing best practices for housing design, the rise of green technologies, and new construction methods including “block and plank” construction and modular construction, today’s residential buildings typically have higher floor-to-floor heights than the buildings of 30 years ago, when many of the current building envelopes prescribed by zoning were established. Standards for retail space have also increased to provide an improved shopping environment and to allow space for modern ventilation and other mechanical systems. Especially when combined with the floor area bonus allowed through the Inclusionary Housing Program, these factors can make it difficult, and often times impossible, to accommodate the full amount of permitted residential floor area within the existing building envelope. These existing controls also limit overall design flexibility and often result in production of suboptimal housing units and buildings that do not include design and streetscape-improving elements that are typical of older apartment buildings in the city’s residential neighborhoods.

As described in the Purpose and Need section below, the current supply of housing units is not well suited for the city’s changing households, partly due to existing zoning regulations. The city’s residents are aging: DCP projects that the population aged 65 or older will increase by 175,000 from 2010 to 2020. Housing needs change over a household’s life cycle. Some older adults need housing that provides special support services, while others prefer to ‘age in place’ in age-integrated settings. Many struggle to make ends meet because incomes frequently decline after retirement. To address these changes, the city must develop housing options that are affordable to older New Yorkers and that meet their special needs.

The boroughs of Manhattan, the Bronx, Brooklyn and Queens are unusual nationwide in having relatively low levels of car ownership, particularly in dense areas characterized by apartment buildings, and high levels of transit use for journeys to work (Staten Island more closely resembles the suburban norm). Research undertaken by DCP in recent years further clarifies the factors that are correlated with car ownership among households. The 2007 Residential Parking Study found that car ownership rises with income. Families (two or more persons living together, related by blood or marriage) are more likely to own cars than non-families. And, on average, car ownership rises the farther a household lives from the city’s business core in Manhattan south of 60th Street.

DCP’s 2013 Inner Ring Parking Study recommended that in light of these characteristics, zoning parking requirements need to be adjusted in a targeted manner, focused on the parts of the city and the specific populations for which car ownership is low. Parking requirements are intended to ensure that new housing does not result in community impacts from street congestion; where such effects are not a concern, parking need not be required.

Moreover, the costs of providing parking in New York City, and especially in the city’s densest neighborhoods, is extremely high – up to \$40,000 or even \$50,000 per structured parking space<sup>2</sup>. Surface parking costs less to build but occupies scarce land which could otherwise be developed as housing or other active uses. The high costs of required parking hamper project financing, especially where it involves affordable housing that is largely dependent on public subsidy.

These initiatives, individually and in concert, are expected to expand the landscape of affordable housing across the city. It is not possible to isolate the individual contribution that ZQA would have on the overall production of new housing in the context of every other initiative underway. Nevertheless, ZQA is expected to play a meaningful role in achieving the Mayor’s Housing Plan production goals. While it is not in-and-of itself expected to induce development on sites where development would not have otherwise been possible, more development is expected to occur as a result of this proposal, in the aggregate, citywide. By making it easier and more cost effective to develop under the existing zoning framework, ZQA is expected to intensify existing development patterns. An analysis of building trends since 2000 provides some insight as to where the effects of this proposal may be felt across the five boroughs.

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<sup>2</sup> <http://www.reinventingparking.org/2015/06/how-much-does-one-parking-spot-add-to.html>

## G. RECENT BUILDING TRENDS

### General residential development

Between January 1, 2000 and through the end of 2014, nearly 14,000 new buildings with at least 3 residential units have been issued Temporary or Final Certificates of Occupancy from the NYC Department of Buildings, resulting in nearly 190,000 new units. Over 2,800 of these buildings had at least 10 residential units, amounting to over nearly 170,000 housing units.

#### *Temporary or Final Certificates of Occupancy issued*

**Table 1-6: Temporary or Final Certificates of Occupancy issued 2000-2014, Buildings with 10 or more Residential Units**

Borough	Total New and Occupied Buildings	Total New Units
Brooklyn	1,075	40,850
Bronx	408	23,978
Manhattan	796	80,922
Queens	496	23,215
Staten Island	34	939
<b>Grand Total</b>	<b>2,809</b>	<b>169,904</b>

*Source: NYC PLUTO 15v1; NYC DOB Temporary or Final Certificate of Occupancy issued*

The vast majority of the changes proposed as part of the Zoning for Housing Quality and Affordability proposal, and all of the changes with as-of-right applicability, would apply only to multifamily zoning districts, with the exception of a new as-of-right allowance for certain community facilities in two-family districts. The breakdown of development in these districts over the previous 15 years is shown below. Note that the sum of new development in the tables below are slightly lower than the 2,809 buildings and 169,904 units referenced above. Because the tables below reference zoning districts where development occurred, buildings with no information on zoning district were excluded.

**Table 1-7: Temporary or Final Certificates of Occupancy issued 2000-2014, Buildings with 10 or more Residential Units, by zoning district**

Borough	Total New and Occupied Buildings	Total New Units
<b>Brooklyn</b>	<b>827</b>	<b>31,191</b>
lower density (R3-R5B)	88	1,961
medium density (R5D-R8)	727	25,482
highest density (R9-R10)	12	3,748

<b>Bronx</b>	<b>342</b>	<b>19,868</b>
lower density (R3-R5B)	9	317
medium density (R5D-R8)	333	19,551
<b>Manhattan</b>	<b>611</b>	<b>61,667</b>
medium density (R5D-R8)	408	25,226
highest density (R9-R10)	203	36,441
<b>Queens</b>	<b>390</b>	<b>13,652</b>
lower density (R3-R5B)	79	2,115
medium density (R5D-R8)	311	11,537
<b>Staten Island</b>	<b>29</b>	<b>779</b>
lower density (R3-R5B)	26	590
medium density (R5D-R8)	3	189
<b>Grand Total</b>	<b>2,199</b>	<b>127,157</b>

*Source: NYC PLUTO 15v1; NYC DOB Temporary or Final Certificate of Occupancy issued*

The table below further parses out new buildings and units by whether they were built in contextual or non-contextual districts, providing additional insight as to where this proposal is most likely to affect future development.

**Table 1-8: New Development 2000-2014, Buildings with 10 or more Residential Units, Contextual and Non Contextual**

<b>Borough</b>	<b>Total New and Occupied Buildings</b>	<b>Total New Units</b>
<b>Brooklyn</b>	<b>827</b>	<b>31,191</b>
<b>contextual</b>		
lower density (R3-R5B)	32	603
medium density (R5D-R8)	427	11,973
<b>general residence or non-contextual</b>		
lower density (R3-2, R4, R5)	56	1,358
medium density (R6-R8)	300	13,509
highest density (R9-R10)	12	3,748

<b>Bronx</b>	<b>342</b>	<b>19,868</b>
<b>contextual</b>		
lower density (R3-R5B)	1	10
medium density (R5D-R8)	47	2,628
<b>general residence or non-contextual</b>		
lower density(R3-2, R4, R5)	8	307
medium density (R6-R8)	286	16,923
<b>Manhattan</b>	<b>611</b>	<b>61,667</b>
<b>contextual</b>		
lower density (R3-R5B)	226	11,754
medium density (R5D-R8)	79	10,406
<b>general residence or non-contextual</b>		
medium density (R6-R8)	182	13,472
highest density (R9-R10)	124	26,035
<b>Queens</b>	<b>390</b>	<b>13,652</b>
<b>contextual</b>		
lower density (R3-R5B)	19	304
medium density (R5D-R8)	202	6,546
<b>general residence or non-contextual</b>		
lower density(R3-2, R4, R5)	60	1,811
medium density (R6-R8)	109	4,991
<b>Staten Island</b>	<b>29</b>	<b>779</b>
<b>general residence or non-contextual</b>		
lower density(R3-2, R4, R5)	26	590
medium density (R6-R8)	3	189
<b>Grand Total</b>	<b>2,199</b>	<b>127,157</b>

Source: NYC PLUTO 15v1; NYC DOB Temporary or Final Certificate of Occupancy issued

The table above demonstrates that the majority of recent development occurred in the city’s non-contextual districts, although patterns vary by borough based on the prevalence of mapped contextual or non-contextual districts. The proposed changes affect contextual and non-contextual districts in different ways, as is discussed at length in this document.

### Development with an affordable component

Only a fraction of new units built since 2000 are rent- and income-regulated affordable housing units. Roughly 472 buildings with 28,552 residential units built since 2000 have an affordability component, according to data aggregated by New York University’s Furman Center, which “brings together multiple data sources to provide information on thousands of privately-owned, subsidized rental properties in New York City” (<http://datasearch.furmancenter.org/>). Data sources include NYC Department of Housing Preservation and Development, NYC Housing Development Corporation, the NYS Homes and Community Renewal, and the U.S. Department of Housing and Urban Development.

**Table 1-9: Residential Development with Affordable Component 2000-2014**

Any affordability program		
Borough	Total Buildings	Total Units
Bronx	129	8,225
Brooklyn	150	3,685
Manhattan	158	15,104
Queens	10	1,233
Staten Island	25	305
<b>Total</b>	<b>472</b>	<b>28,552</b>

Source: Subsidized Housing Information Project property-level data provided by the Furman Center, retrieved from <http://www.furmancenter.org/data/search> on 7/20/2015. Terms can be found at <http://www.furmancenter.org/data/disclaimer/>.

Looking only at buildings comprised entirely of affordable units, the numbers are smaller.

**Table 1-10: Residential Development 2000-2014 comprised entirely of affordable units**

Borough	Total Buildings	Total Units
Bronx	53	2319
Brooklyn	50	1891
Manhattan	35	1204
Queens	4	344

<b>Staten Island</b>	n/a	n/a
<b>Total</b>	142	5758

Source: *Subsidized Housing Information Project property-level data provided by the Furman Center, retrieved from <http://www.furmancenter.org/data/search> on 7/20/2015. Terms can be found at <http://www.furmancenter.org/data/disclaimer/>.*

Many factors contribute to housing development. Availability of developable sites, market values, mortgage rates, labor costs, public subsidy, zoning regulations and many more variables influence what type of housing gets built where. The Mayor’s housing plan seeks to support sustained levels of new housing development to enable housing supply to keep pace more closely with demand, by reducing costs and barriers to construction. The Zoning for Quality and Affordability proposal is one part of a coordinated, multi-pronged effort to encourage the development of housing, and especially affordable housing, as well as preserve existing affordability and plan for neighborhoods.

### Anticipating the effects of the Proposed Action

To describe the anticipated effects of the initiatives underway through *Housing New York*, development in the next decade may be benchmarked against trends of the previous decade. Some modest and unquantifiable amount of additional development is expected as a result of more funding and improved regulations proposed across the spectrum of agencies that influence housing production. The various components of the housing plan are designed to work together, in concert, making it difficult to isolate the anticipated effects of any single action, including the Zoning for Housing Quality and Affordability proposal.

While it is not possible to isolate the individual contribution that ZQA would have on the overall production of new housing in the context of every other initiative underway, as previously discussed, ZQA is expected to play a meaningful role in achieving the goals of the mayor’s Housing Plan. By making it easier and more cost effective to develop quality buildings under the existing zoning framework, ZQA is expected to intensify to some degree existing development patterns highlighted in the above tables. With the exception of the proposed allowance of as-of-right development on certain existing affordable senior housing parking lots, the proposal is not expected to induce development on sites where none would otherwise be expected in the future. The ZQA proposal is not expected to dramatically alter existing market forces, but it would make development somewhat easier on constrained sites. Certain sites may be able to “unlock” development potential under ZQA that would have been difficult or costly to build absent this proposal.

Throughout this document, anticipated development expected as a result of the Proposed Action is characterized as “slight” or “modest” at any neighborhood level, given the inability to quantify projected development with any degree of precision. In any given location, a small local increase in housing units resulting from the reduced costs and design flexibility facilitated by the proposed is expected and, in the aggregate, these units would help meet the city’s housing needs. Yet, fundamentally, the type and distribution of development across the city as a result of the Proposed Action is expected to track the historic trends outlined above and no significant changes to density or character are expected at any local neighborhood scale. Given the generic nature of this proposal, the Analytical Framework and Prototypes in Chapter 2 provide as detailed an explanation as possible of how development is expected to change as a result of the Proposed Action, in the context of other housing initiatives. While the Proposed Action would make incremental changes intended to support the achievement of broad *Housing New York* plan targets, other initiatives, in particular neighborhood planning studies that would result in local area rezonings, would increase permitted density in areas where it can be best accommodated. These rezonings would be separate from this proposed action, and subject to their own environmental review. Therefore, recent building trends can be considered a rough benchmark against which small incremental increases of development may be experienced at the neighborhood level as a result of the Zoning for Quality and Affordability proposal.

## H. PURPOSE AND NEED

DCP has identified a number of areas where existing zoning regulations unduly limit housing production, make it unnecessarily costly and inefficient, or unintentionally produce housing that is not in keeping with its neighbors or contemporary trends. These issues are described below.

### **Promote Affordable Independent Residences for Seniors and Long-Term Care Facilities**

Older New Yorkers are a diverse and rapidly growing segment of the city's population. The 2010 census documents that the population 65 years and over consisted of 1,002,000 people – nearly 50 percent of whom are disabled. Furthermore, the Department of City Planning projects this population to increase to 1,410,000 in 2040 – an increase of 408,000 persons or 40.7 percent.<sup>3</sup> Overall, the total share of the population 65+ is projected to increase from 12.2 percent in 2010 to 15.6 percent in 2040. The bulk of the population increase is projected to occur in the next two decades with the aging of the post-World War II “baby-boomer” population, who began to reach their 60s in 2006. During the last decade, the senior population has increased by 12.4 percent, faster than both the City's total population (2.1 percent) and the population under 60 (0.2 percent).<sup>4</sup>

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<sup>3</sup> New York City Population Projections by Age/Sex & Borough, 2010-2040; NYC Department of City Planning, December 2013

<sup>4</sup> Census 2010: Changes in the Elderly Population of New York City, 2000-2010; NYC Department for the Aging, July 2012

**Table 1-11: Projected New York City 65 and Over Population by Borough, 2010-2040**

Projected New York City 65 and Over Population by Borough, 2010-2040				
	<u>2010</u>	<u>2020</u>	<u>2030</u>	<u>2040</u>
NYC	1,002,208	1,177,215	1,364,178	1,409,708
Bronx	145,882	171,856	212,334	228,476
Brooklyn	294,610	351,609	408,424	428,845
Manhattan	214,153	250,806	278,043	277,444
Queens	288,219	325,300	370,214	377,060
Staten Island	59,344	77,644	95,163	97,883

CHANGE								
	<u>2010-2020</u>		<u>2020-2030</u>		<u>2030-2040</u>		<u>2010-2040</u>	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
NYC	175,007	17.5	186,963	15.9	45,530	3.3	407,500	40.7
Bronx	25,974	17.8	40,478	23.6	16,142	7.6	82,594	56.6
Brooklyn	56,999	19.3	56,815	16.2	20,421	5.0	134,235	45.6
Manhattan	36,653	17.1	27,237	10.9	-599	-0.2	63,291	29.6
Queens	37,081	12.9	44,914	13.8	6,846	1.8	88,841	30.8
Staten Island	18,300	30.8	17,519	22.6	2,720	2.9	38,539	64.9

*Source: New York City Population Projections by Age/Sex & Borough, 2010-2040; NYC Department of City Planning, December 2013*

Low income households are a significant portion of the older population. Sixty-one percent of all persons age of 65 or older in New York City have incomes at or below 80 percent of adjusted Area Median Income and are therefore eligible for housing assistance.



**Table 1-12: Persons 65 and over in households with income less than 80 percent of adjusted Area Median Income (AMI), as calculated by the US Department of Housing and Urban Development**

	Total Persons 65 and Over in Households (Group Quarters removed)	<= 80 percent AMI (controlled for household size)	Percentage
Total (controlled for HH size)	958,799	584,653	61.0%
Bronx	137,274	94,782	69.0%
Brooklyn	278,617	191,402	68.7%
Manhattan	208,440	117,122	56.2%
Queens	277,427	154,016	55.5%
Staten Island	57,041	27,331	47.9%

*Source: U.S. Census Bureau, 2008-2012 American Community Survey—Public Use Microdata Sample*

Today, there are various housing and facility types available to seniors that offer specialized living arrangements targeted to accommodate lifestyles of the aging and higher care needs. The level of support and services ranges depending on the facility type and population served, but typically fall into two primary categories: 1) independent senior apartments and 2) Long-Term Care Facilities. The growth in older New Yorkers has already resulted in an increased demand for services for Long-Term Care; especially for social and health care services for less mobile or disabled individuals with chronic diseases. Given the high cost of care services, and low incomes of seniors, these housing types are typically supported through subsidies or funding-programs from the federal, state and/or city government. The dramatic increase of the post-World War II “baby boom” generation, now becoming elderly, also has an important impact on housing and service models, necessitating new housing types for smaller households that can meet the needs of senior residents who may have different lifestyles and different needs from those of past generations.

### **Non-Profit Residences for the Elderly**

Nearly all of the independent living residences for seniors in New York City are publicly assisted or operated by non-profit organizations that establish eligibility on the basis of income. The largest numbers of these units have historically been developed using HUD Section 202 funds, which diminished in recent years and are no longer available to support new capital construction. The NYU Furman Center’s Subsidized Housing Information Project inventories 209 total facilities (approximately 16,400 units) subsidized through the HUD Section 202 Program for seniors. Many of these buildings were constructed during the 1980s and 1990s, when funding sources were greater. In recent years, government funding and support has declined, as has the construction of new facilities, failing to keep up with the demand for housing created by the aging of the population.

**Table 1-13: HUD 202 Funded Affordable Senior Housing Facilities and Units**

Borough	Number of HUD 202 Facilities	Number of 202 Units
Bronx	63	4,767
Brooklyn	57	4,678
Manhattan	64	4,186
Queens	20	2,410
Staten Island	5	392
Total HUD 202 Facilities	209	16,433

Source: Furman Center for Real Estate and Urban Policy Subsidized Housing Information Project (SHIP), 2014

### Long-Term Care Facilities

The New York State Department of Health licenses Long-Term Care Facilities, such as nursing homes and assisted living facilities. Pursuant to 10 NYCRR Section 700.2(a)(11), the State defines a “nursing home” as a facility, institution, or portion thereof, providing therein, by or under the supervision of a physician, nursing care and other health, health-related and social services as specified in this Chapter for 24 or more consecutive hours to three or more nursing home patients who are not related to the operator by marriage or by blood within the third degree of consanguinity, including, but not limited to, an infirmary section which is identifiable as a nursing home unit in a special area, wing or separate building of a public or voluntary home or of a general or special hospital.

Listed below are examples of other types of State-regulated facilities and programs:

ALP – Assisted Living Program – 18 NYCRR 485.2(s): An Assisted living program means an entity which is approved to operate pursuant to section 485.6(n) of this Part, and which is established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, supervision, and providing or arranging for home health services to five or more eligible adults unrelated to the operator. An “Assisted Living Program”, which is available in some Adult Homes and Enriched Housing Programs (see definitions below), combines residential and home care services. It is designed as an alternative to nursing home placement for individuals who historically have been admitted to nursing facilities for reasons that are primarily social, rather than medical in nature.

AH – Adult Home – An adult home is established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care and supervision to five or more adults unrelated to the operator.

EHP – Enriched Housing Program – An enriched housing program is established and operated for the purpose of providing long-term residential care to five or more adults, primarily persons sixty-five years of age or older, in community-integrated settings resembling independent housing units. The program provides or arranges for the provision of room, board, housekeeping, personal care and supervision. An Enriched Housing Program is considered Use Group 2 (residential).

CCRC and FFSCCRC- Continuing Care Retirement Community (CCRCs) and Fee-for-Service Continuing Care Retirement Community (FFSCCRCs) are residential alternatives for adults that offer, under one contract, an independent living unit (an apartment or cottage), residential amenities and access to a continuum of Long-Term Care services, as residents' health and social needs change over time.

These uses are broadly managed by the Division of Long-Term Care of the State Department of Health; similar terminology exists nationally and represents the range of typical care options available to seniors throughout the United States.

DOH currently licenses 176 nursing homes (43,484 beds) and 77 assisted living facilities, enriched housing programs, and adult homes (10,986 beds) in the city. Nursing homes offer the highest level of care and 24-hour nursing services, while assisted living are typically independent apartments with optional personal services and support. These include independent living arrangements with apartments or hotel-style suites where residency may also be age-restricted (per the Fair Housing Act), and residents may have access to optional services such as congregate dining, transportation, housekeeping, social activities and limited health care. Most of these Long-Term Care Facilities were constructed during the 1970s, when funding sources were at a peak. Since the 1970s, government funding and support has steeply declined, as has the construction of new facilities, failing to keep up with the demand for housing created by the aging of the population.

**Table 1-14: New York State Department of Health Licensed Long-Term Care Facilities in New York City**

Facility Type	Number of Facilities	Number of Beds
Adult Home	33	4,670
Adult Home/Assisted Living Program	19	3,771
Enriched Housing Program	16	1,658
EHP/ALP	9	887
Nursing Home	176	43,484
Total NYS DOH Licensed Long-Term Care Facilities	253	54,470

*Source: New York State Department of Health, Long-Term Care Facilities, 2014*

According to NYS DOH estimates of need for 2016, there is a shortage of 8,357 long-term residential health care facility beds in New York City. The city also has half as many assisted living beds per capita as other urban counties in the state.

**Table 1-15: Comparison of Total Bed Numbers in Select Regions, by NYS County**

County and NYC	65+ Pop*	Pct of Total Pop*	Total Number of Beds**		Ratio of 65+ persons to one bed	
			Nursing Homes	Adult Care Facilities	Nursing Homes	Adult Care Facilities
Albany	42,314	13.9	1,905	952	22:1	44:1
Monroe	103,594	13.9	5,244	2,830	20:1	37:1
Nassau	204,681	15.3	7,608	4,005	27:1	51:1
Onondaga	65,578	14	3,011	1,637	22:1	40:1
Suffolk	201,793	13.5	8,361	4,478	24:1	45:1

Westchester	139,122	14.7	6,449	3,229	22:1	43:1
NYC	993,158	12.1	43,484	10,986	23:1	90:1
Sources: *U.S. Census Bureau, 2010 Census Summary File 1; **NYSDOH website						

Although demand for appropriate Long-Term Care is very high, there are many factors that constrain the production of these facility types:

- Limited availability of public funding and subsidies
- High cost of health care and services
- High cost of construction, especially for specialized design requirements (additional accessibility and safety features which add to the costs) as well as for social, accessory and support spaces
- Other requirements from government oversight agencies

In New York City specifically, there are additional impediments that suppress the supply of senior housing:

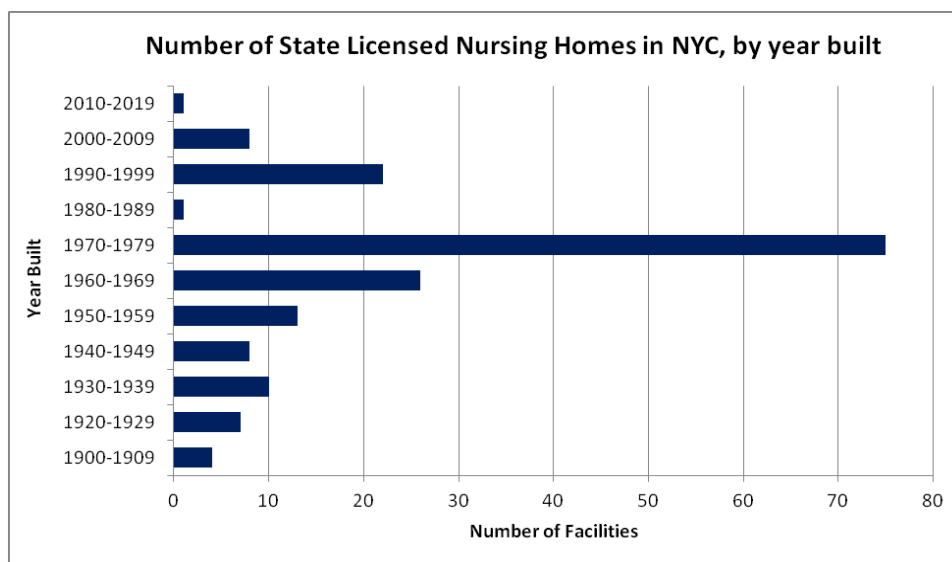
- High cost of land and limited availability of suitably configured sites
- Preference for higher value housing types (leading to displacement)
- Obsolete and burdensome zoning regulations

The City believes it is essential to encourage this critical category of care facilities today and in the future, and remove any unnecessary regulatory impediments that unfairly burden the creation of additional supply.

### Expanding the supply of affordable senior housing and care facilities

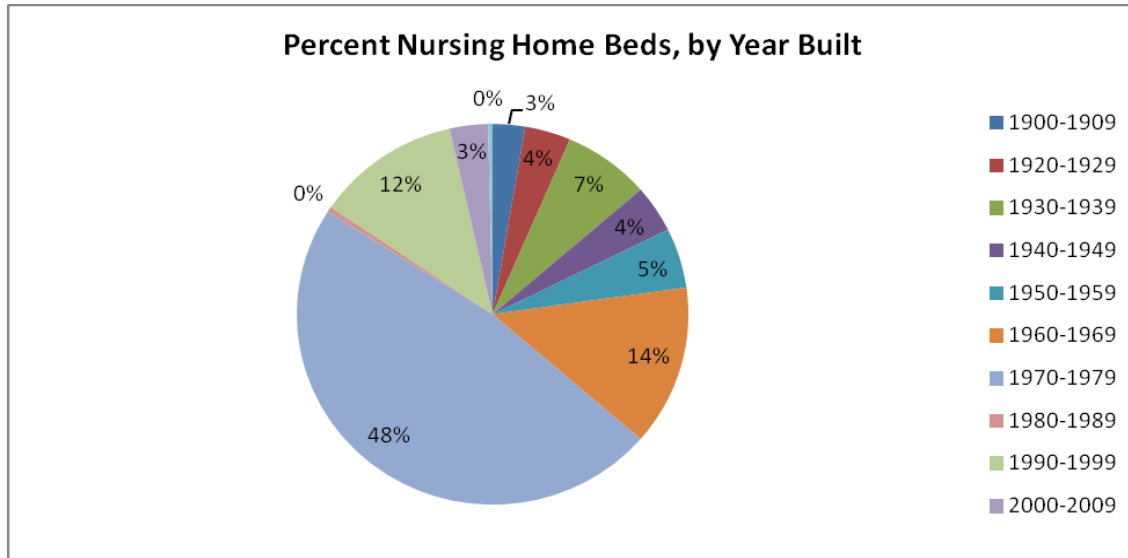
Since 1989 (when DCP’s records are available on these certifications and special permits), there have been 54 applications under 22-42, and 49 certifications. Half of these applications were to enlarge or modify existing nursing homes. The need to submit such applications represents a financial and time burden to both the Commission and the applicants. Of the 49 applications for a special permit pursuant to Section 74-902 to increase the bulk, no application has been denied by the Commission. Twenty of the 49 facilities were existing facilities aiming to renovate. Since 2000 (the last 14 years), New York City has seen the construction of only 9 new nursing homes containing 1,500 new nursing home beds, as shown in the figures below.

**Figure 1-1: Number of State Licensed Nursing Homes in NYC, by year built**



Source: New York State Department of Health, Long-Term Care Facilities, 2014

**Figure 1-2: Percent Nursing Home Beds, by year built**



Source: New York State Department of Health, *Long-Term Care Facilities, 2014*

In the early 1970s, when the City Planning Commission voiced fears of overbuilding in certain communities, there was a favorable funding environment for nursing homes, large suitable sites were widely available in many neighborhoods, and land prices were low. Today, the picture is very different for nursing homes: financing and public funding is scarce, and suitable sites are difficult and expensive to procure.

The State Department of Health's Nursing Home licensure requirements have also evolved since the 1970s. The rules governing nursing homes and Long-Term Care Facilities are found in the Rules and Regulations of the State of New York, Title 10. These rules include standards for nursing home construction, including requirements for residential units and support services and communal areas. A separate operating certificate is required that provides oversight regarding the operation and care provided by the operator of the nursing home. The DOH requirements exist to ensure both the quality of care and life for residents of nursing homes, and that nursing care services are aligned with community need. New York's Certificate of Need (CON) (<https://www.health.ny.gov/facilities/cons/>) process provides Department of Health oversight in limiting investment in duplicate beds, services and medical equipment. All nursing homes and adult care facilities licensed by the state are subject to CON review; thus today, the State now serves a similar role that was originally sought by the 1973 certifications and special permits by the Commission. Criteria for the CON review are based on a number of factors, including population demographics, services utilization patterns, epidemiology of selected diseases and conditions and access to services. The review is extensive and includes the following:

- Public need review
- Financial feasibility review
- Character and competence and programmatic review
- Architectural and Engineering Review
- Legal review

The existing certification and special permit rules that require all nursing homes to come before the City Planning Commission are outdated and no longer relevant. There is a significant need for new nursing home beds and facilities, and this process unnecessarily constrains the development of such projects. Nursing home construction is further constrained by financing and the availability of public funding sources to pay for medical services. Over the next five years, modest growth is expected: the industry is expected to expand at an average annual rate of 3.8

percent annually, due largely to the accelerated aging of the population<sup>5</sup>. While the growing population of elderly will spur demand, lack of government funding will limit supply and industry growth. Further, the release of nursing home licenses is also mediated and slowed through the Certificate of Need process.

As the city's population ages, it is equally important to make an appropriate range of options available so that seniors can access the level of care for their needs. The absence of clear and appropriate zoning regulations for assisted living and continuing care retirement communities likely deter investment and contribute to the undersupply of assisted living beds, and the absence in the city of CCRCs.

Given that current demand for Affordable Independent Residences for Seniors and Long-Term Care far outstrips existing supply, in order to promote a more secure housing future for this rapidly growing population, the City aims to support and encourage the production of these housing types. Many areas of the Zoning Resolution pertaining to Affordable Independent Residences for Seniors and Long-Term Care Facilities have not been updated in over three decades and refer to obsolete programs and terminology. By modernizing the regulations and removing outdated or redundant impediments, the City can better support the development of these housing types.

Interviews with architects, advocates, and developers of Affordable Independent Residences for Seniors and Long-Term Care Facilities also suggest that mixed-use projects and changes in the senior demographic and funding environment may result in new and different ways of configuring or mixing senior housing with other uses and housing types. The following list summarizes the primary issues that are addressed in the proposal to accommodate both current and future models of housing and care for seniors:

- Outdated and obsolete definitions
- Inconsistent FAR and bulk regulations
- Density and unit size limits
- Redundant certifications and special permits

#### Outdated and obsolete definitions

Obsolete zoning definitions do not recognize the range of industry models for Affordable Independent Residences for Seniors and Long-Term Care Facilities that now exist, leading to ambiguity as to how regulations apply. For example, the Zoning Resolution does not include several categories of Long-Term Care that are licensed by NYS DOH, such as assisted living facilities. Further, the term "non-profit residences for the elderly" is unnecessarily restricted to non-profit developers, where, instead, any entity wishing to do so should be able to create income-restricted senior housing.

In addition to failing properly to recognize contemporary senior housing types, the Zoning Resolution includes obsolete uses that no longer correspond to State-regulated categories. These include "domiciliary care facilities" and "sanitariums."

#### Inconsistent FAR and bulk regulations

FAR and bulk regulations are confusing and inconsistent across Affordable Independent Residences for Seniors and Long-Term Care Facility types, making it difficult for providers of this type of housing to figure the regulations governing different housing types in different districts.

The additional FAR permitted for nonprofit residences for the elderly recognizes the difficulty of assembling sites within the funding constraints for affordable senior housing and the low land use impacts created by this population. Zoning Resolution Section 23-147 established maximum floor area ratios, minimum required open space ratios for non-contextual districts, and minimum required open space and maximum lot coverage in contextual districts for non-profit residences for the elderly. However, in many cases, allowable floor area under Section 23-147 cannot be achieved without waivers because the allowable FAR is higher, but the permitted building envelope is based on the lower FAR permitted for non-senior housing. The additional FAR provided for non-profit residences for the elderly also does not apply in all of the zoning districts where Affordable Independent Residences for Seniors are

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<sup>5</sup> IBIS World Report 62311 Nursing Care Facilities in the US Industry Report, 2014

constructed, including R8-R10 districts. In addition, Affordable Independent Residences for Seniors in non-contextual districts are subject to open space requirements which do not allow for an efficient building form.

In lower density districts, affordable senior housing developments have an envelope that was intended, in 1989, to be compatible with the housing types prevailing in the city's lower-density (R3-R5) areas. Yet, from the start, it was recognized that the lower density contextual zoning building envelopes were incompatible with the Section 23-147 higher floor area ratios for non-profit residences for the elderly, and a City Planning Commission authorization (Section 23-631) was created to permit appropriate height and setback for these residential buildings through discretionary review. Since 1989, this authorization has been used 31 times – an average of only slightly more than once a year – and represents a significant source of expense, delay, and uncertainty to the applicants for Affordable Independent Residences for Seniors.

While assisted living and nursing homes are subject to financing constraints in many cases comparable to affordable senior affordable senior housing, they are subject to floor area restrictions that in some zoning districts permit less floor area than is available to market-rate residences. These restrictions are a reflection of a long-past period in which state regulation was far more lax and some communities had a realistic fear of being overwhelmed by over-bulk facilities.

Section 24-111 establishes maximum floor area ratios for certain community facility uses, such as nursing homes, sanitariums and philanthropic or non-profit institutions with sleeping accommodations. This section was added to the Zoning Resolution in February 1973 (Application No. [CP-22212](#)). The floor area ratios in Section 24-111 were matched with the underlying residential district FARs (which are lower than what is permitted for other community facilities, and in many cases also lower than the Quality Housing FARs later established for ordinary residences), and, as a result of this action, zoning only allows the full community facility FAR of Section 24-11 for nursing homes, sanitariums and other philanthropic or non-profit institutions with sleeping accommodations through a special permit. This was a change from the 1961 Zoning Resolution, where nursing homes were originally permitted the full community facility FAR as-of-right.

#### [Density and unit size limits](#)

Zoning regulations currently limit the maximum number of dwelling or rooming units for non-profit residences for the elderly by zoning district (23-221). However, density restrictions can prevent the creation of efficiently sized senior housing units. The density requirements in the Zoning Resolution are not based on design best practices for affordable senior housing, which often call for small average unit sizes to reduce rents and simplify housekeeping. The household size for Affordable Independent Residences for Seniors differs from that of other housing, with a high frequency of single occupancies and the general absence of children; thus the population in a given number of units for the elderly is less than it is in an identical number of units tenanted by a mixed-age group.

The Zoning Resolution also establishes a minimum unit size for non-profit residences for the elderly at 400 square feet in medium- and high-density contextual districts. Under the Proposed Action, as discussed in the “Modernize Rules That Shape Buildings” section below, unit size minimums would be eliminated from the Zoning Resolution for all housing, with other regulations allowed to govern. Reducing the minimum unit size will not preclude the development of larger units, allowing facilities the flexibility to accommodate home health care aides and other operational needs.

Under current zoning regulations, the number of dwelling units that can be constructed on a given site is established through the applicable density factor for non-profit residences for the elderly set forth in Section 23-221. Seniors are typically housed in smaller dwelling units, reflecting their small household sizes, the desirability of simplifying housekeeping for older residents, and the need to provide low-cost housing. However, the density factors listed in Section 23-221 for non-profit residences for the elderly may unnecessarily restrict the creation of suitably sized units for Affordable Independent Residences for Seniors. The effective minimum dwelling unit size established by other applicable laws and codes is approximately 275 square feet. Affordable senior housing is a highly-regulated housing type and requires a regulatory agreement with certain federal, state or city agencies. These agencies often impose their own various minimum unit size requirements and other design parameters for Affordable Independent Residences for Seniors; therefore zoning should not conflict with other applicable controls and the requirements of funding programs.

### Mixing of Use Group 2 residential and Use Group 3 community facility uses

Currently, non-profit institutions with sleeping accommodations (NPISAs) and nursing homes and health related facilities (nursing homes are proposed to be renamed “Long-Term Care Facilities”) are listed in Use Group 3 of the Zoning Resolution and are generally governed by the community facility bulk regulations set forth in Article II, Chapter 4. While the application of these provisions is fairly straightforward for stand-alone facilities, the regulations are confusing and complicated in instances when developers want to mix residential and community facilities such as Long-Term Care and NPISA uses. Since a variety of mixed facilities and residences are becoming industry best practice, the impediments created by the Zoning Resolution are increasingly important to remove. An example of this is a building that mixes affordable senior housing (a residential use) with assisted living facilities (a community facility use).

First, the Zoning Resolution does provide clear direction for the application of density requirements when different uses have different requirements. For example, while residential uses have a maximum number of dwelling units that are permitted on a zoning lot through a density calculation, community facility uses (including NPISAs) do not, creating ambiguity regarding which rules apply to buildings that accommodate both uses. Second, the Zoning Resolution currently does not specify how to allocate floor area to accessory spaces that serve multiple uses with different permitted floor areas. For example, a mixed residential and community facility building might integrate Long-Term Care or NPISA units into a predominantly residential story, meaning that both uses would utilize the common areas on the floor. If both residential and community facility uses are utilizing this space, practitioners are unsure how to attribute the floor area to each use from the total permitted FAR.

Finally, while NPISAs generally are currently permitted an FAR that is comparable to that permitted for residences in Residence Districts, in certain zoning districts, Section 24-162 of the Zoning Resolution currently requires that the community facility portion of a mixed building be restricted to less FAR. This regulation was established with the intent of restricting the bulk of buildings subject to the full community facility FAR allowed for other uses, but has the effect of constraining the mixing NPISAs and similar facilities with residences. For example, in an R6 or R7-1 district, while the permitted FAR for a stand-alone NPISA would be 2.43 or 3.44, respectively, in mixed buildings the NPISA component is limited to 1.0 FAR. While this restriction is understandable in mixed buildings containing community facility uses that may deviate substantially from the residential character of a building, it is needlessly restrictive for Long-Term Care and NPISAs as these uses are harmonious with, and functionally similar to, residential uses.

### Redundant certifications and special permits

Today, the Zoning Resolution requires several certifications and special permits for nursing home facilities. The certification in Section 22-42 applies to both new buildings and enlargements or substantial renovations to existing buildings and requires that applicants demonstrate that the concentration of nursing home beds in the community district will not exceed the citywide average. If the construction of the new development or enlargement increases the concentration of nursing home beds above the citywide average, then the applicant must demonstrate that it meets the findings of the special permit in Section 74-90. This certification and special permit were developed as a reaction to historic conditions that saw a boom in nursing home construction during the 1970s. Today, the certification and special permit serve little purpose in protecting against community impacts, which are not typically generated by these types of facilities today, but do create a bureaucratic hurdle and increased time and expense to applicants. The concentration metric does not assess the likelihood of any sort of impact; given the typical size of community districts, there is no reason to expect that having a greater share of nursing home beds than the citywide average would have a measurable impact on the quality of life within one. Moreover, the Commission lacks the capacity or authority to conduct ongoing oversight of nursing homes, which the State DOH has, and must in any event defer to the DOH’s judgment that the facility is in fact needed.

New York’s Certificate of Need (CON) process provides Department of Health oversight in limiting investment in duplicate beds, services and medical equipment. All nursing homes and adult care facilities licensed by the State are subject to CON review. Thus today, the State now serves a similar role that was originally sought by the 1973 certifications and special permits by the Commission.



The following analysis reviews the history of certification approvals at the City Planning Commission, which do not require environmental review, and also the CEQR history of special permits to determine if any impacts were identified through the discretionary review process.

Since 2000, City Planning records show that a total of 34 nursing home projects, including existing and new facilities, applied to the City Planning Commission for either certification or a special permit.

From 2000 to 2014, 16 nursing homes and health related facilities were certified by the City Planning Commission pursuant to Zoning Resolution Section 22-42. The 16 applications for nursing homes were located in four of the five boroughs (none were certified in Staten Island). Of the 16 applications, all were certified by the City Planning Commission that they were not located in a Community District that exceeded the citywide average concentration of nursing home beds, and therefore could proceed as-of-right without a special permit. Seven out of 16 were new or replacement nursing homes and nine were enlargements, modernization or renovations of existing nursing homes.

This certification is based on the premise that the citywide average ratio of beds to population by community board is a reasonable benchmark for a discretionary approval of nursing homes. However, given that the population has increased and that the number of nursing home beds has not, the ratio has decreased over time – from a citywide ratio of 6.28 beds per thousand residents in 1995 to a ratio of 5.4 in 2013. This has the result of unnecessarily increasing the applicability of the special permit while continuing to discourage the creation of new needed nursing home beds.

**Table 1-16: Special Permits 74-90 and 74-902**

Section	Number of Projects
74-90 only	10
74-90 and 74-902	4
Total	14

From 2000 to 2014, 14 nursing homes and health related facilities were approved by the City Planning Commission pursuant to Zoning Resolution Section 74-90. Section 74-90 applies to nursing homes located in a Community District that exceeds the citywide average ratio of nursing home beds to population. Such a project must demonstrate that it meets certain findings, related to architectural scale, impacts on supporting neighborhood services, street capacity, and that any disadvantages of a potential increase to concentration would not exceed the benefits of the proposed use. All recorded applications for this permit were found by the City Planning Commission to meet these findings and were approved. All projects received a negative CEQR declaration. A small number (3 of 14) were subject to field testing for hazardous materials or archeological resources. The 14 applications were located in all five boroughs, with the majority of the applications were in Queens (6 of the 14). Four of the 14 nursing homes also applied for special permit 74-902 for an increase of bulk, to use the full community facility FAR per 24-11.

This requirement applies to both new nursing home construction and also to any nursing home enlargement, whether or not new beds are created. Only 4 of the 14 total 74-90 special permits filed were new projects or buildings; the remaining 10 were existing nursing homes that renovated or modernized their facilities requiring enlargement. In the City Planning Commission reports filed with the approvals for this permit, many facilities cited the problem of obsolete facilities that were inadequate both in terms of current consumer demands and the requirements of skilled nursing care. Some facilities were operating with regulatory waivers from the State for insufficient space prior to their application for renovation or expansion. For example, the bedroom sizes constructed historically often did not comply with the State’s current regulations for minimum room sizes. Modernization of

facilities allows the facility to provide other rehabilitative or social amenity spaces such as therapy rooms and recreation spaces, which increases the level of care available to residences and in some cases reduces their need to travel outside of the facility for services. When new beds are proposed, the Department of Health also must approve the number of beds or increase of bed numbers through their Certificate of Need process.

#### *New Nursing Home Facilities 74-902*

From 2000 to 2014, eight nursing home facilities were approved by the City Planning Commission pursuant to Zoning Resolution Section 74-902. The eight applications were located in four of the five boroughs, with four of the eight applications pertaining to sites in Queens. In some cases both 74-902 and 74-90 permits were required in the event the facility was located in a Community District with a concentration of beds above the citywide average bed ratio.

Of the 8 projects, 3 were new facilities, while 5 were for expansions of existing facilities. Of the projects that only applied for 74-902 (not required to have special permit 74-90 and were certified pursuant to 22-42), 3 of 4 were new facilities. This suggests that some new facilities had difficulty achieving their programmatic and licensure requirements within the floor area provided by 24-11.

Applicants of 74-902 must demonstrate that it meets certain findings, related to architectural scale, impacts on supporting neighborhood services, and street capacity. All projects were approved with a negative declaration of environmental findings, with three subject to field testing for hazardous materials or archeological resources.

## **Modernize Rules that Shape Buildings**

The Zoning Resolution contains several layers of provisions that work to shape how the amount of floor area that a particular parcel possesses can be organized. Height limitations, yard regulations, lot coverage maximums, setback regulations and street wall location provisions, among other bulk regulations, combine to establish a theoretical maximum parameter that floor area must be contained within. This is referred to as the 'building (or bulk) envelope'.

Currently, medium- and high-density Residence Districts are regulated largely through two separate regimes with similar densities but very different building envelope controls: the original provisions established under the 1961 Zoning Resolution, known as "height factor"; and a program established in 1987 known as the Quality Housing Program (which includes "contextual" regulations that are optional in residential districts without a letter suffix and mandatory in those with a letter suffix).

Many of the major innovations in New York City's zoning history were reactions to the previous generation of building stock. This was true of the bulk regulations established in the original 1916 Zoning Resolution, the height factor regulations established in the 1961 Zoning Resolution, and the alternate subset of regulations contained within the Quality Housing Program.

In the post-World War II population boom years, housing in New York was in short supply, and the harsh setback requirements of the 1916 Zoning Resolution, which produced the 'wedding-cake' buildings of Midtown and Lower-Manhattan, were seen as heavy-handed obstacles to cost-effective housing production. In contrast, developments such as Stuyvesant Town (1947) extolled the potential of a set of regulations that could allow simple, unarticulated towers surrounded by lush open space, colloquially known as "tower-in-the-park" developments. Increasing the flexibility in the manner in which light and air was provided to the street level became the basis of height factor zoning.

While much of the focus of the public debate prior to 1961 was on the deleterious effects of the high-density buildings permitted in locations in Manhattan and Downtown Brooklyn, as well as wide boulevards in other areas, in the Bronx, Brooklyn and Queens the pre-1961 Zoning Resolution was criticized for producing a uniform landscape of six-story semi-fireproof apartment buildings. This prototype, which resulted from the interaction of the Zoning Resolution with the Building Code, which required buildings of seven stories or more to be fully fireproof, was viewed as a mediocre alternative to suburban living for the city's diminishing middle-class population.

Under the 1961 Zoning Resolution, floor area ratios (FAR) were created as a tool to cap development, especially in far-flung areas in the outer boroughs. In higher-density districts, FAR was allotted a sliding scale based on the amount of open space provided on the zoning lot. Short, squat buildings that provided little open space were discouraged by being given less FAR, while taller towers that provided a lot of open space at the ground level were encouraged through higher permissible FAR. This range of FAR worked in tandem with a simplified sky exposure plane that started at fixed heights instead of being based on street widths as was done previously. By lowering the height where the setback begins, and by introducing an initial setback distance, the regulations encouraged buildings to set back from the street line to take full advantage of the looser envelope and higher FAR.

While height factor zoning had the same goal as the original 1916 zoning - maximizing access to light and air -- the manner in which this was to be achieved was to basically invert the traditional form of development in New York, by encouraging tall towers set back from the sidewalk. The discord between the existing fabric and new height factor buildings quickly led to community objections over the deleterious effects the new Zoning Resolution was having on the essential character of many neighborhoods, and led the City Planning Commission to introduce special provisions to ensure development was more harmonious with its context. This began incrementally, first with the Special Park Improvement District in 1973, then with a Housing Quality Special Permit in 1976. This was followed by provisions for narrow zoning lots (the 'sliver law') in 1983, (which tied development on small lots to the width of the adjoining street), and the gradual creation of citywide contextual zoning districts between 1984 and 1987. All of these text amendments had the goal of trying to ensure that new developments or enlargements were consistent with the scale of the existing neighborhoods. Ironically, in many of these neighborhoods the scale was set by the semi-fireproof or taller "wedding cake" residential buildings reviled by planners only a few years before.

Contextual zoning districts (and optional contextual regulations in zoning districts where "height factor" buildings or towers were still permitted) were meant to eliminate out-of-character development by creating a rigorous set of rules that would govern the shape of the building. These new regulations included: rules to bring the street wall back closer to the street; substantially larger lot coverages; hard caps on development heights; and minimum setbacks once a building reaches applicable district base heights. Letter suffixes after a zoning district (R7A, for example) denote the particular contextual designation, and the original demarcations of A, B, and X were meant as a loose means to categorize street types, with A and X districts designed for wide streets (75 feet or more) and B districts designed for narrow streets. Since 1987, several more districts and suffixes have been added, and contextual districts have been mapped throughout the city.

In many cases these provisions have been supplemented and modified by Special Purpose Districts that often create tailored regulations to respond to the unique character of a neighborhood. Since these have largely been established in the time period after contextual zoning, many Special Districts have replicated or slightly modified the contextual controls of the underlying districts.

While the regulatory environment, building construction practices, technology and market trends surrounding affordable and market rate housing construction in New York have greatly changed since 1987, the Quality Housing regulations that govern large aspects of this development have not kept pace. These changes have rendered many aspects of the regulations that govern the building envelope obsolete. As part of "Housing New York: A Five Borough, Ten Year Plan" issued in May of 2014, the City committed to study zoning and land use regulations, including height and setback regulations, to remove impediments to development. Eliminating these obstacles would in turn facilitate easier development.

Shortly after the release of Housing New York, the Citizens Housing & Planning Council (CHPC) released a study entitled "The Building Envelope Conundrum" which explains that since 1987, when contextual zoning regulations were established citywide, several changes in basic development assumptions have contributed to making the contextual envelope inadequate. A combination of factors, namely rising floor-to-floor heights, new construction materials and techniques, an increasing prevalence of irregularly-shaped parcels and a growing number of policy initiatives that utilize floor area incentives or deductions, has left the building envelope so constrained in many zoning districts that a number of case studies in the report were unable to accommodate their permitted amount of floor area. The text amendment described below proposes several adjustments to the bulk envelope, (including heights, setbacks, and maximum lot coverage), in order to facilitate contemporary best practices in building design and construction.

While the regulations that comprise the building envelope are the principal means to shape development, other controls exist that complement and support these regulations. These include many provisions that have rarely, if ever, been amended, including court regulations, density controls, irregular lot provisions, Quality Housing design requirements, as well as dimensional requirements between buildings and lot lines and between other buildings. Since many of these regulations reflect the mindset of planners responding to the issues of their time, certain aspects of these regulations have also become antiquated over time. Conversely, other regulations, such as ground floor retail, transparency and parking wrap requirements, have changed so frequently over the past few decades that the Zoning Resolution contains a confusing amount of small variations for similar provisions. Reflecting the preferences of the time, the provisions were incorporated into a number of underlying districts and Special Purpose Districts. The proposed text amendment addresses all of these various issues.

In addition to establishing development parameters, the Zoning Resolution has often been utilized as a means for achieving policy goals, especially by awarding or deducting floor area for the provision of amenities. This means of pursuing broad agendas through the allocation of development rights was established as early as the 1961 Zoning Resolution, where planners devised a floor area bonus for the provision of a public plaza as a way to address pedestrian congestion on Midtown streets. Similarly, community facility uses and non-profit residences for the elderly have historically been permitted higher FAR as a means of ensuring that ample numbers of these needed uses can be sustained throughout the city's neighborhoods.

In 1987, the same year that citywide contextual zoning was introduced, the City introduced the first Inclusionary Housing Program, which awarded a development bonus for the provision of affordable housing in R10 districts and their commercial equivalents. This program has subsequently been amended and expanded to apply to many medium- and high-density districts throughout the city that are mapped within Inclusionary Housing Designated Areas. Additionally, in recent years, floor area bonuses and deductions have been established for new policy goals, including Zone Green and FRESH, where thicker exterior building walls and fresh food stores in underserved areas are encouraged by adding the space associated with each of these amenities, respectively, to the total permitted amount of floor area in a development.

While careful thought has often gone into determining the policy goals and amount of additional floor area to award to a site's total development rights, a smaller amount of attention has recently been paid to whether the bulk envelopes that must accommodate this floor area need to be adjusted. This was not as necessary in many early bonus programs, as height factor districts that permit towers do not have maximum height limits and thus additional floor area could simply be added on top to make a taller building. However, since the creation of contextual zoning districts, the ability of their envelopes to accommodate this additional floor area has become increasingly strained as additional height allowances that increase in step with the additional floor area (be it for affordable housing, senior housing or the FRESH food stores program) have never been established. While the envelope may accommodate all the floor area, it does so in a limited set of configurations that can add cost to construction and detract from the quality of the resulting building configuration. The inflexibility of the contextual envelope has spurred the need for height modifications either through discretionary actions or variances, and has blunted the efficacy of zoning incentives for affordable housing in achieving policy goals. To finally address this incongruity, while maintaining the original intent of the contextual districts, the proposed text amendment establishes alternate bulk envelopes for Inclusionary Housing Designated Areas and senior housing developments.

Over the course of the last year, DCP has engaged with a number of architects, affordable housing developers and housing advocacy groups to identify specific shortcomings in the contextual bulk regulations. These insights are grouped and further explained below.

#### [Changes in best practices](#)

In 1987, when contextual zoning was established throughout the city, the prevailing development patterns and construction methods of the time were taken into account to create the maximum base heights and overall building heights for each R6-R10 contextual zoning district in Section 23-633 of the Zoning Resolution. These assumptions included: only the minimum clearance in floor-to-ceiling heights required by the building code would be provided; that development would occur primarily on corner lots with avenue frontage (which had the added advantage of benefiting from higher permitted lot coverages, reduced front setbacks and no rear yard setbacks); and that

substantial ground floor coverage would be allocated to commercial or community facility uses (at heights less than 15'). Under these assumptions the permitted floor area was easily accommodated in the proposed envelopes.

Since 1987, several factors have limited the ability of the envelope to continue to accommodate the permitted floor area. These include, but are not limited to the following: building code and other regulatory codes (including accessibility) that have, in effect, required greater floor-to-floor heights; an increasing market demand for residential units with higher ceiling heights; increasing demand from retail tenants for higher ground floor spaces; new construction practices, including modular and 'block and plank' construction; and, a diminished supply of prototypical corner lots.

Quality Housing building envelopes were designed around the prevailing floor-to-floor height at the time, which was roughly 8'-8" - allowing a floor to ceiling height of 8' and a structural slab depth of 8". Since 1987, the prevailing accepted minimum floor-to-ceiling height for rental housing has increased so as to provide better quality interior spaces that afford more light and air. Taller ceiling heights are a return to some of the better aspects of New York's rich housing history. In fact, the taller ceiling heights associated with most pre-1960s housing continue to make them desirable dwelling units throughout the five boroughs. However, since the growth in floor-to-floor height was unforeseen in 1987, the Quality Housing building envelopes were not crafted to accommodate them.

In addition to floor-to-ceiling heights growing, the space between floors has needed to increase as well, in large part to facilitate enhanced building safety, energy efficiency and accessibility measures. For example, since 1987 sprinkler systems have become more prevalent in residential buildings. Additional height between floors is needed to accommodate the sprinkler systems' pipes, which are typically run within the cavity between the ceiling and the bottom of the floor slab. Green building systems such as radiant heating can further add to the vertical dimension required.

When these changes to floor and ceiling and floor thickness are combined, the result has been a shift to a typical floor to floor height of 9'-4" in rental buildings, and 10' in condo buildings. This is clearly incongruous with the original contextual assumptions and, while seemingly small, when multiplied over the number of stories in a building, can severely constrain the ability to accommodate floor area within the bulk envelope.

Since the adoption of contextual zoning regulations, new construction technology and practices, particularly in the affordable housing industry, have made the original assumptions increasingly obsolete.

One of the more pronounced changes in the construction industry has been the steady increase in pre-fabricated components or even modular units. To reduce construction costs, affordable housing developments often utilize a 'block and plank' structural system, which is comprised of, and thusly named for, pre-fabricated hollow-core concrete floor planks and concrete masonry unit (CMU) walls. Hollow-core planks are pre-engineered and have pre-set spans that correlate to their specific depths. For an 8" depth slab, the maximum span is 30'. If two of these planks are placed together, the maximum effective depth of the building is 60'. For districts which allow, and whose ability to fit the permitted floor area were based on, 65 percent lot coverage (or a depth of 65' on a typical 100' deep lot) this effective construction depth cap becomes an artificial envelope that limits the full utilization of floor area and hampers the development of affordable housing.

Modular construction has similar difficulties being accommodated in the present system. Unlike conventional construction techniques, modular units are structurally independent and have built-in floor cavities to accommodate their mechanical systems. These require slightly more space than conventional systems so that the typical floor to floor height is roughly 10' in modular systems. This construction typology was not considered in 1987, and is inadvertently restricted because of its increased floor-to-floor heights, limiting instances where this type of construction could result in the cost-effective development of affordable housing.

When it was adopted, the Quality Housing Program established several requirements and incentives to promote an improved building stock in forthcoming contextual districts. These standards, set forth in Article II, Chapter 8 of the Zoning Resolution, included requirements for recreation space, laundry space and trash facilities, as well as, incentives to reduce the density fronting upon and provide natural light within residential corridors. In each case, an incentive to locate these amenities within the building was a floor area deduction, which offset the space these amenities would ordinarily occupy. Under the lower ceiling height assumptions of the late 1980s, these deductions could easily be accommodated within the bulk envelope and facilitated the creation of greater quality buildings.

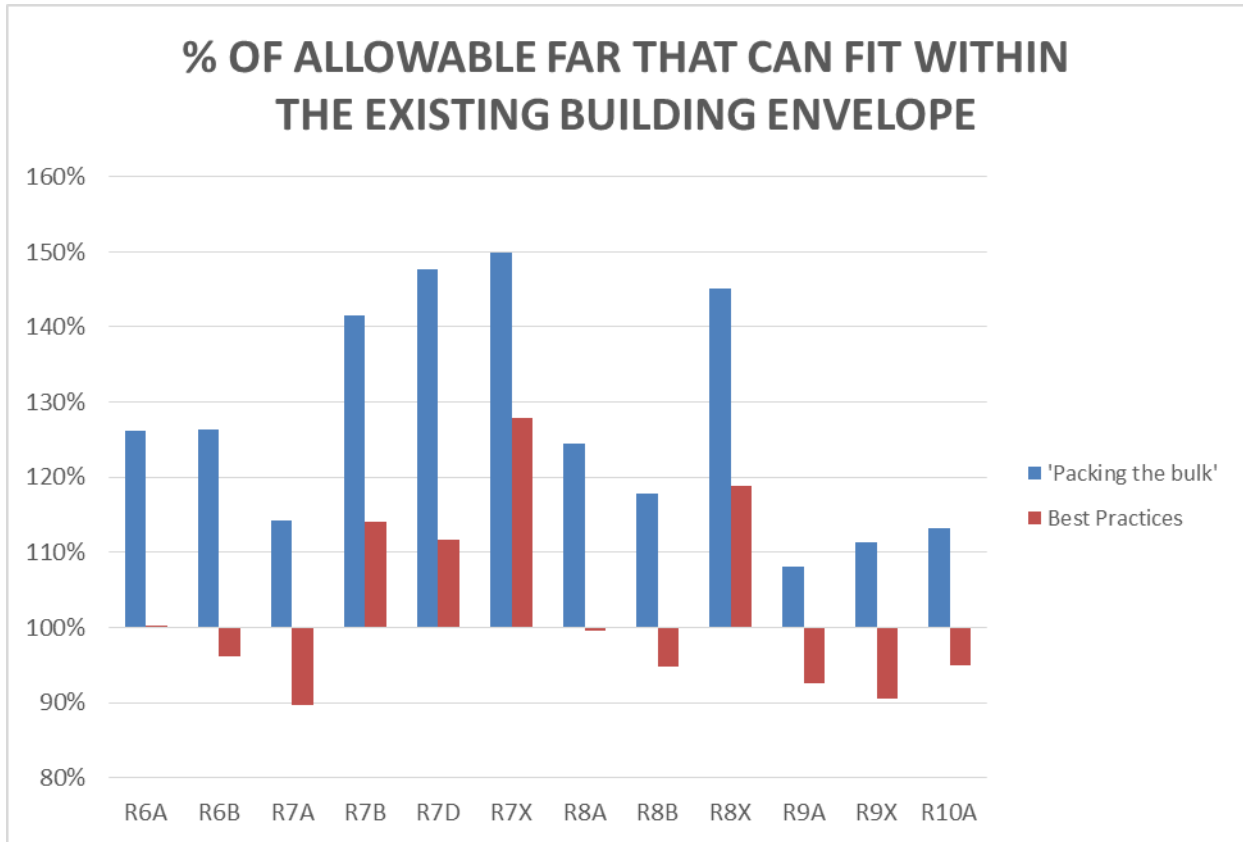
Since the establishment of Quality Housing, several other floor area deductions or bonuses have been created in order to further policy goals. These include a deduction for floor space occupied by bicycle parking spaces, a deduction for a portion of thicker, energy efficient exterior walls, a floor area exemption for the provision of fresh food stores in underserved areas, and the higher floor area permitted through participation in the Inclusionary Housing Program.

While these incentives serve important policy objectives, when modern floor to floor heights, construction practices and lot irregularities are applied, there is often insufficient room in the building envelope granted to accommodate these floor area bonuses or deductions while achieving a desirable building. When the additional floor area permitted by the Inclusionary Housing Program is applied, this is particularly problematic, as the envelopes do not increase in step with the additional floor area. This undercuts the utility of the higher permitted floor area ratio and the efficacy in achieving the policy goal of fostering greater neighborhood economic integration.

With limited flexibility in the building envelope, the outcome is inadequate, resulting in either higher quality housing design features but a building unable to maximize its permitted FAR, or a building that provides the full amount of floor area, including floor area allowed for the provision of affordable housing, but which is forced to sacrifice design. For example, on an interior lot, one may need to reduce the floor-to-floor heights, and increase the building depth in order to accommodate the permitted floor area, but this may increase construction costs while lowering the quality of the residential units. Sometimes the additional height needed is taken from the ground floor, lowering retail ceiling heights (and hurting the ability to tenant the space), or placing ground floor units at or near grade. Additionally, where these constraints are faced, building articulation measures such as recesses and courts, which increase the quality of living space and provide for light and air and planting at the street line, are often sacrificed. These are all at the detriment of the streetscape, the residents of the building, and ultimately, the larger neighborhood.

The graph below illustrates the this challenge, by comparing the percentage of floor area that can either be added, or is unable to be accommodated, into each contextual zoning district's respective envelope using inferior standards akin to the original Quality Housing assumptions on the one hand, and modern best practices on the other. These scenarios are compared on a prototypical 10,000 square foot interior lot on a narrow street. The inferior building assumes 9' floor to floor heights, a 10' ground floor, and maximized interior lot coverage in order to "pack" the allowable floor area into the permitted bulk envelope. The best practices scenario assumes a 15' ground floor (in order to elevate ground floor units off the street), 10' floor to floor heights above the ground floor, and slighter shallower building depth (60 percent coverage in R6A, R7A, R7B and R7D and 65 percent in the remaining districts). Both options assume 10 percent of the total floor space in the building is deducted from floor area for the combination of mechanical space, mandatory Quality Housing elements (such as recreation space, trash facilities, and laundry), and other small floor area exemptions (such as the additional wall thickness through Zone Green and the Quality Housing small density on the corridor exemption).

**Figure 1-3: Bulk envelope capacity as a percentage of permitted floor area**



As the figure above shows, this slight adjustment in floor to floor heights and building depth can easily be the determinant in whether a new building can accommodate 100 percent its permitted floor area. Additional design features, like recesses in the façade, and other forms of articulation, are often infeasible as there is not even the flexibility to accommodate reasonable ceiling heights.

The maximum base heights and overall building heights associated with contextual zoning envelopes need to be modified to allow buildings designed to contemporary best practices (including floor to floor height, unit depth and a measure of façade articulation) to fit comfortably within their permitted envelope.

**Other key constraints**

In addition to the changes in Best Practices identified above, a number of other zoning regulations have been identified that make the construction of housing more costly and inefficient. These include the following:

[Building setbacks](#)

While the contextual setback distances above the maximum base height of 15’ on a wide street and 10’ on a narrow street, set forth in Section 23-633 of the Zoning Resolution, work to bring light and air to the street, they are not correlated to typical spanning distances in concrete or steel construction, and can require costly reinforcing and awkwardly-placed columns on lower floors to support the upper portions of the building above the maximum base heights. In addition, setbacks are measured from the building line, rather than the street line. Where buildings are set back from the street line, this effectively amounts to two setbacks rather than one. When combined with the rear yard setback of 10’ required from the rear yard line, there is a perverse incentive to either shift the entire building towards the street to reduce the effect of or avoid altogether the rear yard setback (at the expense of having units front directly on the street) or maximize the permitted lot coverage to make a reasonably deep floor plate on the upper floors (at the expense of having unnecessarily deep units on the lower floors).

### Corner coverage requirements

In most R6-R10 contextual districts, buildings on corner lots are limited to a maximum lot coverage of 80 percent pursuant to Section 23-145. This regulation is another vestige of the 1980s construction era, when the limited new construction that occurred frequently produced simple slab buildings along the avenue frontage. It was not expected that a building would be designed to wrap a corner and abut any existing buildings along the side street frontage, and this is evident in the mathematics of the regulation. Even a 60 foot deep building on a prototypical 100 foot by 100 foot corner lot cannot be designed into an 'L' shape to wrap the corner as the resulting building would have a lot coverage of 84 percent. The depth on one portion of this building would have to be reduced, decreasing the efficiency of the floor plate. Alternatively the building would leave a gap between the avenue portion and the buildings along the side street, potentially resulting in an unfortunate break in an otherwise continuous street wall. The rigidity of the provision becomes especially apparent on acutely-angled corner lots as the inner court space quickly erodes workable building depths.

### Provisions along zoning district boundaries

In the process of increasing the permitted density in areas with prime transit access, DCP became aware of the potential problems the additional permitted height could pose when immediately juxtaposed next to lower density zoning districts, as one or two family homes could be in almost perpetual shadow of larger towers next door. In order to mitigate against this potential outcome, as part of the Downtown Jamaica Plan in 2007, DCP proposed that any portion of a building in an R6-R10 district within 25 feet of a district boundary of an R1-R5 district could not exceed a height of 35 feet. In a sense, this 25 foot zone served as a transition area between the low and high-density districts, and prevented the lower density districts from being overwhelmed by the higher density heights. After the adoption of the Jamaica Plan, the agency extended the rule to have citywide applicability in Section 23-693 of the Zoning Resolution, and added districts to the list of low density districts that trigger the rule.

While the goals of the 'transition rule' are sensible, the height at which the 25 foot zone along the district boundary is limited can be problematic. In higher-density districts, limiting a 25 foot zone to 35 feet in height greatly reduces the effective envelope where one can accommodate a building's permitted floor area. Additionally, since lower-density districts are often capped at a height of 35 feet, the zone is effectively extending the lower height and shifting the dramatic height difference towards the higher-density district rather than allowing the 25 foot zone to bridge the different lower and higher density heights with an interstitial height.

Additionally, prior to the establishment of the 'transition rule' several provisions with a similar intention were established along district boundaries between R6-R10 Residence Districts and adjoining R1-R5 Residence Districts and Commercial District equivalents. Many of these provisions, such as Section 23-51, require that an eight foot side yard be provided along the entire length of the side lot line of the higher-density district. These 8' side yard provisions do not sync well with the 25' rule (from a construction space perspective), and provide little additional light and air compared to the burden they place on an already-constrained envelope.

### **Further constraints for Inclusionary Housing and Affordable Independent Residences for Seniors**

While the above regulations pose a difficulty for ordinary developments, these problems are compounded for developments containing affordable housing (including for seniors), mainly as a result of having a higher permitted floor area ratio (FAR). Several existing regulations limit the ability to fully accommodate the permitted FAR for buildings participating in the Inclusionary Housing Program or providing Affordable Independent Residences for Seniors and Long-Term Care Facilities. These include the following:

### Difficulty fitting permitted floor area

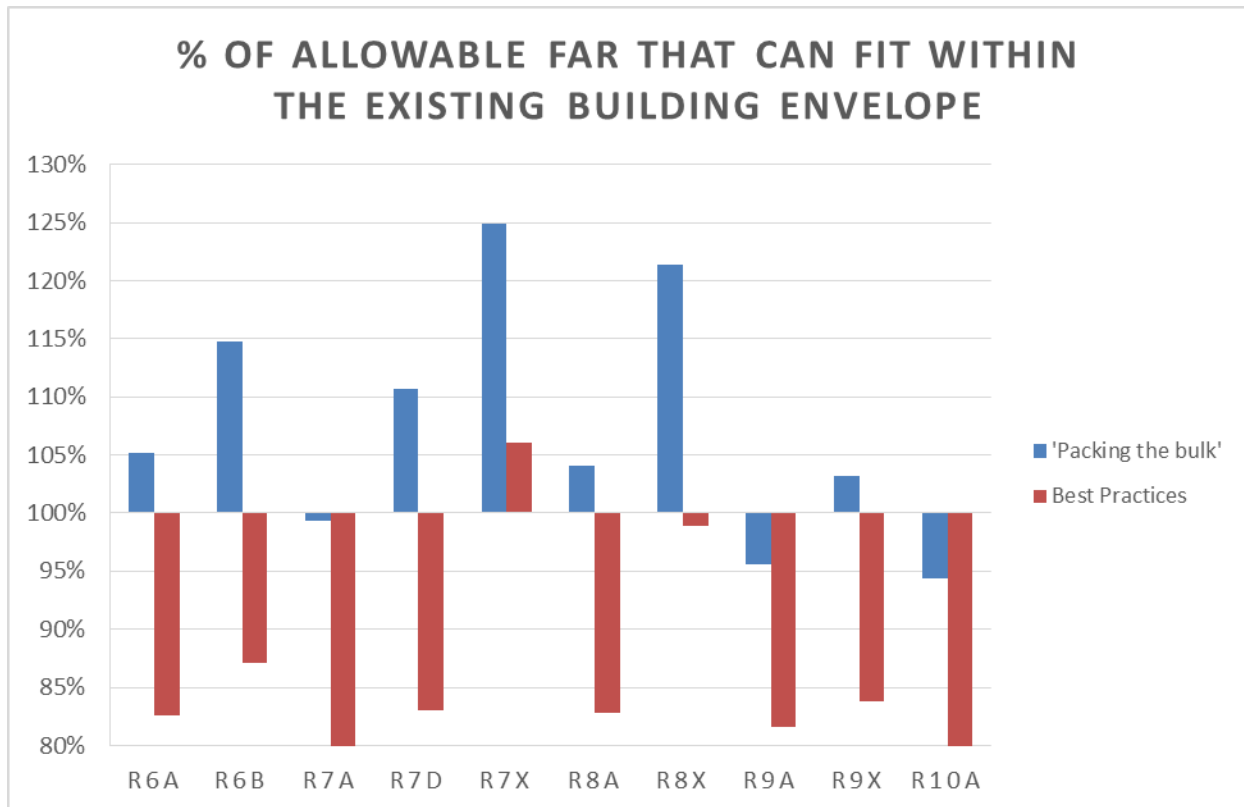
Currently, developments providing affordable housing in Inclusionary Housing Designated Areas or Affordable Independent Residences for Seniors under the category of non-profit residences for the elderly are given additional development rights to offset the lower returns associated with the affordable units. However, while the additional FAR is a reasonable tradeoff, there is no additional height and other flexibility given to accommodate these development rights. When contemporary best practices assumptions are accounted for, the contextual envelopes are typically unable to accommodate the full amount of development rights allocated to a particular site without



diminishing quality (squashing floor heights or elongating depths). This problem is particularly pronounced as density increases, and undermines the utility of the additional FAR.

The graph below illustrates the degree to which incorporating modern building design assumptions impacts the ability to accommodate permitted floor area in an Inclusionary Housing Designated Area by comparing the percentage of Inclusionary Housing floor area that can either be added, or is unable to be accommodated, into each contextual zoning district's respective envelope. One series of data sacrifices quality design by maximizing the amount of FAR that can be "packed" into the bulk envelope assuming an inferior set of assumptions - 9' floor to floor heights, a 10' ground floor, and maximized interior lot coverage. The second data set, meanwhile, assumes contemporary best practices, including a 15' ground floor (in order to elevate ground floor units off the street), 10' floor to floor heights above the ground floor, and slighter shallower building depth (60 percent coverage in R6A, , R7A, R7B and R7D and 65 percent in the remaining districts). Both options assume 10 percent of the total floor space in the building is deducted from floor area for the combination of mechanical space, mandatory quality housing elements (such as recreation space, trash facilities, and laundry), and other small floor area exemptions (such as the additional wall thickness through Zone Green and the Quality Housing small density on the corridor exemption).

**Figure 1-4: Bulk envelope capacity as percentage of permitted floor area**



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

Rather than continuing to utilize the standard contextual district heights for Inclusionary and Affordable Independent Residences for Seniors and Long-Term Care Facilities, an alternate set of additional heights allowances should be established, and should roughly correlate to the increment of additional development rights allocated for the inclusion of these public priorities in each respective zoning district.

#### [Restriction on accessory residential space in rear yards](#)

In Residence Districts there is an allowance for portions of buildings containing accessory parking facilities and community facility uses to be considered as a permitted obstruction in the rear yard on the ground floor pursuant to Section 23-44, and Section 24-33 of the Zoning Resolution, respectively. The same allowances are extended to commercial uses in Commercial Districts, in addition to the accessory parking and community facility allowance pursuant to Section 33-23. In addition to facilitating flexibility in building layouts, in community facility and commercial buildings, this allows a substantial amount of floor area to be utilized on the ground floor, creating more flexibility in the bulk envelope. Accessory residential uses, such as laundry rooms, recreation spaces, and trash rooms, (which are all required under Quality Housing), could be accommodated in the rear yard in a similar manner, which would add design flexibility to residential buildings participating in the Inclusionary Housing Program or providing Affordable Independent Residences for Seniors or Long-Term Care Facilities.

#### [Further constraints for narrow lots](#)

In order to limit the outcrop of tall, narrow buildings that emerged in neighborhoods with strong street wall continuity, the 'sliver law' was established in 1983. For zoning lots in R7-2, R7D, R7X, R8, R9, and R10 Residence Districts and their Commercial equivalents with a width of less than 45 feet, this provision limits the height of the building to the width of the street or 100 feet, whichever is less. These provisions, which are set forth in Section 23-692, predate contextual zoning districts, and so at the time of their establishment, these regulations were a reasonable means to ensure predictable development in areas with strong neighborhood character. However, since establishment of Quality Housing and the citywide contextual zoning districts in 1987, many narrow lots have become subject to both contextual and sliver law regulations, which is oftentimes confusing, and with the added layer of height caps, the regulations become redundant. Additionally, where the sliver law height cap is lower than that of contextual districts, it limits the ability to accommodate the permitted floor area. This is especially critical for buildings participating in the Inclusionary Housing Program, where the increased amount of floor area makes the envelope even more constrained.

#### [Inability to account for additional floor area in height factor zoning districts](#)

While DCP has generally been moving towards applying contextual zoning regulations in the areas of new rezonings, there remain certain areas where it may not be appropriate to apply contextual zoning. For example, parcels located adjacent to rail lines and freeways may continue to warrant non-contextual zoning designations, but uses such as affordable senior housing may not be suited for the existing height-factor alternative.

Where these areas could facilitate greater housing production, there is not currently a simple mechanism to apply the Affordable Independent Residences for Seniors and Long Term Care facility floor area on top of the designated height factor floor area. Since non-contextual districts utilizing the height factor option currently assign floor area based on the amount of open space provided on the zoning lot, layering additional floor area on top of this sliding scale is not a simple endeavor. Additionally, the associated tower-in-the-park form is not necessarily the desired bulk outcome for the parcels. The current bulk requirements demand a tower-in-the-park building that is costly to build and not a good housing prototype for seniors.

Instead of requiring these parcels in non-contextual districts to utilize the Quality Housing option (which is available in all non-contextual R6-R10 districts), an alternate set of regulations is needed to allow these non-contextual parcels the same FAR as a contextual district along with a new non-contextual envelope that evokes the flexibility found in Special Mixed Use Districts.

#### [Unworkable envelope for lower-density Affordable Independent Residences for Seniors](#)

Currently, in R3-R5 districts, like many other Residence Districts, a floor area incentive exists for developments comprised of non-profit residences for the elderly pursuant to Section 23-147. However, despite the additional floor area, very modest flexibility is available to modify the building envelope. In R3 districts, non-profit residences for the

elderly may utilize the height and setback regulations of an R4 district (amounting to a 4 foot increase in perimeter wall and the same overall height limit of 35 feet) and in R5 districts other than R5D an alternate front setback is available (which consists of a sky exposure plane beginning at 27 feet and an overall height limit of 40 feet), all pursuant to Section 23-631. If these options prove infeasible, a City Planning Commission authorization is available in R3-2, R4 and R5 districts (other than R4A, R4B, R4-1, R5A, R5B and R5D districts) to modify the height and setback regulations for non-profit residences for the elderly, provided that the neighborhood character is not impaired by the additional height. This authorization has been utilized frequently, as the sloping envelopes of most lower-density districts limit the ability of the envelope to cost-effectively accommodate the permitted floor area in a building that meets the needs of seniors (e.g., is served by elevators). The requirement for the authorization represents a procedural hurdle that limits the ability to produce Affordable Independent Residences for Seniors in these districts.

#### Lack of overall building design flexibility

In addition to a constrained building envelope, many zoning regulations inadvertently limit design flexibility for architects and cumulatively diminish housing quality in the city's neighborhoods.

#### Unclear street wall regulations

Street wall location provisions in contextual districts, which are set forth in Section 23-633 for Residence Districts and Section 35-24 for mixed buildings in Commercial Districts, are intended to ensure that new developments would have a harmonious relationship to the existing neighborhood fabric. These provisions differ by district, and unfortunately often lack specificity with regard to permitted façade articulation. For example, in Residence Districts, permitted recesses are set forth for R8A, R8X, R9A, R10A, and R10X districts while for all other R6-R10 contextual districts there are no corollary provisions. Similarly, in the Commercial District equivalents of R8, R9 and R10 districts where 100 percent of the street wall must be located on the street line, permitted recesses are stipulated, but it is unclear if smaller 6" or 12" undulations in the street wall for articulation measures such as structural expression would comply with these provisions. In either case this is problematic as articulation greatly enhances the visual interest in a building façade and the lack of clarity in many districts creates confusion in the design community as to whether these design measures are even permitted.

Additionally, in districts where street wall location provisions are stringent, such as in the 'B' suffix districts where buildings may be located no closer or no further than the adjoining building, it is unclear how façade articulation is accomplished if adjoining buildings are articulated. For example, if both adjoining buildings have bay window projections, it is unclear in the current zoning if a new development can mimic these articulation measures in a contemporaneous fashion.

Recess and projection regulations for all districts should be clearly stipulated to avoid confusion in the design community and signal the agency's desire for these classic building elements to re-emerge in new developments.

#### Line-up provisions

In many contextual districts, the location of a street wall is governed by that of adjoining or nearby buildings so that a reasonable degree of street wall continuity can be maintained amongst old and new buildings along the block front. The provisions of Section 23-633 (a) (1) govern R6A, R7A, R7D, R7X, and R9D districts while the provisions of Section 23-633 (a) (2) govern R6B, R7B and R8B districts. Both paragraphs establish permitted street wall location rules relative to the surrounding context; however the threshold of adjoining buildings to be included in making the permitted street wall location determination differs among the zoning districts. For example, in R6A, R7A, R7D, R7X and R9D districts a street wall can be located no closer to the street line than that of any building located within 150 feet of the development, whereas in 'B' suffix districts only the adjoining buildings are utilized to establish the permitted street wall location. One method should be utilized among all districts for consistency.

Additionally, in districts with line-up provisions (including R6A, R7A, R7D, R7X and R9D districts pursuant to Section 23-633 (a)(1), and R7B and districts pursuant to Section 23-633 (a)(2)), a maximum range of applicability is established at 15' to avoid new buildings having to line-up with buildings set back far beyond the street line and the potentially unworkable building depths when rear yard requirements are accounted for. However, while the intention is good, the specific dimension of 15' may still be too inflexible. For example, many buildings that are set back from the street line within the ranges of 12-15' were constructed during the height factor era of zoning and are

not necessarily in context with the remainder of the block. This has the effect of inadvertently forcing new developments to line-up with a non-contextual building.

#### Court regulations

Both outer and inner court regulations, set forth in Section 23-84 and Section 23-85, respectively, contain anachronisms in their dimensional requirements that impede building design.

Like height and setback regulations, the original outer court regulations established in 1961 may have been over reactive to those found in the typical pre-war buildings of the 1930s. Many of these court provisions have not been modified since their enactment.

Currently outer courts are subdivided into three categories: narrow outer courts; wide outer courts; and outer court recesses. Each of these categories establishes a minimum width requirement in relation to the depth of the court in order to ensure adequate light and air into the courtyard space. However, the width requirements that result from the application of the calculation are often excessive and often preclude the incorporation of courts into building design. As a result, modern buildings often do not have natural light in kitchens or bathrooms and, from an urban design perspective, many block fronts lack the visual interest that can be achieved through a well-designed outer court.

Inner courts have minimum dimensional requirements as well to ensure that legal windows fronting upon them have adequate light and air. However there is currently no allowance for smaller inner courts that only serve as light wells to kitchens and bathrooms (and have no legal windows fronting on them).

These nuances make it difficult to incorporate these quality design measures into apartment layouts.

#### Retail and other ground floor regulations

Many special district and even certain underlying commercial districts contain supplemental use, transparency and parking wrap regulations that govern the ground floor level of new buildings in order to foster a more dynamic streetscape. However, since many of these rules were established at different times, slight variations and anomalies amongst them emerged as newer regulations were created to correct the shortcomings of the previous regulations. For example, transparency regulations have changed and now typically differ in the amount of glazing required and in the dimensional range in which the glazing is required. In the aggregate, the disparities in retail depth, transparency and parking wrap requirements found in the Zoning Resolution are confusing for practitioners.

Additionally, many of the older provisions have become obsolete with regard to contemporary building practices and thus impede cost-effective building design. Retail depth requirements that are out of sync with typical building depths, for example, require costly solutions to compensate for the resulting misalignment of the building's structural system or vertical circulation core.

The myriad range of regulations should be simplified into a single set of provisions, with ground floor level transparency requirements based on the provisions set forth in the Special Enhanced Commercial District (Section 132-32), which were derived from a DCP study of existing retail streets in the city.

#### Unnecessary window regulations

As part of the 1987 Quality Housing text amendment, double glazed windows were required in all Quality Housing buildings pursuant to Section 28-22. Since 1987, these regulations have been superseded by the Building Code, and the requirement has been an impediment to the use of higher-performing window types, such as triple-glazed windows.

In Special Mixed Use Districts, all new dwelling units are required to provide 35 dB(A) of window wall attenuation pursuant to Section 123-32, so as to minimize ambient noise levels to achieve an interior noise level of 45 dB(A) or less. However, this attenuation amount is overly conservative in many cases, as has been demonstrated by actual developments in MX districts, when field measurements are taken and actual site conditions are taken into account. Unlike noise (E) designations, which may be modified by the Mayor's Office of Environmental Remediation (OER) pursuant to Section 11-15, there is currently no mechanism available to reduce this costly window treatment to a

level that would be appropriate for a particular development. This requirement also exists in some of the other Special Districts.

#### Unclear regulations for use locations within buildings

Pursuant to the underlying supplemental commercial use regulations, commercial uses in mixed-use buildings in C1, C2 and C3 districts are generally limited to the ground floor, below any upper story residential and community facility uses. In order to provide more flexibility in building design, the Special Mixed-Use District modified this underlying provision in Section 123-31 to allow commercial uses on the same story or a story higher than residential uses provided that there is separate access to the street and that there is no direct connection to the residential portion of the building at any story. However, the specific language within the zoning text of the Special District uses “non-residential uses” instead of “commercial uses” and therefore places the same restrictions on community facility uses. What was intended as a measure of flexibility is inadvertently more restrictive for community facility uses, as the underlying zoning allows residential uses and community facility uses to co-mingle on the same story without separation. After being drafted for the Special Mixed-Use District, this zoning text was subsequently incorporated into several other Special Districts, which all need to be corrected.

#### Outdated density factor and unit size requirements

A minimum dwelling unit size of 400 square feet was established in Section 28-21 as part of the 1987 Quality Housing text amendment, in order to prevent the creation of excessively-small apartment units. However, other regulatory mechanisms such as the NYC Building Code and the Housing Maintenance Code both contain minimum room size requirements that effectively establish de facto minimum dwelling unit sizes, and renders the zoning requirement as an additional redundant regulation. Additionally, in recent years the Citizens’ Housing and Planning Council (CHPC) has actively pursued an initiative entitled “Making Room” which seeks to better align the city’s variety of housing typologies with the needs of its households. As part of this initiative, CHPC highlighted a shortfall of small, efficient studio apartments for the growing number of single households. Subsequent design competitions and a City-led prototype of a ‘micro-unit’ apartment building have all been facilitated as part of this on-going discussion. Eliminating minimum unit sizes would allow the development community to explore this new housing type, while the continuing application of density regulations would prevent the over-concentration of small units in any one building.

Additionally, the number of dwelling units that can be constructed on a given site is established through the applicable density factor for the particular zoning district set forth in Section 23-22. In all zoning districts, the maximum number of dwelling units permitted in the development is determined by dividing the maximum residential floor area by the density factor for its zoning district.

This density factor tends to decrease as the permitted FAR of the district increases, effectively allowing density to increase in step with building bulk. However, for R8-R10 Residence Districts, where one would expect the very highest permitted density, the density factor increases and thus increases the required average unit size. Given the small average household size in the city’s highest-density areas, this anomaly is unnecessary to protect against community impacts and should be corrected to allow a greater range of unit mixes. Finally, Section 23-22 also governs the amount of ‘rooming units’ that are permitted as part of particular development. This reference is to a housing type that has largely been made obsolete by City laws that prevent the creation of dwellings with shared kitchens and baths. Under current law, rooming-type units are created only as community facilities for which this provision is not relevant.

Additionally, separate density factors listed in Section 23-221 for non-profit residences for the elderly may unnecessarily restrict the creation of appropriately-sized units for Affordable Independent Residences for Seniors.

#### Elevated ground floors

One of the finer aspects of historic New York housing typologies is their relationship between the ground floor and the street. In order to avoid apartments fronting directly upon the sidewalk, many ground floor units are elevated by as much as 5’ above grade. Accessibility requirements have limited elevated ground floors, as accessible ramps are required from the public right of way into the building. In addition, the rigidity of the contextual envelope, including street wall location provisions (which in many circumstances may require a façade too close to the sidewalk

to accommodate an exterior ramp) and outmoded height assumptions also limit the ability to provide an elevated ground floor, when desired. These impediments should be removed.

#### Quality Housing study areas

During the public review of the Quality Housing text amendment in 1987, several neighborhoods were skeptical about the merits of contextual zoning. They objected to contextual zoning (where Quality Housing would be mandatory), but also objected to the optional provisions that allow Quality Housing to be utilized in non-contextual R6-R10 districts. In response to these concerns, “study areas” were created that limited the applicability of the Quality Housing optional regulations on block fronts characterized by small homes. These ‘study areas’ were small geographies, scattered throughout the city and set forth in specific boundaries in Section 23-011 (c). They include: portions of Soundview and Castle Hill (Bronx); Midwood and Brighton Beach (Brooklyn); Elmhurst/Corona, Forest Hills, and Flushing (Queens), as shown in Appendix A.

Since 1987, many of these areas have been rezoned and community issues have been addressed. At present there is very little applicability of these regulations. Practitioners and residents within the few remaining areas of applicability are largely unaware of these obscure provisions. The study areas no longer have relevance and should be removed.

#### Increasing prevalence of constrained lots

Zoning regulations have generally been designed around ideal, rectilinear sites. The Manhattan grid established in the Commissioners’ Plan of 1811, and widely copied throughout the city, first established a predictable configuration of tax lots, and later gave planners an easy template to design zoning regulations around. The grid lent itself to a system devised on the strong delineation between wide and narrow streets, corner lots and interior lots and the prevalence of 100’ deep lots. These basics have been the cornerstone of each successive set of height and setback regulations, but less attention has been placed on liberalizations for irregular sites, unusual geometries wrought by differing grids, changing topography and other site conditions.

Given the fixed supply of land in the city and the increasing demand for housing, easy-to-develop sites have become increasingly scarce since 1987. As unconventional sites become the new normal, building envelope controls would increasingly need to accommodate common types of irregularities. Street wall regulations, rear yard regulations, lot coverage maximums, court regulations, distance between buildings and distance between legal windows and lot line provisions, all combine to make development on lots with irregular depths and angles difficult.

#### Shallow lots

Since the majority of bulk regulations have been designed around prototypical lots, cost-effective design becomes problematic on irregular parcels, especially shallow lots. With fixed 30-foot rear yard requirements the provision of a practical building depth on a shallow interior lot can be difficult. For this reason, a rear yard relaxation was previously established for lots shallower than 70 feet deep in Section 23-52, which allows the required rear yard to be reduced by one foot for every foot the lot depth is less than 70 feet. For example, a 65 foot deep lot would have a reduced rear yard depth of 25 feet. However, helpful as this reduction is, it applies to a limited subset of irregular lots and provides no relief to many of the city’s shallow lots, which are in the range of 80 feet to 95 feet in depth. Additionally, since this provision was established with rectangular shaped sites in mind, the language inadvertently disqualifies flag shaped zoning lots with a portion deeper than 70’. This should be amended so that the relaxation of rear yard rules can also apply to shallow portions of an irregularly-shaped lot.

Similar problems with rear yard requirements arise for shallow through lots. Prototypical through lots generally have to provide a 60’ rear yard equivalent (in lieu of two, 30’ rear yards that would abut on a two interior lots) and in contextual R6-R10 districts, this rear yard is required to be within 5’ of centerline of the depth of the zoning lot, pursuant to Section 23-532. For shallow lots, two modifications of these provisions are available. First, for lots with a depth of less than 180’, the contextual district provisions requiring the rear yard equivalent to be placed in the middle of the block can be modified to allow two alternative strategies for the placement of the rear yard equivalent (either placing it on the side lot line, or placing it in front of either building), giving architects more flexibility in designing for these odd situations. Second, for extremely shallow lots of 110’ feet or less, no rear yard is required, pursuant to Section 23-531. While these relaxations are well intended, a large number of shallow through lots



currently is not afforded a reduction in rear yard equivalent, which, in many situations could result in an unworkable building depth. The reductions proposed for interior lots should be mimicked for through lots to provide an added measure of flexibility.

#### Acutely-angled lots

In high density commercial districts with a residential equivalent of R7D, R8A, R8X, R9A, R9D, R9X, R10A or R10X, street walls are required along 100 percent of the street line, except that a chamfer is allowed within 15' of the corner to allow for articulation. This restricts the ability of buildings on acutely-angled lots to efficiently chamfer beyond 15' of the corner of the building and should be relaxed in these circumstances.

#### Irregular topography

To contend with parcels with sloping topography, the definition of base plane in Section 12-10 allows one to divide a building into multiple segments, each with a separate datum for measuring height, provided the street wall is at least 15 feet wide. Additionally, in situations where the slope is steeper than 10 percent between the front and rear of the building there can be a sloping base plane in order to establish height maximums. Architects and builders have noted that reducing this threshold would allow this useful provision to apply to a greater number of sloping sites.

#### Lots with multiple buildings

Currently, requirements governing minimum distances between buildings on the same zoning lot do not differentiate between one- and two-family homes and buildings with multiple dwellings. This is problematic because the state Multiple Dwelling Law also contains minimum distance between building regulations that are more liberal than the City's regulations in some instances and more restrictive in others. The lack of separation between multiple dwelling and one- and two-family homes within the Zoning Resolution creates an apparent contradiction with the State law that in turn has created confusion among practitioners. The regulations should be reorganized and any contradictions should be eliminated. Additionally, the current regulations for multiple dwellings are more restrictive than the Multiple Dwelling Law, requiring 60 feet between two buildings on the same zoning lot. This effectively limits the development potential of larger lots in the city.

Finally, if rear yard regulations on shallow lots are liberalized, provisions pertaining to the minimum distance between buildings on the same zoning lot and between legal windows and lot lines would need to be reduced as well for these constrained parcels.

#### Limited discretion to address unforeseen site circumstances

Despite potential modification, unforeseen site conditions may continue to make the height and setback regulations unworkable for certain extremely-irregular lots. If these are the result of irregular street grids, topography or subsurface conditions that affect multiple properties, the subject parcel may not be eligible for a variance as the 'uniqueness' requirement may not be able to be met.

### **Reduce parking requirements where appropriate for affordable housing**

To aid in the fulfillment of the Mayor's Affordable Housing plan by addressing impediments to housing, DCP assessed car ownership rates and parking requirements across the city, and examined how parking requirements may affect the development of affordable housing.

In the Manhattan Core (Community Districts 1-8) and Long Island City, there is no required parking for any new housing. In the Special Downtown Brooklyn District, there is no required parking for any affordable housing. In other areas of the city, reduced requirements for off-street parking for affordable housing are specified by Section 25-25.

The Zoning Resolution currently provides five categories of reduced parking for affordable housing (Section 25-25, paragraphs (a) through (e)). The 1961 zoning text identified Public Housing as requiring fewer parking spaces per unit. Additional housing categories and parking requirements were added over time as new affordable housing programs were created, each citing the lower rates of car ownership among residents of low-income and senior housing. Subsequent amendments noted the high cost of providing parking and the resulting higher cost to produce affordable housing.

The applicability of most of the five categories that have been added to the Zoning Resolution since the 1960s is unclear due to obsolete or ambiguous references. The general practice of affordable housing developers is to apply category (c), which has the lowest requirements for non-age-restricted housing. Age-restricted housing filing as a non-profit residence for the elderly utilizes category (d), which has lower requirements.

Parking requirements today are defined by the underlying residential zoning district, inversely correlated with density. Low-density housing generally has higher car ownership, even near transit, than nearby apartment buildings, reflecting self-selection by drivers seeking easier parking conditions. However, there is relatively little difference among residents of apartment buildings in the same neighborhood, regardless of the zoning district. Since apartment buildings are concentrated in transit-accessible areas, transit access might be a better determinant of auto ownership and use. Neither the affordable housing categories, nor the age-restricted category, of Section 25-25 fully reflect the low level of car ownership in lower-income housing, particularly in areas well-served by transit.

Affordable housing generally qualifies for parking waivers based on a small number of required spaces (Section 25-26). However, many larger developments may still not yield the number of cars required to justify the expense of providing the parking that is required for affordable housing. Furthermore, such waivers may not be utilized by non-profit residences for the elderly. The need to provide even a small number of spaces has proved to be a financial burden for senior housing projects, not justified by any parking impacts generated by such housing.

Construction costs for structured parking are high – up to \$40,000 or even \$50,000 per parking space<sup>6</sup>. Surface parking costs less, but occupies scarce land and itself carries substantial cost, and that could be better used for additional housing units or other uses. The cost of providing off-street parking is borne by the development, using funds that might otherwise produce additional affordable housing units, or reducing the amount of housing that can be provided on-site. In order to support the cost of providing the spaces, building owners typically charge residents a monthly fee to use the spaces. Fees of roughly \$300 per month would be required to support the cost of constructing a structured parking space. While residents of market-rate housing may in some neighborhoods be able and willing to pay such a fee, those low-income households that own cars are not, and frequently choose instead to park on-street for no cost, leaving the spaces built for them underutilized.

The tradeoffs associated with current parking requirements for low-income housing units are high, in the form of a reduced number of housing units provided on site, higher construction costs and taxpayer burden, and poorer quality design and construction.

#### [Relationship between transit and auto ownership](#)

Parking requirements for housing units and residences are currently aligned with the residential zoning district the development is built in, regardless of proximity to transit or other factors that influence car ownership and utilization. Data show that car ownership rates and utilization (as measured by commute mode) among all residents, including low-income residents, varies not only by density, but also by proximity to transit. Common land use and development patterns along transit corridors appear across the city's boroughs, with less variation in auto ownership and utilization that when compared with neighborhoods further from transit. That is, car ownership rates among low-income residents near transit in neighborhoods in Queens and in Brooklyn are more similar than car ownership rates among low-income residents far from transit in the same neighborhoods. These common patterns highlight the value of defining a geography that acknowledges the role that transit proximity plays in determining or facilitating lower car ownership.

The Inner Ring Parking Study on car ownership outside of the Manhattan Core has pointed toward the correlation between transit proximity and car ownership. However, as previously discussed, the Zoning Resolution does not distinguish parking requirements by proximity to transit. The geography defined in the Inner Ring study provided a natural starting point for developing a more comprehensive geography for analysis.

To define the geography for analysis, zoning district boundaries were supplied by DCP. Data were obtained from the New York State Department of Motor Vehicles in June 2014, providing car registrations at the address level. Data

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<sup>6</sup> <http://www.reinventingparking.org/2015/06/how-much-does-one-parking-spot-add-to.html>



providing the size and location of existing affordable and senior housing developments was obtained from a variety of sources:

Affordable and some senior housing locations were obtained through the Furman Center’s Subsidized Housing Information Project (SHIP), and were parsed to identify those that are assumed, based on tax subsidies received, to contain 100 percent affordable units, those that are mixed-income buildings, and those that provided units for seniors. An additional list of Section 202-funded senior housing sites was provided by HUD in April 2014. Public housing sites were provided by the New York City Housing Authority. Market rate housing was identified as all buildings with residential units, minus those identified as affordable or senior via the previously discussed datasets.

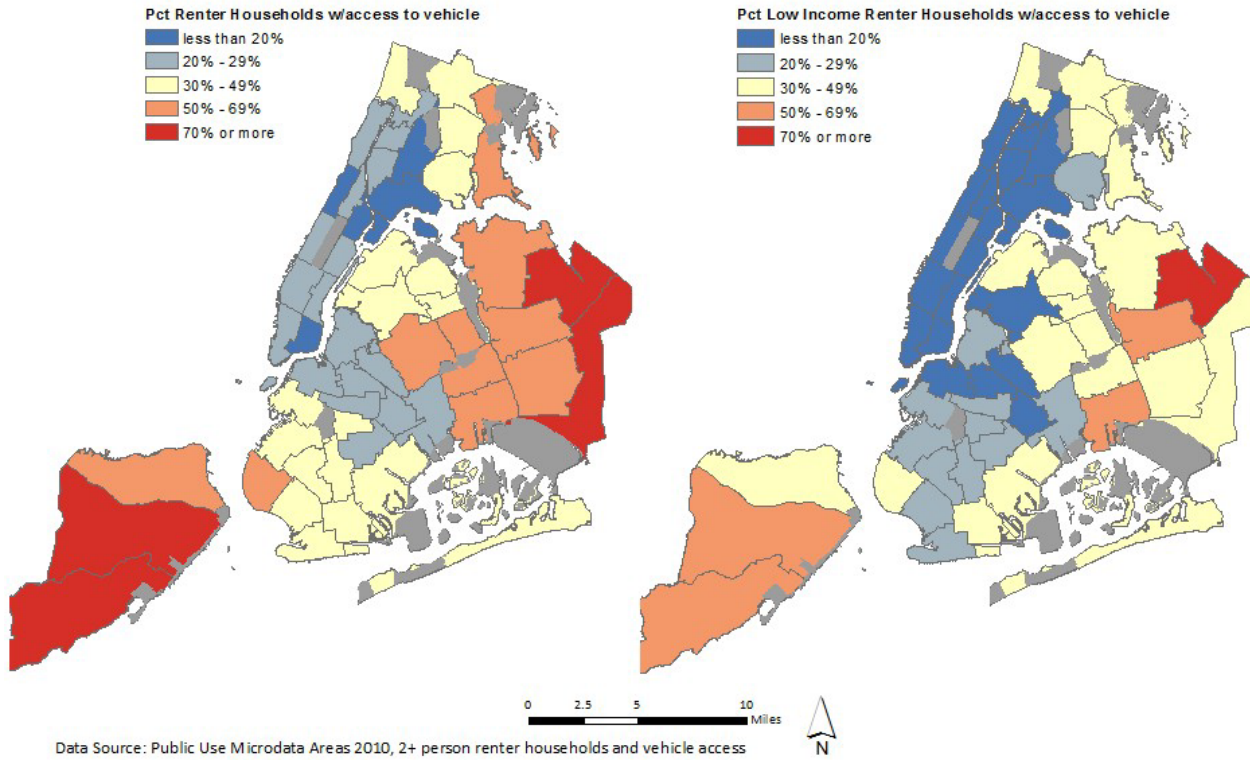
These data sources were combined for a comprehensive analysis of car ownership rates by zoning district, proximity to transit, and housing affordability. A Network Analysis was conducted in GIS to identify the tax blocks that fall within ½ mile walking distance from each MTA subway station. The latest available Public Use Microdata Areas (PUMAs) from 2010 were studied to further identify and include geographies outside of the ½ mile walking distance from a subway, where car ownership among low-income renters was low, and where rates of commuting to work by automobile were also low. The results of these analyses are shown in Figure 1-5 and Figure 1-6. Multifamily buildings (4 or more residential units, as identified by PLUTO 14v1) were selected within this assembled geography, and the total numbers of car registrations were calculated for each building.

The results of the analysis confirmed that, within the areas closer to transit, car ownership rates among both affordable and non-affordable housing developments were lower than the same type of housing further from transit. Furthermore, car ownership rates among residents of affordable housing were confirmed to be lower than car ownership rates among residents of non-affordable housing. These data are presented in Figure 10 below.

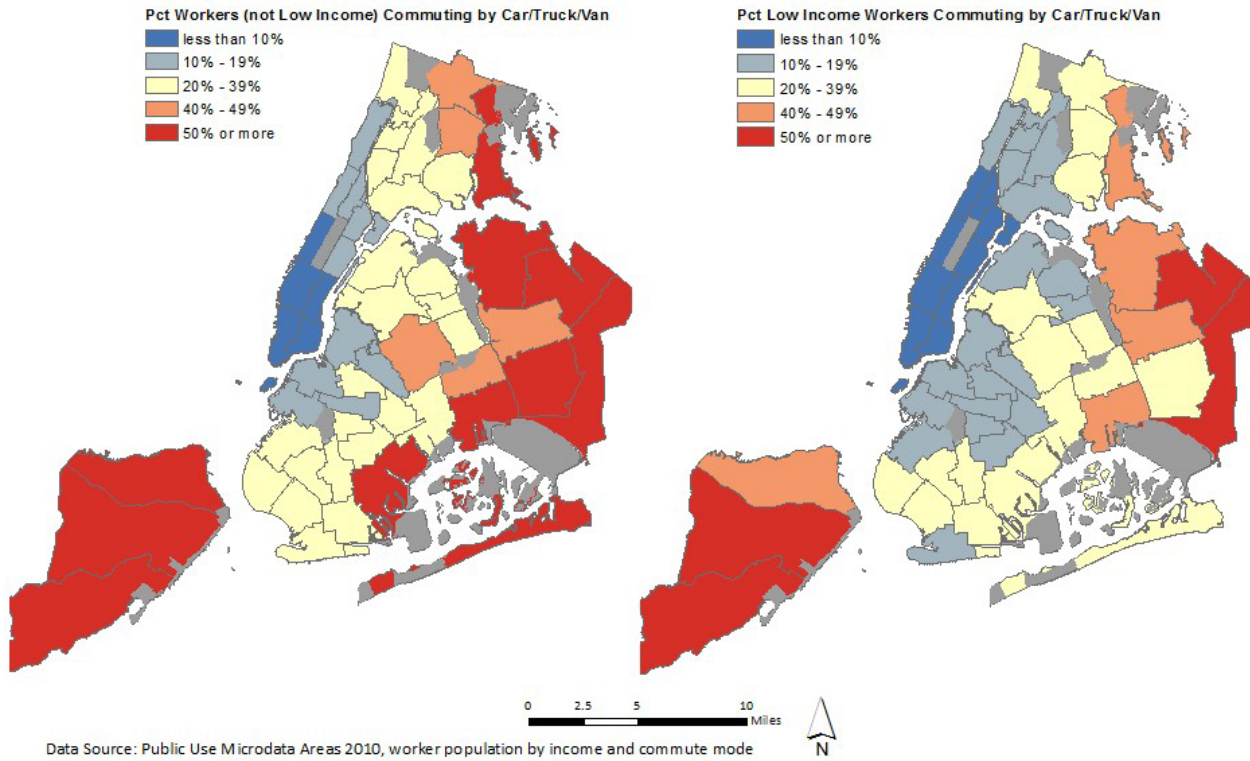
**Table 1-17: Cars per 100 Households (>3 dwelling units, all tenure)**

	All housing since 2000	100 percent affordable since 1990	202-funded senior housing	Other Long-Term Care Facilities
Near transit	32	18	5	1
Far from transit	54	39	11	1
Data sources: NYS DMV 2014; NYC DCP PLUTO 14v1; NYU Furman Center; NY State Department of Health				

**Figure 1-5: Comparison of Renters' Access to Vehicle, All Renter Households vs. Low Income Renter Households**



**Figure 1-6: Comparison of Commuting by Car, Truck or Van, Non-Low Income vs. Low Income Workers**



Obsolescence of Section 25-25 (a-e)

Section 25-25 outlines five affordable housing typologies, each with different parking requirements. The table recognizes that affordable housing generates fewer cars per household than housing that is not income-restricted, but the parking requirements are still high and fail to distinguish transit-served areas from areas that are not well served by transit and where auto ownership is higher. Moreover, the categories in the table are program-specific, and refer in many cases to housing programs or types of assistance that have not been active for many years. Because this section refers to outdated programs and can be confusing to interpret, most non-senior affordable housing developments adhere to “Column C” requirements for Public Housing Developments or Dwelling Units for Low Income Housing, which are the lowest of the group.

Developers of affordable senior housing apply parking regulations as defined under “Column D”, for non-profit residences for the elderly or dwelling units for the Elderly, which requires parking at the lowest rates in the table. Nonetheless, these rates are substantially higher than demand suggests.

Furthermore, Columns A-E specify reduced parking requirements for affordable and Affordable Independent Residences for Seniors built where permitted in single- and two-family zoning districts (R1, R2, R3-1, R3A, R3X, R4-1, R4A, R4B, and R5A). The housing models for affordable and Affordable Independent Residences for Seniors are not consistent with single- and two-family development and the failure to exclude these districts creates confusion.

**Table 1-18: Parking spaces required for public, publicly-assisted and government-assisted housing developments or non-profit residences for the elderly (from Section 25-25)**

Column A	Column B	Column C	Column D	Column E	
Publicly Assisted Housing	Federal Rent Subsidy Programs	Public Housing Developments or Dwelling Units for Low Income Tenants	Non profit Residences for the Elderly or Dwelling Units for the Elderly	Gov't Assisted Housing District	Zoning District
80	65	50	***	80	R1, R2
80	65	50	35	80	R3, R4
70	56	42.5	31.5	70	R5
55	45	35	22.5	55	R5D, R6**
39	32	25	16	35	R6A, R6B, R7B
45	38	30	20	45	R7-1**
30	23	15	12.5	25	R7-2, R7A, R7D, R7X, R8B*
30	21	12	10	25	R8, R8A, R8X, R9, R10

\*In the Borough of Brooklyn, R8B Districts are subject to the parking requirements applicable in R8 Districts

\*\* For assisted housing projects in R6 or R7 - 1 Districts which are #Quality Housing buildings#, the applicable district parking requirements shall be as follows: R6 = R6A; R7-1 = R7A

### Issues for affordable housing

As shown in Table 14, car ownership rates among low-income households are low, particularly among households close to transit.

Parking requirements are often misaligned to the actual car ownership rates of low-income residents in the applicable housing type, and price sensitive residents with cars typically end up parking on street, rather than paying for off-street parking. The cost to provide parking, i.e., the cost to build each individual parking space, ranges from \$20,000 to \$50,000 per structured space,<sup>7</sup> often exceeding the value of the car parked in the space. Moreover, the fees to park, usually levied on a per-month basis and with market values ranging from \$100 to \$200 per month<sup>8</sup>, are usually higher than what a low-income household is willing or able to pay for off-street parking. These fees are necessarily high in order to support the cost to build the parking, but result in the spaces going unused by the residents they were required for.

A substantial portion of new affordable housing developments are eligible for parking waivers. However, roughly three-quarters of new affordable developments are not eligible to waive their parking, inflating the cost of the project. Affordable housing and other housing built as part of the Inclusionary Housing Program often depends on public subsidy. While parking itself cannot be paid for by public subsidy, the overall development shares the burden of the cost to provide it. Since the market alone cannot support the construction of off-street parking for affordable housing, the funds used to provide the parking come from a source that might have otherwise spent money on the development of additional housing, or elsewhere within the housing project.

Parking also occupies significant physical space on a development site that might be better allocated towards additional housing units or amenities. A self-park facility, where the driver is able to park his or her own car in a space, typically requires about 300 square feet of surface area per parking space, to accommodate the car and access. While an attended facility typically requires closer to 200 square feet of surface area per parking space, since the car owner is not parking his or her own car, attended parking is more expensive to operate and, therefore, to park in. The cost to provide below-grade or structured facilities may be prohibitively high for a development depending on public subsidy and, thus, the development may not get built at all if it cannot reduce required parking.

### Issues for affordable senior housing

As shown in Table 14, car ownership rates are extremely low among residents of affordable senior housing, where parking requirements are entirely mismatched with actual parking demand among residents. According to LiveOn, a senior housing advocacy group, in order to be eligible for residency in a HUD 202 building, which has historically been the funding program under which affordable senior housing is built in the city, applicants must qualify as “very low income”. This means that most tenants earn less than \$15,000 per year, making car ownership a highly unusual exception for households of these developments. Car registration data from the NYS Department of Motor Vehicles bears this out.

Moreover, while there are parking waivers available for some affordable housing developments where only a small number of spaces are required, there are no waivers available when filing under “Column D” in the above table. Every development built under non-profit residences for the elderly or dwelling units for the elderly must provide its required parking, regardless of the size of the lot or the number of spaces. As with affordable housing, this adds considerable cost to the development and impedes the number of housing units that might be built for the same amount of public subsidy on the same lot.

### Existing underutilized parking facilities

Under existing regulations, parking is required and determined by minimums, except where there are opportunities to waive out of required parking. As a result, many affordable developments generated large amounts of parking, built as surface parking lots or structured facilities. Low car ownership, proximity to multiple sources of public

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<sup>7</sup> <http://www.reinventingparking.org/2015/06/how-much-does-one-parking-spot-add-to.html>

<sup>8</sup> DCP *Inner Ring Residential Parking Study*, 2013:  
[http://www.nyc.gov/html/dcp/html/transportation/inner\\_ring.shtml](http://www.nyc.gov/html/dcp/html/transportation/inner_ring.shtml)

transportation, and the desire to create additional affordable housing units on an increasingly limited supply of land, and with limited funding, suggests that some of the previously-required parking area may be more appropriate for other use, including additional housing units, residential amenity space, open space, or services including offices or commercial uses. For example, affordable housing was developed on a site formerly used for open parking for New York City Housing Authority tenants as a consequence of a targeted zoning text amendment (Application No. N 100262 ZRM).

#### Required parking in mixed-income developments

Where market-rate housing is built as part of a mixed-income development, the profit generated from the market-rate units often cross-subsidizes the development of the low-income housing built as part of the same development. Where the developer is required to provide parking for market-rate units, and at a higher ratio per unit than the affordable units, additional expense is added to the development that might have otherwise reduced rents or sales prices or enabled the development of additional housing units, amenity space, open space, or other uses. Because the underlying zoning's off-street parking requirements do not distinguish between transit-served and auto-dependent areas, in many areas car ownership rates are lower among both market-rate and low-income residents than implied by the zoning requirement.

#### Existing inconsistencies in reduced parking for affordable housing

Where affordable housing is built in the Special St. George District in Staten Island, the parking requirements for these units is aligned with the parking requirements for market-rate units. The intent of the parking requirements for this Special District was to ensure that every unit of market-rate development was built with a parking space. The zoning text unintentionally included income-restricted units in this requirement and, as such, the parking requirements for these income-restricted units is unnecessarily high.

Where affordable housing is built in Queens Community Board 14 in zoning districts R6 and higher, the parking requirements are aligned with requirements for an R5 zoning district. The intent of the parking requirements in this area was to ensure that higher-density market-rate developments are built with a parking requirement of a medium-density district. The zoning text unintentionally included income-restricted units in this requirement and, as such, the parking requirement for these income-restricted units is unnecessarily high.

## **I. THE PROPOSED ACTION**

The Proposed Action would not change any underlying zoning districts, but would modify underlying regulations to facilitate more efficient and less costly development of all types of housing within each zoning district. A new set of discretionary actions consider how lot constraints and certain zoning regulations may unnecessarily hamper the development of housing units. As no areas are being rezoned under the Proposed Action, no changes to allowable floor area ratio (FAR) are proposed as part of this action, with the exception of the as-of-right FAR for Long-Term Care Facilities and Affordable Independent Residences for Seniors in specific zoning districts.

Across the city, the Proposed Action is only expected to induce new development or affect the overall amount or type of development in a neighborhood on a very limited basis. As noted, the individual sites to which the Proposed Action would apply would be located throughout the city's five boroughs but cannot be specifically identified for analysis purposes.

The following components of the proposal are considered for the future condition and comprise the analysis basis for this environmental review as outlined below.

Maps indicating the affected districts are in APPENDIX A. A table highlighting applicability within Special Districts can be found in Appendix C.

## Promote Affordable Independent Residences for Seniors and Long-Term Care Facilities

The proposal aims to facilitate the development of Affordable Independent Residences for Seniors and Long-Term Care Facilities through various updates and refinements to the Zoning Resolution. The proposal would clarify the regulatory status of state-regulated Long-Term Care Facilities and provide additional zoning flexibility to allow for new industry models in senior housing. The proposal includes changes to various areas of the Zoning Resolution and would:

- Update the definitions for affordable senior housing
- Update the floor area ratios for affordable senior housing
- Update definitions for New York State licensed Long-Term Care Facilities
- Update floor area ratio for New York State licensed Long-Term Care Facilities
- Remove obsolete definitions
- Remove density and unit size limits for affordable senior housing
- Provide a framework for mixing of Use Group 2 residences with certain Use Group 3 community facilities
- Revise permitted obstructions in rear yard to allow accessory social and amenity spaces to encroach in the rear yard
- Revise certifications and special permits for Long-Term Care Facilities

### [Update the definitions and use regulations for affordable senior housing](#)

The definitions for affordable senior housing have not been updated in over 30 years. As a result, the definitions are outdated and inconsistent with the current practices.

As such, the proposal includes a new defined term “Affordable Independent Residences for Seniors” to replace “non-profit residences for the elderly”. This definition would be expanded to include both non-profit and for-profit developers, but the income restriction and age restriction would still apply to this use, thus the population served would remain the same. This use type would be required to have a regulatory agreement with NYC HPD or another governmental agency, for a minimum term of 30 years and restrict residence to low-income households. Affordable Independent Residences for Seniors would continue to be a residential use in Use Group 2. Under the proposal, this use would continue to be a residence that is occupied at least 90 percent by elderly families, the head or spouse of which is 62 years or older.

### [Update the floor area ratios for Affordable Independent Residences for Seniors](#)

The Zoning Resolution establishes maximum floor area ratios for non-profit residences for the elderly in Section 23-147. These floor area ratios are higher than the underlying residential district floor area ratio limits to encourage and support this type of housing. Because of the high frequency of single occupancies and the absence of families with children, population in a building for the elderly is less than it is in an identical building tenanted by a mixed age group. To help to encourage the creation of a greater supply of housing for this age group, a 35 percent increase in permitted density and higher floor area ratios for R3-R7 zoning districts is permitted today. Seniors put very limited resource demands on neighborhoods; for example they do not utilize school seats and they are typically unemployed or retired and therefore they do not add to transportation demand. Thus the proposal would expand this rationale to a wider variety of zoning districts.

This type of housing also has a 4 percent accessory social and amenity space requirement, to allow for needed community or support spaces. Under the proposal, Quality Housing required indoor recreation space could also meet the 4 percent common area requirement. The higher floor area allowance also provides greater spatial flexibility to provide necessary, and sometimes required, accessory social amenity spaces. These spaces may consume between 4 and 10 percent of the building floor area, and are less common in general housing types. This category of housing would continue to be permitted in all multi-family residential zoning districts R3-R10/.

This proposal also aims to ensure that Affordable Independent Residences for Seniors is distributed throughout the city; however the current Section 23-147 does not include all of the zoning districts where senior housing is permitted and where such housing is constructed. Thus, the proposal amends this section to allow the newly-defined Affordable Independent Residences for Seniors to utilize the maximum floor area in Section 23-147 or the maximum

floor area in Inclusionary Housing Designated Areas, whichever is higher, consistent with the existing framework. The proposed FAR is listed in Table 1-16.

**Table 1-19: Existing and proposed maximum FAR for Affordable Independent Residences for Seniors**

Zoning District	Existing ZR Section 23-147	Existing ZR Section 23-14	Proposed ZR Section 23-155	
	Non-profit residences for the elderly Max FAR	Residential Max FAR	Proposed for Affordable Independent Residences for Seniors Max FAR	Change
R3-2	0.95		0.95	0.00
R4	1.29		1.29	0.00
R5	1.95		1.95	0.00
R5B	n/a	1.35	1.35	0.00
R5D	n/a	2.00	2.00	0.00
R6	3.90		3.90	0.00
R6A	3.90		3.90	0.00
R6B	2.00		2.20	0.20
R7	5.01		5.01	0.00
R7A	5.01		5.01	0.00
R7B	3.90		3.90	0.00
R7D	5.01		5.60	0.59
R7X	5.01		6.00	0.99
R8	n/a	6.02	7.20	1.18
R8A	n/a	6.02	7.20	1.18
R8B	n/a	4.00	4.00	0.00
R8X	n/a	6.02	7.20	1.18
R9	n/a	7.52	8.00	0.48
R9A	n/a	7.52	8.50	0.98



R9D	9.00	10.00	1.00
R9X	9.00	9.70	0.70
R10	10.00	12.00	2.00
R10A	10.00	12.00	2.00
R10X	10.00	12.00	2.00

In establishing this revision to the applicable floor area for Section 23-147, the proposal would also remove the specific open space ratios for non-contextual districts and lot coverages for contextual districts. The senior bulk requirements would reference the lot coverage and open space provisions in the underlying bulk regulations for enhanced consistency.

Seniors are typically housed in smaller dwelling units, reflecting their small household sizes, the desirability of simplifying housekeeping for older residents, and the need to provide low-cost housing. Consistent with best practices in senior housing design, the Proposed Action also would remove the density factors listed in Section 23-221 for non-profit residences for the elderly. There would be no minimum dwelling unit size. Already today, Section 23-23 exempts non-profit residences for the elderly from the minimum size of dwelling units in R3, R4 and R5 Districts. The effective minimum dwelling unit size established by other applicable laws and codes is about 275 square feet.

[Update definitions for New York State licensed Long-Term Care Facilities](#)

The zoning definitions for Long-Term Care Facilities are outdated and inconsistent with current terminology utilized by other City, State and Federal agencies that regulate and subsidize these housing types. The proposal would replace the nursing homes and health related facilities in Section 12-10 with a new term, “Long-Term Care Facilities”, which would include State-licensed Long-Term Care Facilities such as nursing homes, assisted living facilities, and certain continuing care retirement communities. This proposal is also consistent with national standards and represents the range of living environments typically provided for seniors who need varying levels of assistance and care. Nursing homes “and health related facilities” are currently considered Use Group 3, community facility uses in the Zoning Resolution. Other New York State licensed Long-Term Care Facilities similar to nursing homes include assisted living facilities and continuing care retirement communities (CCRCs). Assisted living facilities and CCRCs are not currently defined in the Zoning Resolution and, as a result, confusion exists as to whether they are residential uses (US2) or community facility (UG3). Based on a review of Certificate of Occupancy forms for existing assisted living facilities (there are not currently any CCRCs in New York City), assisted living facilities generally filed as community facilities, Use Group 3.

Nursing homes are regulated in Section 10 NYCRR 700.2(a) (currently cited in Section 22-42) as “a facility, institution, or portion thereof, providing therein, by or under the supervision of a physician, nursing care and other health, health-related and social services as specified in this Chapter for 24 or more consecutive hours to three or more nursing home patients who are not related to the operator by marriage or by blood within the third degree of consanguinity, including, but not limited to, an infirmary section which is identifiable as a nursing home unit in a special area, wing or separate building of a public or voluntary home or of a general or special hospital.”

Assisted Living Programs are licensed under 18 NYCRR 485.2 (s): “An Assisted living program means an entity which is approved to operate pursuant to Section 485.6(n), and which is established and operated for the purpose of providing long-term residential care, room, board, housekeeping, personal care, supervision, and providing or arranging for home health services to five or more eligible adults unrelated to the operator.”

Continuing care retirement communities are “life care facilities” for adults that offer, under one contract, an independent living unit (an apartment or cottage), residential amenities and access to a continuum of Long-Term Care services, as residents' health and social needs change over time. CCRCs are required to have a Certificate of Authority from the State Commissioner of Health (per Public Health Code Article 46) and the New York State



Department of Insurance. Under the Proposed Action, only certain continuing care retirement communities would be considered “Long-Term Care Facilities”. To be considered a “Long-Term Care Facility” in use group 3, the CCRC must:

- Hold a Certificate of Authority with the State Health Commissioner
- Offer a life care contract (Type A) that includes unlimited enriched housing/assisted living care and unlimited skilled nursing facility services, along with independent housing and residential services and amenities. The resident's monthly fee cannot change due to a change in the level of covered health care required by the resident (except for normal operating costs and inflation adjustment). This means that the resident pays the same monthly fee in the skilled nursing facility as he or she paid in independent housing.
- Consist of one or more buildings (on adjacent or contiguous zoning lots or zoning lots that would be contiguous but for their separation by a street) where 50 percent of the total units and beds included in any CCRC, nursing home, and assisted living facility uses on the same lot (or contiguous lots) are allocated for exclusive nursing home or assisted living facility uses.

[Update floor area ratio for New York State licensed Long-Term Care Facilities](#)

With the objective of rationalizing all Affordable Independent Residences for Seniors and Long-Term Care types, the proposal would also change the allowable floor area for Long-Term Care Facilities. These are community facilities that also have high floor area utilization for support spaces such as clinical service, dining and common areas. Today, nursing homes are allowed higher community facility floor area through special permits, while undefined assisted living facilities sometimes utilize the non-profit residences for the elderly category. Because they are similarly low-impact uses, under the proposal both Long-Term Care and Affordable Independent Residences for Seniors would utilize the same floor area ratio maximums, per Section 23-147 or per the Inclusionary Housing Program, whichever is higher. By having the same set of bulk regulations for all the different housing types, developments are facilitated that have multiple options. The proposed maximum floor area ratios for Long-Term Care Facilities outlined by zoning district are shown in Table 1-17.

**Table 1-20: Existing and proposed maximum FAR for Long Term Care facilities**

24-111		23-147	Change
Existing FAR for Community Facility: UG 3 (Nursing Homes and Health Related) per 24-11 or 24-111		Proposed FAR for Affordable Independent Residences for Seniors and Long-Term Care facilities	
District	Max FAR	Max FAR	
R3	0.50	0.95	0.45
R4	0.75	1.29	0.54
R5	1.27	1.95	0.68
R5B	1.27	1.27	0.00
R5D	2.00	2.00	0.00
R6	2.43	3.90	1.47

R6A	3.00	3.90	0.90
R6B	2.00	2.20	0.20
R7	3.44	5.01	1.57
R7A	4.00	5.01	1.01
R7B	3.00	3.90	0.90
R7D	4.20	5.60	1.40
R7X	5.00	6.00	1.00
R8	6.02	7.20	1.18
R8A	6.02	7.20	1.18
R8B	4.00	4.00	0.00
R8X	6.00	7.20	1.20
R9	7.52	8.00	0.48
R9A	7.50	8.50	1.00
R9D	9.00	10.00	1.00
R9X	9.00	9.70	0.70
R10	10.00	12.00	2.00
R10A	10.00	12.00	2.00
R10X	10.00	12.00	2.00

When the underlying FARs are revised, several changes to Special Purpose Districts would be necessary so that affordable senior housing developments within these areas are permitted the same FAR as the underlying zoning districts.

[Remove outdated and obsolete definitions](#)

There are several terms in the Zoning Resolution that are no longer used and are therefore obsolete; these include domiciliary care facilities for adults and sanitariums listed in Use Group 3. Domiciliary care facility was previously a State defined category for institutional care; however, this type of care facility no longer exists and is no longer defined in State law. Today, the Zoning Resolution only allows domiciliary care facilities by special permit yet, because they do not exist, the permit has no applicability. Similarly, sanitariums are not a State-regulated category. Thus, the proposal recommends that these outdated terms be removed, as they are obsolete references to facilities that are no longer in existence.

### Provide a framework for mixing of Use Group 2 residences with certain Use Group 3 community facilities

Buildings that mix residences and certain community facilities such as Affordable Independent Residences for Seniors, Long-Term Care and non-profit institutions with sleeping accommodations (NPISAs) are becoming industry best practice. While the application of bulk provisions is fairly straightforward for stand-alone facilities, the regulations are confusing and complicated in instances when developers want to mix residential and these community facility uses; thus the impediments created by zoning should be removed. To resolve this confusion, the proposal would specify that density in mixed community facility and residential buildings would be calculated by subtracting any floor space allocated to Affordable Independent Residences for Seniors and Long-Term Care or NPISA use from the maximum permitted residential floor area, and dividing the remainder by the applicable density factor of the residence district (set forth in Section 23-22). The proposed text amendment would require that in instances where floor space in a building is utilized by both residential and community facility uses with different permitted FARs, the percentage pertaining to each use would be determined by taking a pro rata share of these common areas based on the percentage that the use occupies in non-common areas of the building.

Finally, while nursing homes and NPISAs generally are currently permitted an FAR that is comparable to that permitted for residences in Residence Districts, in certain zoning districts, Section 24-162 of the Zoning Resolution currently requires that the community facility portion of a mixed building be restricted to less FAR so as not to overwhelm the residential character of a building. In R6 or R7-1 districts, while the permitted FAR for a stand-alone nursing home or NPISA would be 2.43 or 3.44, respectively, in mixed buildings the NPISA component is limited to 1.0 FAR. While this restriction is understandable in mixed buildings containing community facility uses that may deviate substantially from the residential character of a building, it is needlessly restrictive for Long-Term Care and NPISAs as these uses are harmonious with, and functionally similar to, residential uses. The proposed text amendment would also remove the applicability of these provisions for Long-Term Care and NPISAs in R6 and R7-1 districts. In higher density districts, no such Community Facility FAR restriction exists today and that would remain unchanged.

The Quality Housing Program establishes a set of rules that includes minimum apartment sizes, recreation space requirements and incentives to provide amenities such as laundry rooms and daylight in corridors. All of the Quality Housing Program rules and regulations are mandatory in contextual R6 through R10 districts. Thus in a building that combines Quality Housing residential floor area and Long-Term Care or non-profit institution with sleeping accommodation Use Group 3 floor area, the floor area deductions are proposed to be computed on the combined floor area. For example, if there is daylight in the corridor, the whole corridor would be included and not just the part that is residential. The same would apply to shared recreation space provided that is available to all the residents. In contextual zoning districts, where the Quality Housing Program is mandatory, the Quality Housing program standards and floor area deductions would also be applicable to standalone Use Group 3 Long-Term Care and NPISAs. This is implied by the existing Section 24-012, but Article II, Chapter 8, to which wholly community facility developments are referred by this section, only has provisions applicable to residences.

These proposals would be located in a proposed new paragraph (c) in existing Section 24-011 (Exceptions to the bulk regulations of this Chapter).

### Revise permitted obstructions in rear yard to allow accessory social and amenity spaces to encroach in the rear yard

Section 23-44 lists permitted obstructions in required rear yards or rear yard equivalents. The Proposed Action would add accessory social and welfare facilities in Affordable Independent Residences for Seniors, as well as for affordable housing participating in the Inclusionary Housing program. No dwelling units would be permitted within the required yards. Quality Housing required recreation space could also meet the 4 percent common area requirement and be a permitted obstruction in the rear yard, as discussed below under “Modernize Rules That Shape Buildings”.

### Allow higher densities for Affordable Independent Residences for Seniors in R7X and R7-3 Districts

In order to ensure that all districts have a meaningful increase in floor area for the provision of Affordable Independent Residences for Seniors, as compared to the standard district floor area ratio, the proposal would increase the permitted FAR in R7X and R7-3 districts from 5.0 to 6.0 for these facilities. This change would also aid in filling a gap in incremental density increases between R7D (5.6) and R8A (7.2) districts.

Developments that utilize this provision for additional FAR would be permitted additional height in order to accommodate this additional floor area, as described elsewhere in this proposal.

#### [Revise certifications and special permits for Long-Term Care Facilities in ZR Sections 22-42, 74-90, and 24-111](#)

The proposal would remove the certification under Section 22-42 and special permit in Section 74-90, allowing Long-Term Care Facility uses as of right in all residential districts except R1 and R2 districts. The existing certification and special permit, intended to guard against the concentration of facilities in a neighborhood, do not provide a useful supplement to the State Department of Health's Nursing Home licensure requirements but, rather, create an unnecessary obstacle to the provision of needed services to seniors. Further, the findings in the zoning resolution are easily satisfied, given the benefits of these facilities to the city and the extremely low impacts of their senior residents.

The proposal would create a special permit to allow Long-Term Care Facilities in R1 and R2 districts, and another to allow such facilities to apply for the higher Section 24-11 floor area, but would not change the allowable floor area for Long-Term Care Facilities in R1 and R2 districts, as per Section 24-111.

The proposal also includes revisions to Section 22-42 that would replace the existing certification with a City Planning Authorization for continuing care retirement communities (a subset of Long-Term Care Facilities) in R1 and R2 districts on a zoning lot that is greater than 10 acres. The continuing care retirement community must also demonstrate that the design is consistent with neighborhood character and that an adequate buffer exists from nearby residences.

The proposal would also remove the special permit in Section 74-903 for domiciliary care facilities for adults. This use is obsolete, and is proposed to be removed by this proposal; therefore this special permit would not have applicability.

### **Modernize Rules that Shape Buildings**

The proposal is seeking to modify several building envelope and other controls to remove impediments to the construction of Housing in the city. Specifically the proposal aims to address the following through changes to the Zoning Resolution:

- General building envelope modifications
- Enhanced building envelope modifications for Inclusionary and Affordable Independent Residences for Seniors
- Improved design flexibility
- Modifications for constrained lots

#### [Adjust height controls in moderate- and high-density districts for general residential uses](#)

In order to facilitate more cost effective construction, improve design flexibility and bolster the quality of the city's housing supply, a revised set of assumptions for a prototypical building configuration are included in the proposal to reflect current best practices in residential design. These assumptions also are more akin to many of the historic standards that continue to make pre-1961 residences desirable.

First, the proposal bases the zoning envelope on an assumed ground floor height of 15' to facilitate taller retail spaces in commercial districts and elevated ground floor units in residential districts and a 10' floor-to-floor height above the ground floor. Next, the proposal assumes a building depth of 60' in moderate-density districts (R6A, R7A, R7D) and a depth of 65' in high-density districts (R7X, R8A, R8X, R9A, R9X, and R10A) in order to accommodate block and plank construction in districts with a maximum height less than 14 stories. In residential districts, the proposal accommodates a building set back of 5' from the street line to provide planting and separation from the street line and to allow for façade articulation (in conjunction with street wall location provisions). Lastly, floor area exemptions are assumed for typical mechanical spaces, as permitted by the zoning definition of floor area; Quality Housing recreation space, laundry rooms, trash rooms and corridor density, as permitted pursuant to Article II, Chapter 8; and a 4" façade deduction pursuant to the Zone Green thick wall exemption, as permitted by the definition of floor

area in Section 12-10, in districts with a maximum height below 14 stories (to correspond with block and plank construction, where 8” masonry walls are typically clad with rigid insulation and facade materials).

When these revised assumptions are applied to a prototypical building, the current bulk envelopes are often unable to accommodate the permitted floor area ratio without drastically reducing the design quality (reduced floor to floor heights, increased building depths, no façade articulation, etc.), as discussed in the Purpose and Need section above. To address these shortfalls and to build in the flexibility for architects to design buildings with façade articulation and quality ground floor spaces, the proposal includes increases to the maximum permitted base and overall heights. In many districts today, either the base height or the overall height is divisible by 10’, meaning that a 15’ ground floor would inherently be out of sync with the envelope. In many districts, simply adding 5’ to either the maximum or overall height solves this problem and allows an additional story. In a few inherently constrained districts, another story in addition to the 5’ (for a total of 15’) is needed to provide sufficient flexibility in the new envelope. In order to limit potential misuse of these new heights (fitting additional stories into the larger envelope instead of providing more generous ceiling heights), the proposal is introducing a maximum number of permitted stories, which should roughly correlate to the number anticipated under the original Quality Housing proposal for each district. The specific proposal for each district is shown in Figure 16 below.

In instances where the maximum height is increasing, the additional proposed height must first be allocated to the ground floor, ensuring a “qualifying ground floor”. A qualifying ground floor is one where the level of the finished floor of the second story above grade is 13 feet or more above the sidewalk – resulting in a building where the ground floor has sufficient height to provide quality ground floor retail or elevated residential space. After the construction of a qualifying ground floor, the building may be permitted to achieve the full heights proposed in Tables 1-18 and 1-19 below.

If a building does not provide a qualifying ground floor, permitted maximum overall heights as shown in Tables 1-18 and 1-19 below are reduced by 5 feet – resulting, in most cases, to no change to permitted heights compared to the existing regulations. The two-foot difference between the height of the “qualifying ground floor” and the maximum height assumed in the design of the envelope allows for architectural flexibility and accommodates structural features above the ground floor such as transfer beams.

**Table 1-21: Existing and proposed maximum heights for contextual districts**

HEIGHT CHANGES FOR ALL BUILDINGS IN CONTEXTUAL DISTRICTS				
Zoning District	Base Height		Overall Height	
	Existing Max Height	Proposed Max Height	Existing Height	Proposed Max Height (stories)
R6B	40'	45' (4 stories)	50'	55' (5 stories)
R6A	60'	65' (6 stories)	70'	75' (7 stories)
R7B	60'	65' (6 stories)	75'	75' (7 stories)
R7A	65'	75' (7 stories)	80'	85' (8 stories)
R7D	85'	85' (8 stories)	100'	105' (10 stories)
R7X	85'	95' (9 stories)	125'	125' (12 stories)

R8B	60'	65' (6 stories)	75'	75' (7 stories)
R8A	85'	<del>105' (10 stories)</del> 95' (9 stories)	120'	125' (12 stories)
R8X	85'	95' (9 stories)	150'	155' (15 stories)
R9A (narrow street)	95'	105' (10 stories)	135'	145' (14 stories)
R9A (wide street)	95'	105' (10 stories)	145'	155' (15 stories)
R9X	120'	125' (12 stories)	160'	175' (17 stories)
R10A (narrow street)	125'	135' (13 stories)	185'	195' (19 stories)
R10A (wide street)	<del>125'</del> -150'	155' (15 stories)	210'	215' (21 stories)

In non-contextual districts utilizing the Quality Housing option, the proposal is generally seeking to make the district envelope comparable to that of a comparable 'A' zoning district. For example, a development on a wide street in an R6 district utilizing the Quality Housing option would have a Residential FAR equal to that of an R6A district, and thus it is rational that the proposed envelopes would be the same. The modified provisions are shown in Table 19 below.

**Table 1-22: Existing and proposed maximum heights for Quality Housing options in non-contextual zoning districts**

HEIGHT CHANGES FOR QUALITY HOUSING BUILDINGS IN NON-CONTEXTUAL DISTRICTS				
District	Base Height		Overall Height	
	Existing Max Height	Proposed Max Height	Existing Max Height	Proposed Max Height (stories)
R6 (narrow street)	45'	45'	55'	55' (5 stories)
R6 (wide street w/in Manhattan Core)	55'	55'	65'	65' (6 stories)
R6 (wide street outside Manhattan Core)	60'	65'	70'	75' (7 stories)
R7 (wide street w/in Manhattan Core)	60'	65'	75'	75' (7 stories)

R7 (wide street outside Manhattan Core)	65'	75'	80'	85' (8 stories)
R8 (wide street w/in Manhattan Core)	85'	95'	120'	125' (12 stories)
R8 (wide street outside Manhattan Core)	85'	95'	120'	145' (14 stories)
R9 (narrow street)	95'	105'	135'	145' (14 stories)
R9 (wide street)	102'	105'	145'	155' (15 stories)
R10 (narrow street)	125'	135'	185'	195' (19 stories)
R10 (wide street)	150'	155'	210'	215' (21 stories)

In addition to the underlying changes, similar building envelope modifications would be made to many Special Districts, as well as to R5D, C4-4L and M1-6D districts, and Waterfront areas (subject to Article VI, Chapter 2), which all need to account for the new assumptions being established (15' ground floor and 10' floor to floor above).

[Create more-efficient building setback rules](#)

Currently, setbacks above the maximum base height are required on both the front and rear of the building. The combination of these setbacks poses a severe impediment to cost-effective construction, efficient upper story layouts and even an attractive streetscape.

Front setbacks in contextual zoning districts currently require upper stories above the maximum base height to set back 15 feet from the street wall of building base on narrow streets and 10 feet on wide streets. Since this is measured from the street wall, even if the building is set back 5 feet or 10 feet to create a separation from the sidewalk, the minimum 10 feet or 15 feet setback is still required. This gives little incentive to set the building back at ground floor to provide quality ground floor streetscapes as upper stories would be seriously constrained by the limited depth imposed by setbacks on two sides, not to mention the need to align vertical circulation cores with lower stories.

Rear yard setbacks require upper stories above the contextual base to set back 10 feet from the rear yard line, which is 30 feet from the rear lot line on an interior lot. No rear yard setback requirements apply on corner lots. Since the location of the rear yard setback is fixed, shifting the building towards the street can mean eliminating one costly setback in districts with lax street wall location requirements – at the expense of the streetscape and the quality of ground floor units.

In order to remedy these complementary problems, the proposal includes modifications to both the front and rear yard setback requirements. First, the front setback would be measured from the street line of the building. In order to encourage a separation between the sidewalk and the building (and reduce costly structural reinforcing below setbacks) the front setback may be reduced by one foot for every foot that the building is set back from the property line, provided that a minimum setback of 5 feet must be provided from the street wall. For example, a building on a narrow street located on the street line would continue to require a 15 foot setback, whereas a building that was set back from the sidewalk by 5 feet would be able to reduce the setback above the base height to 10 feet (5 foot

setback at grade + 10 foot setback above base = 15 foot total setback). Second, the proposal seeks to remove the rear yard setback requirement. The 60-foot rear yard (resulting from two 30' yards abutting each other) should suffice to ensure adequate light and air to rear-facing portions of buildings. The combination of these provisions would allow buildings to be designed to provide greater separation and plantings between ground floor units and adjoining sidewalks and would allow upper story units to be designed with much greater ease, cost effectiveness and efficiency.

These provisions would apply to all R6-R10 contextual districts as well as to Commercial and Manufacturing equivalents that utilize 10' and 15' setbacks along narrow and wide streets as part of an established envelope, including within Special Districts.

Remove unnecessary corner lot coverage restrictions

In order to allow a building to be designed to wrap around the corner without diminishing the depth of its floor plate, the proposal would allow 100 percent lot coverage for the residential portion of Quality Housing buildings, and eliminating lot coverage for interior lots that are within 100 feet of a corner and therefore do not have a required rear yard. This would likely only be achievable on lots of 5,000 square feet or less, which is a practical limit for a building designed with a single-loaded corridor on the inside face of the building that accesses units fronting upon adjoining streets to provide legal windows. Meanwhile, for lots with areas greater than 5,000 square feet, legal windows on the inside ring of a double loaded corridor would need to be provided with frontage upon a legal inner or outer court, which would typically reduce the effective lot coverage below 90 percent.

Modifying this provision would give more flexibility in how these courts are provided, which is especially important on angled corner lots.

When these modifications are made to the underlying districts, the corner lot provisions of several Special Districts would need to be modified as well, as they mimic (but also supersede) the underlying provisions. Some of these Special Districts also included 100 percent coverage allowances for small corner lots up to 5,000 square feet, which would now be unnecessary and can be eliminated. In addition, the Waterfront regulations set forth in Article VI, Chapter 2, would be modified in step with the underlying, as would C4-4L district provisions, and special provisions for Borough Park in Brooklyn, which are set forth in Section 23-146.

Provide a more balanced building transition rule

In order to establish a better transition along district boundaries between the maximum heights permitted within lower density R1-R5 district, or an R6B districts, and moderate- and higher-density R6-R10 Residence Districts, the text amendment is proposing to create an intermediate height within the 25 foot buffer zone. This would provide a better height transition between the two districts (rather than a prolongation of the lower density height) and would reduce the constraint on the higher density building envelope.

Specifically, within the applicable R6-R10 district, the height of a building within 25' of the district boundary adjoining an R1-R5 district, or an R6B district, would not be able to exceed the base height of the specific district, or a height of 75', whichever is less, as shown in the table below.

**Table 1-23: Proposed maximum base heights in transition areas**

	PROPOSED TRANSITION HEIGHT MODIFICATIONS	
Zoning District	Modified Base Height	Permitted transition height (max stories)
R6A	65' (6 stories)	65' (6 stories)



R7B	65' (6 stories)	65' (6 stories)
R7A	75' (7 stories)	75' (7 stories)
R7D	85' (8 stories)	75' (7 stories)
R7X	95' (9 stories)	75' (7 stories)
R8B	65' (6 stories)	65' (6 stories)
R8A	95' (9 stories)	75' (7 stories)
R8X	95' (9 stories)	75' (7 stories)
R9A	105' (10 stories)	75' (7 stories)
R9X	125' (12 stories)	75' (7 stories)
R10A	135' (13 stories)	75' (7 stories)

[Adjust height controls for Inclusionary Housing and Affordable Independent Residences for Seniors and Long-Term Care Facilities](#)

While buildings providing Affordable Independent Residences for Seniors or care facilities, or affordable housing in Inclusionary Housing Designated Areas in R6-R10 districts currently receive increased floor area, the contextual envelope does not change. As shown in the Purpose and Need section, this severely limits the ability of the building envelope to accommodate all of the permitted floor area without diminishing housing quality (including minimizing floor to floor heights, increasing floor plate depths, and limiting façade articulation).

In order to facilitate better the permitted Inclusionary and Affordable Independent Residences for Seniors or care facility floor area (and incidentally allow for better building design), the proposal would establish additional heights that would better correlate to the increased FAR allotted to each zoning district. Moderate density districts tend to need 1 - 2 additional stories in order to accommodate the higher permitted FAR, whereas higher density districts need 3 - 4 stories, depending on the district.

Since contextual districts have a rough proportional relationship between base heights and overall heights (which helps limit the perceptibility of upper stories from the sidewalk).

In instances where the maximum height is increasing, the additional proposed height must first be allocated to the ground floor, ensuring a “qualifying ground floor”. A qualifying ground floor is one where the level of the finished floor of the second story above grade is 13 feet or more above the sidewalk – resulting in a building where the ground floor has sufficient height to provide quality ground floor retail or residential space. After the construction of a qualifying ground floor, the building may be permitted to achieve the full heights proposed in Table 1-21, below.

If a building does not provide a qualifying ground floor, permitted maximum overall heights as shown in Table 1-21 are reduced by 5 feet.

**Table 1-24: Proposed maximum heights for Inclusionary Housing and Affordable Independent Residences for Seniors and Long-Term Care Facilities with Qualifying Ground Floors**

MAXIMUM HEIGHTS FOR IH, AIRS and LTC: CONTEXTUAL DISTRICTS			
Zoning District	Maximum Base Height	Maximum Overall Height	Maximum Number of Stories
R6A	65'	85'	8
R7A	75'	105'	10
R7D	95'	125'	12
R7X (AIRS only)	105'	145'	14
R8A	105'	145'	14
R8X	105'	175'	17
R9A	125'	175'	17
R9X	145'	205'	20
R10A	155'	235'	23

MAXIMUM HEIGHTS FOR AIRS and LTC: NON-CONTEXTUAL DISTRICTS			
Zoning District	Maximum Base Height	Maximum Overall Height	Maximum Number of Stories
R6 (narrow street)	45'	55'	5
R6 (wide street w/in Manhattan Core)	55'	65'	6
R6 (wide street outside Manhattan Core)	65'	85'	8
R7 (wide street w/in Manhattan Core)	65'	75'	7
R7 (narrow street)	65'	75'	7
R7 (wide street outside Manhattan Core)	75'	105'	10
R8	105'	145'	14

These increased heights would be available to developments providing affordable housing within Inclusionary Housing Designated Areas. Additionally, these provisions would be available to developments comprised of at least 20 percent Affordable Independent Residences for Seniors or Long-Term Care Facilities – irrespective of whether they are within or outside of Inclusionary Housing Designated Areas. These enhanced height provisions would also apply to Special Districts that are also within Inclusionary Housing Designated Areas, or permit the increase in senior housing floor area.

[Permit residential accessory uses on ground floors in rear yards for affordable developments in an IHDA mapped area, or an affordable independent residence for seniors](#)

In order to facilitate greater envelope flexibility in accommodating the additional floor area allocated to affordable housing developments within Inclusionary Housing Designated Areas and Affordable Independent Residences for Seniors, the proposal would allow accessory residential uses, such as recreation space, laundry rooms, trash rooms and mechanical space, as permitted obstructions within the rear yard on the ground floor up to a height of 15', which correlates with DCP's revised assumptions for ground floor heights. This option would be applicable to developments with 9 or more dwelling units, which correspond to the threshold at which recreation space is required in Quality Housing buildings, and would not be permitted in 'B' districts so as not to impair the character of these more-traditional neighborhoods. A similar provision is being proposed for developments providing Affordable Independent Residences for Seniors, which would give additional flexibility in accommodating accessory uses such as the facility's common space, dining areas, recreation space and other shared amenities.

If additional floor area can be absorbed on the ground floor, less pressure would be exerted on the bulk envelope. This in turn would provide more flexibility for designers to incorporate building articulation, sizable floor-to-ceiling heights and even potentially lower overall building heights.

In order to facilitate this allowance for Quality Housing required amenities, the daylighting standards for laundry and recreation space would be amended to facilitate sky-lit spaces (as an alternative to a community facility court).

[Remove narrow lot restrictions](#)

The sliver law, which is the colloquial name for special provisions that pertain to narrow buildings of less than 45 feet wide in R7-2, R7D, R7X, R8, R9, and R10 Residence Districts and their Commercial equivalents, restricts building heights generally to the width of the street they front upon, or a height of 100 feet, whichever is less. In contextual districts, this constitutes a redundant, and often more restrictive height cap. Since the provision bases permitted height on the width of the street and not the amount of permitted floor area, sliver law applicability drastically curtails the ability of narrow lot developments participating in the Inclusionary Housing Program to provide their full permitted floor area. Therefore, the proposal would eliminate sliver law applicability for these building types, and rely on the underlying Quality Housing envelopes to establish height caps, as is the case for wider buildings. This provision would apply only within Inclusionary Housing Designated Areas where the affordable housing is provided on-site as part of the IH Program.

[Create a new non-contextual building envelope for Affordable Independent Residences for Seniors and Long-Term Care Facilities \(R6-R8\) on zoning lots adjacent to certain types of infrastructure](#)

In order to maintain a non-contextual development option in areas of the city that warrant additional flexibility, such as parcels abutting rail lines and freeways, the proposal would create an alternative building envelope for non-contextual R6-R8 districts to facilitate the development of Affordable Independent Residences for Seniors and Long-Term Care Facilities. The proposed alternative would be combined with Quality Housing maximum lot coverage and maximum floor area ratios.

Quality housing lot coverage is set forth in Section 23-145, and ranges from 65-70 percent for interior lots, depending on the district, and for corner lot (or corner lot portions of a larger lot), the percentage would be revised to 100 percent pursuant to this proposal (legal windows would continue to need to front on streets or legal open spaces like yards or courts). Quality Housing floor area ratios within Inclusionary Housing Designated Areas are currently set forth in Section 23-952.

The proposed heights are set forth below.

**Table 1-25: Proposed maximum heights for non-contextual building envelope for certain types of affordable housing on zoning lots adjacent to certain types of infrastructure**

Proposed Alternate Bulk Envelops for Non-Contextual Districts Adjacent to Certain Types of Infrastructure			
Zoning District	Maximum Base Height	Maximum Overall Height	Maximum Number of Stories
R6	65'	115'	11
R7	75'	135'	13
R8	105'	215'	21

[Create new lower-density bulk envelope for Affordable Independent Residences for Seniors and Long-Term Care Facilities \(R3-R5\)](#)

The proposal would create a more workable as-of-right bulk envelope for Affordable Independent Residences for Seniors and Long-Term Care Facilities in R3-2, R4 and R5 Residence Districts (where districts permit multiple dwellings) eliminating the need to obtain a City Planning Commission (CPC) authorization to accommodate the additional floor area allocated to these facilities. Specifically, the envelope would permit a height of 45' within 25' of the street line, and beyond 25', allow a maximum building height of 65'. Yard requirements of the underlying district would continue to apply.

This revised envelope would accommodate the majority of the height modifications sought by applicants through CPC authorization, but nonetheless, the existing authorization would remain available for unforeseen site circumstances.

[Provide greater clarity and design opportunities in street wall regulations](#)

For all R6-R10 contextual Residence Districts, and their commercial equivalents in mixed buildings, the proposal would introduce new provisions to clearly stipulate permitted façade articulation.

Generally the proposal would permit three incrementally larger types of articulation. First, the proposal would clarify where the street wall must be located (pursuant to line-up provisions). This initial street wall location would allow for a 12" deviation to allow for minor articulation, such as structural expression. Secondly, the proposal would stipulate that wherever the street wall is located, in all districts, up to 50 percent of the street wall may project (within the limits of the property) or be recessed up to 3'. Finally, in A, D and X districts, up to 30 percent of the street wall would be permitted to be recessed to the minimum setback distance (unless located within an outer court). This 30 percent allowance for a deeper recess would not be cumulative with the 50 percent allowance.

In order to facilitate elevated ground floor units in Residence Districts, the proposal would stipulate that deeper recesses can be utilized to accommodate exterior ramps and provide handicap accessibility to the building lobby as described further below.

The Special Districts that mimic underlying contextual street wall provisions would be revised pursuant to underlying modifications, as would special street wall provisions for M1-6D districts and waterfront areas, set forth in Section 43-624 and Section 62-341, respectively.

### Match street wall line-up provision requirements to intent

The proposal would make several modifications to the contextual district street wall line-up provisions in order to simplify and clarify the existing regulations.

First, in R6A, R7A, R7D, R7X, and R9D districts, and for Quality Housing buildings on wide streets in non-contextual R6 and R7 districts without a letter suffix, the proposal would reduce the dimension of eligible contextual buildings to line-up with, from those within 150' on the same block, to adjacent buildings. Second, in these districts, the proposal would reduce the eligible threshold of adjacent buildings to line-up with from 15' from the street line to 10' from the street line. This would eliminate the potential of unnecessarily being forced to line-up with a non-contextual building. Finally, in these same districts, the proposal would add specificity to line-up provisions, such as how to determine the permitted street wall location when an adjoining building has multiple façade surfaces (such as a brownstone with bay windows). In R6B, R7B and R8B districts, in the event that both adjacent neighbors are at the street wall, the development is able to be set back up to 3 feet. In all districts R6-R10, a new provision in zoning would clarify articulation that is permitted today.

### Provide more-useable court regulations

In order to facilitate more frequent utilization of court provisions, the proposal would modernize many of the proportional and dimensional standards to make their implementation more feasible with contemporary building depths and construction practices.

For outer courts in R6-R10 districts, the proposal would modify the minimum width to depth ratio to 1:1 for narrow outer courts and outer court recesses (which are currently 1 1/3:1 and 2:1 respectively), and for outer courts wider than 30', the proposal would remove the requirement that the outer court width should equal depth. The latter revision would facilitate wide outer courts of any depth. Similarly, for inner courts in R6-R10 districts, the proposal would reduce inner court recess width to depth ratio to 1:1.

In order to greater facilitate design options, the proposal would establish a new 'small court' typology for R6-R10 districts with dimensions less than 30' so long as the court was entirely below a height of 75' and further provided that no legal windows front upon these spaces and a minimum dimension of 10' is maintained. This would create another viable mechanism for designers to incorporate windows into kitchen and bathroom layouts.

### Clarify and simplify retail and other ground floor regulations

In order to simplify and standardize the array of disparate ground floor retail, transparency and parking wrap regulations in many Special Purpose Districts, the proposal is seeking to establish a single set of provisions.

Where retail depth requirements apply, the proposal would standardize the required depth to 30'. Additionally, the proposal would stipulate that this depth would apply to only 75 percent of the required ground floor level frontage, with 20' retail depth required for the remaining 25 percent of the required frontage. In all instances, structural columns and vertical circulation cores accessing upper story spaces would be permitted to obstruct the minimum retail depth.

Where transparency requirements apply, the proposal would utilize the standards of the Special Enhanced Commercial District and stipulate that transparency is required for 50 percent of the ground floor level street frontage, as measured between a height of 2' and 12' above the level of the adjoining sidewalk.

Where parking wrap requirements apply, the proposal would utilize the standards established in the Manhattan Core Parking text amendment. In Commercial Districts the ground floor would be required to be wrapped by floor area to a depth of 30', except for permitted entrances and exits to the facility. Parking above the ground floor could be screened by floor area, a false façade that emulates upper stories, or decorative screening. In Residence Districts with parking wrap requirements, parking could be screened by floor area, a planted buffer, false façade (a façade pattern that emulates the façade pattern of the portion of the building above the garage) or decorative screening at any level.

The Special Districts containing transparency, retail depth and parking wrap provisions that are proposed to be consolidated into a single set of provisions, are set forth in Appendix C. In addition, M1-6D districts, the Commercial

equivalents of R7D and R9D districts, and buildings that provide fresh foods stores pursuant to FRESH, all contain supplemental retail provisions that would be revised accordingly.

#### [Remove or modify unnecessary window regulations](#)

The proposal would remove the requirement for double glazed windows from the Quality Housing regulations, as these regulations have been superseded by the Building Code. In Special Mixed Use Districts the proposal would establish a mechanism for property owners to modify the existing window wall attenuation requirement of 35 dB(A) through the Mayor's Office of Environmental Remediation, similar to the existing process for (E) designations found in Section 11-15.

A few other Special Districts also have double glazed window or window wall attenuation requirements. These are listed in Appendix C and would be revised in accordance with the proposal for Quality Housing and Mixed-Use Districts, accordingly.

#### [Clarify use location provisions](#)

In Special Purpose Districts that incorrectly modified the underlying location of use provisions to allow "non-residential" uses on the same floor as or above residential uses so long as these uses are self-contained, the proposal would amend the phrase "non-residential" to "commercial", or additionally manufacturing in Special Mixed Use Districts, so that community facility uses can co-locate within the same corridor as residential uses. This is consistent with the underlying zoning regulations.

#### [Update unit size requirements](#)

In order to facilitate greater apartment mixes in building design, and allow viable small units, the proposal would strike the minimum unit size requirement from Quality Housing requirements. Density requirements would still apply, as would minimum room size requirements in the NYC Building Code and Housing Maintenance Code and the state Multiple Dwelling Law. These establish an effective minimum unit size of about 275 square feet for a studio apartment.

#### [Modernize density factor](#)

Additionally, in R8- R10 Residence Districts the proposal is seeking to revise the density factors to equal that of R6 and R7 districts (680 square feet), so that zoning districts that permit more floor area have comparable increases in maximum unit density. Finally, the proposal would eliminate rooming unit factors, which have no effective applicability. New rooming units, as defined by the Zoning Resolution as residences, are not permitted by other applicable laws. Existing rooming units would continue to be permitted to remain.

Consistent with best practices in senior housing design, the Proposed Action also would remove the density factors listed in Section 23-221 for non-profit residences for the elderly.

Other obsolete density provisions, including those with references to rooming units, would be reconciled. The specific Special Districts that would be affected are listed in Appendix C.

#### [Encourage elevated residential ground floors](#)

In order to facilitate elevated ground floor residences, the proposal would create two provisions to better accommodate accessible ramps in contextual zoning envelopes. First, the proposal would incorporate into the Quality Housing regulations of Article II, Chapter 8 a floor area exemption of 100 square feet for each foot the ground floor is raised above curb level to accommodate an interior ramp in the residential lobby. Second, the text amendment's proposed revision to permitted recesses (allowing 30 percent of the street wall to recess to the permitted setback distance in most districts) would typically be large enough to now accommodate a ramp on the exterior of the building.

#### [Eliminate Quality Housing study areas](#)

The proposal would remove the Quality Housing Study Areas. Optional Quality Housing provisions would not be restricted in the geographies designated in Section 23-011 (c), where the existing restrictions have little, if any effect at present.

#### [Provide improved yard and coverage regulations for shallow lots](#)

In order to facilitate more-efficient construction on shallow zoning lots, the proposal would extend the applicability of rear yard reduction provisions to lots, or portions thereof, shallower than 95 feet in R6-R10 Residence Districts and their Commercial equivalents, and would allow a reduction of the rear yard requirement at the rate of 6 inches for every foot less than 95 feet. For example, an 85 foot deep lot would be able to reduce the rear yard requirement by 5 feet, allowing a maximum 60 foot deep building, rather than the current 55 feet, and a much more-efficient floor plate. Similar to the current provisions, no rear yard would be able to be reduced to less than 10 feet, and required minimum distances between legal windows and lot lines would still apply. The provision would be applicable to any lot, regardless of its date of creation. However, lots would be restricted from splitting formerly compliant lots in order to meet the 95 feet dimension.

With these changes to rear yard provisions, modifications to several other provisions are necessitated. First, the same reduction in rear yard requirements would need to be afforded to shallow through lots. This can be done by effectively mirroring the provision over the centerline of the block, and offering a rear yard equivalent reduction of 12 inches for every foot the through lot is less than 190 feet. For example, a 170 foot deep through lot would be able to reduce the required rear yard equivalent by 20 feet (to 40 feet). Additionally, with the rear yard being reduced, the interior lot coverage would need to be increased in a similar incremental scale for these shallow lots in order to effectively maximize the buildable depth. No rear yard equivalent would be permitted to be reduced to less than 40 feet, as the minimum distance between buildings on the same zoning lot regulations would still apply.

These modifications to rear yard regulations would also be made to the Special Districts listed in Appendix C, as well as M1-6D districts, to establish consistency with the proposed underlying provisions.

#### [Rationalize street wall requirements for acutely-angled sites](#)

In R7D, R8A, R8X, R9A, R9D, R9X, R10A or R10X equivalent Commercial Districts, which have 100 percent street wall requirements pursuant to Section 35-24, the proposal would allow a reduction to 70 percent of each street frontage for corner lots with an interior angle of less than 75 degrees. This would allow the corner to be chamfered and the apartments to be configured in a more practical manner. Special provisions created for C4-4L would no longer be necessary and would be eliminated.

#### [Provide additional flexibility for irregular topography](#)

To provide an extra measure of flexibility for sites with irregular terrain, for zoning lots in R6-R10 Residence Districts and their Commercial equivalents, the proposal would modify the threshold at which a sloping base plane can be established to sites with a 5 percent grade change between the front and rear wall.

#### [Update outdated distance between buildings regulations](#)

Where rear yard and rear yard equivalent provisions are modified for shallow lots, the minimum distance between legal windows and lot lines and minimum distance between buildings requirements would need to be reduced to correlate with the applicable reduction in rear yards or rear yard equivalents. However, the minimum distance between legal windows and lot lines would not be permitted to be reduced to less than 20 feet, and the minimum distance between buildings on the same zoning lot would not be permitted to be reduced to less than 40 feet.

Additionally, the provisions that stipulate minimum distances between buildings on the same zoning lot would be clarified to delineate those that apply to single and two family homes and those that apply to multiple dwelling buildings. The provisions for the latter would be revised in R6-R10 Residence Districts and Commercial equivalents to mimic the provisions set forth in the state Multiple Dwelling Law, which stipulates portions of buildings below a height of 125' shall be no closer to one another than 40' and portions above shall be no closer than 80'.

The Special Districts that would be affected by the proposed changes to distance between building regulations can be found in Appendix C.

#### [Create a new discretionary action for unforeseen site circumstances](#)

In order to create a means to modify building envelope regulations for unforeseen site irregularities, the proposal would establish a new discretionary action to help to ensure that irregular sites have a mechanism to accommodate

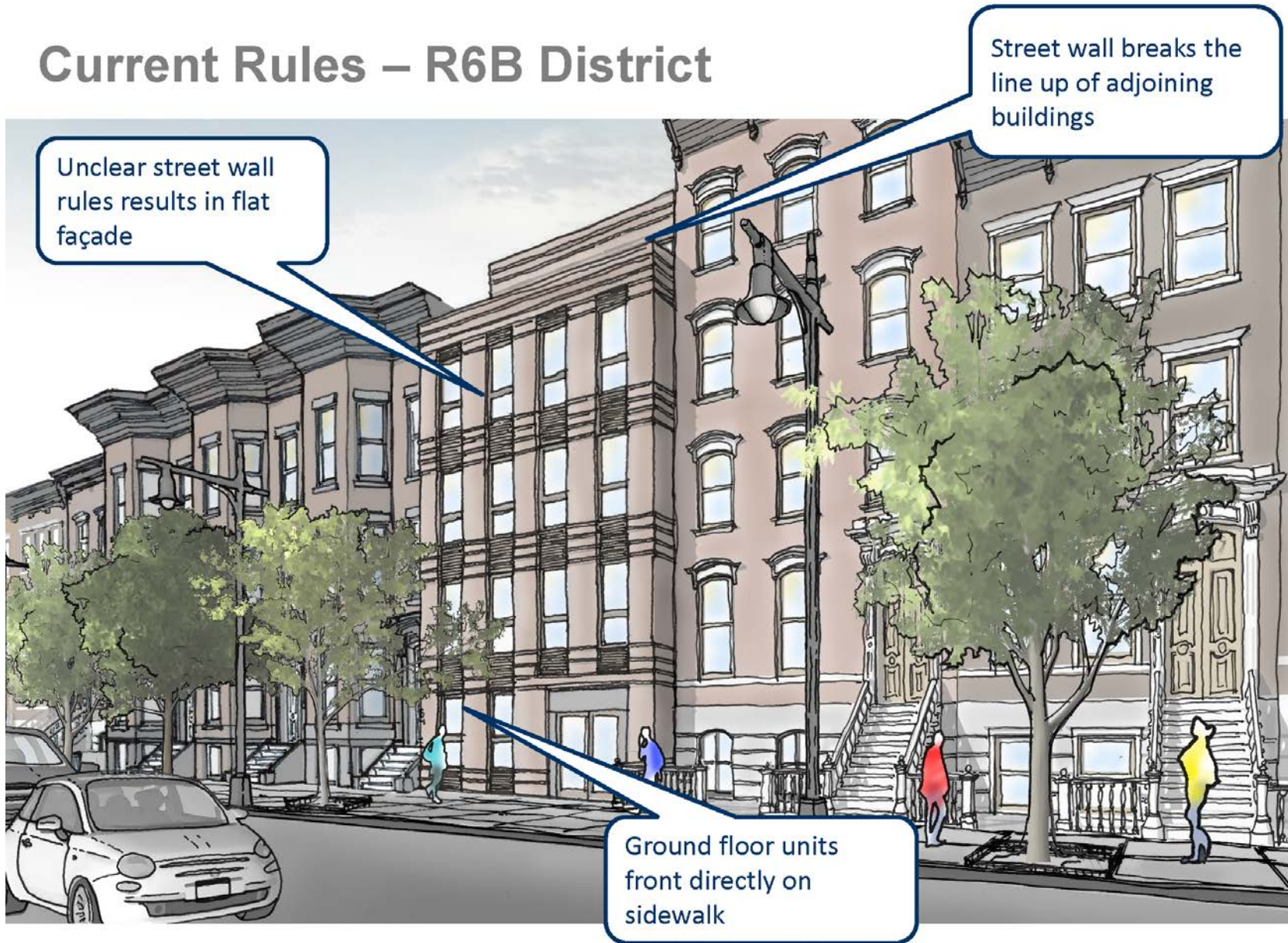
the permitted floor area, especially if the particular irregularity affects adjoining sites (such as an irregular street grid) and might make the site ineligible for a variance (as uniqueness has to be demonstrated).

### **Combined Effects**

The following graphics demonstrate the combined effects of the Proposed Action on building design.



# Current Rules – R6B District



Unclear street wall rules results in flat façade

Street wall breaks the line up of adjoining buildings

Ground floor units front directly on sidewalk



# With Proposal – R6B district

Street wall rules modified to allow traditional elements

Street wall aligned with adjoining buildings



Ground floor units set back and elevated above sidewalk



# Current Rules – R7A district

Restrictive envelope encourages flat facade

Street wall breaks the line up of adjoining buildings



Ground floor units front directly on sidewalk at eye level



# With Proposal – R7A district

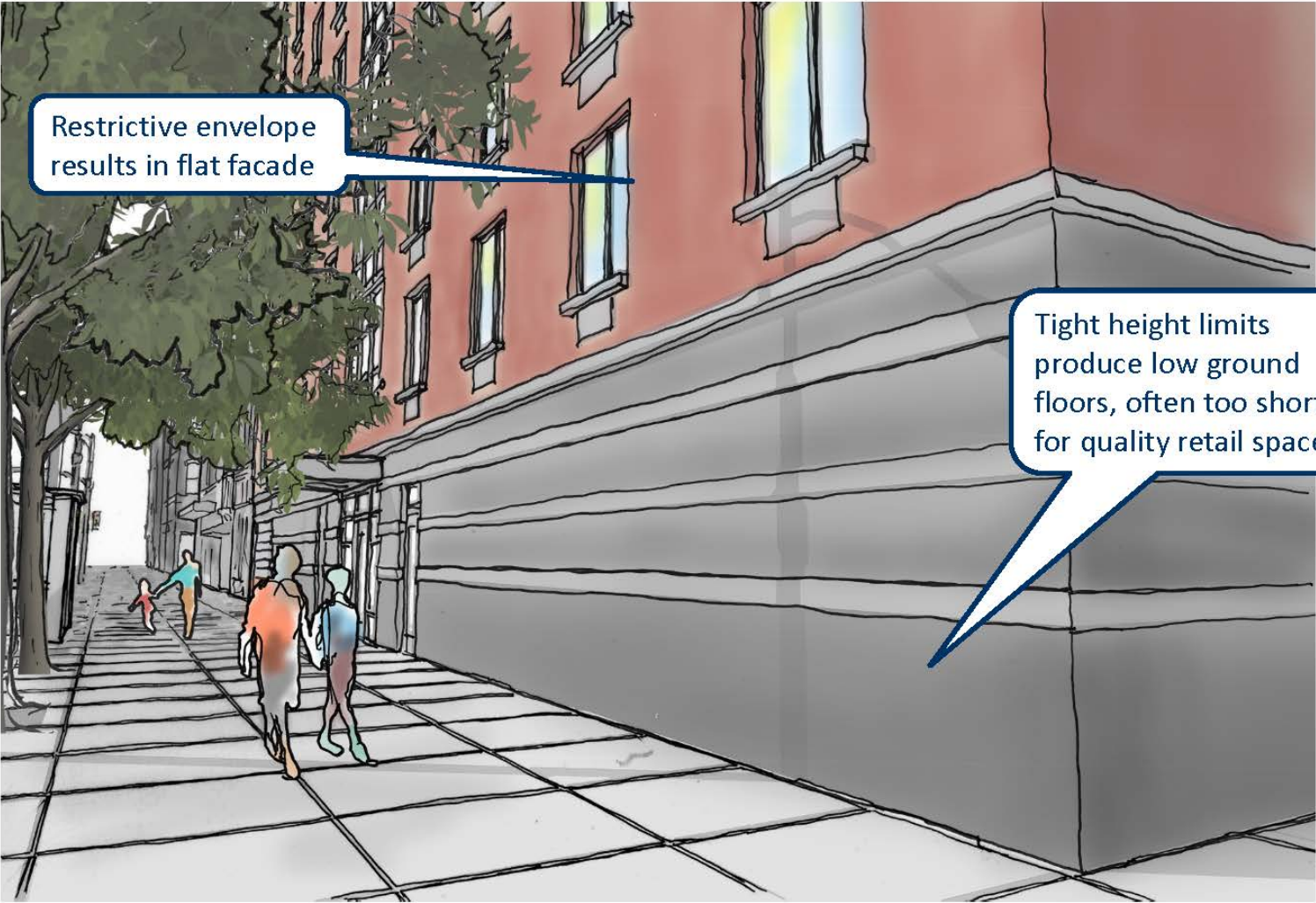
Flexible envelope allows articulation to create visual interest

Street wall aligned with adjoining buildings



Ground floor units elevated above sidewalk and set back so planting can be provided.

# Current Rules – R8A district





# With Proposal – R8A district



# Current Rules - R8A District





# With Proposal – R8A district





## Reduce parking requirements where appropriate for affordable housing

### Establish the Transit Zone

In order to facilitate zoning regulations applicable for a specific geography across a large portion of the city, a new defined term, the Transit Zone would be defined in the Zoning Resolution.

The Transit Zone would encompass all blocks within multi-family zoning districts (R3-2, R4, R5, R5B, R5D, R6-R10) that are roughly within a half mile walking distance of a subway station. It would also encompass portions of the New York City that may be outside this half-mile walking district, but where the Inner Ring Parking Study and 2010 PUMA data identified car ownership and utilization patterns that closely resemble the patterns observed in transit-rich areas. These areas include neighborhoods such as Halletts Point in Queens, Red Hook in Brooklyn, and Morrisania in the Bronx. The Transit Zone does not include some neighborhoods that may have zoning and proximity to transit as defined above, but where car ownership and utilization patterns are atypically high. Examples of such neighborhoods include Riverdale in the Bronx, Bay Ridge and other portions of South Brooklyn and Howard Beach in Queens.

The Inner Ring study also demonstrated that car ownership rates in multifamily zoning districts (R3-2, R4, R5, R5B, R5D, and R6-R10 districts) are lower than car ownership rates in single family zoning districts. Multi-family affordable and senior housing is almost uniformly built in multi-family zoning districts. Upon confirmation of car ownership variation by proximity to transit demonstrated in Figure 21, the Transit Zone geography was further refined to include only those blocks zoned for multifamily housing and, in some locations, only high-density (R6 and higher) multi-family housing.

**Table 1-26: Cars per 100 Households (>3 dwelling units, all tenure)**

CAR OWNERSHIP RATES				
	All housing built since 2000	100 percent affordable built since 1990	HUD-202 funded senior housing built since 1990	Other Long-Term Care Facilities built since 1990
Within Transit Zone	25	20	5	1
Outside Transit Zone*	59	62**	11**	1**
* excludes MN Core, Long Island City, and Downtown Brooklyn where there are no parking requirements				
** there were few new developments of these housing types in this geography				

### Modify Section 25-25 (A-E) to remove obsolete definitions and requirements

In order to clarify and simplify parking requirements for affordable and senior housing, Section 25-25 would be modified to include only two categories: one for qualifying affordable housing units, and one for qualifying affordable independent housing for seniors.

Columns A, B, C and E, which apply to a variety of affordable housing typologies, would be condensed to a single set of off-street parking provisions for qualifying affordable housing units.

Current Column D would be updated to better reflect the type of affordable housing built for seniors, and would be updated with off-street parking provisions that are aligned with the demand for off-street parking.

Qualifying affordable housing would be defined as “income-restricted housing units”, a new defined term in Section 12-10. This definition encompasses the definition of “affordable housing unit” used to qualify for a parking waiver in the Special Downtown Brooklyn District; this special provision would no longer be needed and would be eliminated.

### ***Off-street parking within the Transit Zone***

#### [Eliminate parking requirements for qualifying affordable housing within the Transit Zone](#)

The proposal would eliminate parking requirements for qualifying affordable housing units within the Transit Zone. Car ownership rates among residents of low-income housing are lower than rates among residents of market-rate housing citywide, and especially near public transportation options. The provision of required parking is costly, and may be borne by the development using funds that could have been used towards additional housing units or amenities. Without this requirement, more housing units could be built with the same amount of public subsidy.

Developments that include qualifying affordable housing units, and other units, would have the applicable requirements applied separately to each category of housing unit. Parking waivers for a small number of required spaces [Section 25-26] would be applied to the total of all required parking.

#### [Eliminate parking requirements for Affordable Independent Residences for Seniors within the Transit Zone](#)

The proposal would eliminate parking requirements for Affordable Independent Residences for Seniors within the Transit Zone. Car ownership rates among residents of Affordable Independent Residences for Seniors are extremely low, making it nearly impossible to justify the existing parking requirements and the lack of parking waivers available for these developments.

In conjunction with this modification, regulations in the Special Coney Island District would be modified to establish parking provisions for senior housing that align with the revisions to the underlying zoning regulations.

#### [Allow for the elimination of existing and previously required parking for non-profit residences for the elderly or dwelling units for the elderly within the Transit Zone](#)

Off-street parking required for many non-profit residences for the elderly and dwelling units for the elderly, especially those near transit, are underutilized as residents don't generate close to the number of cars for which there are parking spaces required. The proposal would allow such parking to be eliminated as-of-right.

#### [Create a discretionary action to reduce required parking for non-affordable housing in a development that includes affordable housing within the Transit Zone](#)

Under both existing and proposed regulations, any non-affordable housing units in a development generate parking at a higher ratio than do any affordable units within the same development. Car ownership rates are higher among market-rate households than low-income households, but the cost to provide parking is the same. In many developments, the profit generated from market-rate units cross subsidizes the development of affordable units within the same development, making the project financially feasible. Where significant parking is required, the developer is forced to cross-subsidize the parking, in addition to the affordable units, making it more difficult to support the project. This proposal would seek to ease the financial burden in cases where the parking for market-rate units can be reduced or eliminated without undue community impacts. Under the proposal, the reduction or elimination of parking requirements for market-rate units in a development that includes affordable housing would be allowed by a discretionary action. This would create a mechanism to scrutinize the appropriateness of future proposals on a case-by-case basis.

#### [Create a discretionary action to remove existing affordable housing parking within the Transit Zone](#)

Under existing regulations, parking is required and determined by minimums, except where there are opportunities to waive out of required parking. As a result, many affordable housing developments generated large amounts of parking, built as surface parking lots or structured facilities. Under the proposal, the removal of previously required parking within the Transit Zone would be allowed by a discretionary action. This would create a mechanism to scrutinize the appropriateness of future proposals on a case-by-case basis.

## ***Off-street parking outside the Transit Zone***

### [Modify parking requirement for qualifying affordable housing far from transit](#)

The requirements for multifamily zoning districts would remain generally consistent with what is currently required under Column C of Section 25-25. There would not be reduced parking requirements for affordable housing in single- and two-family zoning districts (R1, R2, R3-1, R3A, R3X, R4-1, R4A, R4B, R5A). Affordable housing is not commonly developed in these districts due to the limitations on housing type.

### [Modify parking requirements for Affordable Independent Residences for Seniors to 10 percent in multifamily zoning districts](#)

The proposal would reduce parking requirements for Affordable Independent Residences for Seniors to 10 percent, or 1 space per 10 units, in multifamily zoning districts (R3-2, R4, R5, R5B and R5D-R10 districts). Car ownership rates among residents of Affordable Independent Residences for Seniors are extremely low, making it nearly impossible to justify the existing parking requirements and the lack of parking waivers available for these developments. The 10 percent requirement for lower density districts reflects the small percentage of residents likely to have cars in these areas. The parking would be easily accommodated in open areas on the zoning lot.

### [Modify parking requirements for Affordable Independent Residences for Seniors in single- and two-family zoning districts](#)

Parking requirements for Affordable Independent Residences for Seniors in single- and two-family zoning districts (R1, R2, R3-1, R3A, R3X, R4-1, R4A, R4B, R5A) would be modified to comply with the underlying residential district parking requirements for residential development.

Affordable Independent Residences for Seniors is a housing type not commonly developed in these districts.

### [Create a discretionary action to remove existing parking for Affordable Independent Residences for Seniors](#)

Under existing regulations, parking is required and determined by minimums, except where there are opportunities to waive out of required parking. As a result, many senior housing developments generated large amounts of parking, mostly built as surface parking lots. Low car ownership rates and parking utilization on these lots indicates that some of this parking area may be more appropriate for other uses. Under the proposal, the reduction of previously required parking at existing developments outside of the Transit Zone, to not less than the proposed underlying requirement of 10 percent of dwelling units, would be allowed by a discretionary action. This would create a mechanism to scrutinize the appropriateness of future proposals on a case-by-case basis.

### [Correct inconsistencies in reduced parking for affordable housing](#)

Under existing regulations, where affordable housing is built in the Special St. George District in Staten Island, the parking requirements for these units is aligned with the parking requirements for market-rate units. The intent of the parking requirements for this Special District was to ensure that every unit of market-rate development was built with a parking space. The zoning text unintentionally included income-restricted units in this requirement and, as such, the parking requirements for these income-restricted units is unnecessarily high. Under the proposal, income-restricted housing units developed within the Special St. George District in Staten Island would have a parking requirement aligned with the relevant zoning district requirements of Section 25-25 of the Zoning Resolution. This special district is outside the proposed Transit Zone.

Under existing regulations, where affordable housing is built in Queens Community Board 14 in zoning districts R6 and higher, the parking requirements are aligned with requirements for an R5 zoning district. The intent of the parking requirements in this area was to ensure that higher-density market-rate developments are built with a parking requirement of a medium-density district. The zoning text unintentionally included income-restricted units in this requirement and, as such, the parking requirements for these income-restricted units is unnecessarily high. Under the proposal, income-restricted housing units developed in Queens Community Board 14 would have a parking requirement aligned with the mapped zoning district requirements of Section 25-25 of the Zoning Resolution. This Community District is outside the Transit Zone.

## **J. DISCRETIONARY ACTIONS**

### **BSA Special Permit for Quality Housing to account for unforeseen site circumstances**

The Proposed Action includes a provision for a discretionary action that would permit developments on lots with unforeseen configuration issues the opportunity for relief from building envelope controls that impede the construction of their permitted floor area. This would allow the development of the fully-permitted floor area on such sites in a more-efficient manner. Circumstances may include topographical challenges, lot configuration challenges, or other characteristics that may occur across a neighborhood (and thus do not represent a unique hardship) but for which there is limited relief through the Zoning Resolution.

For sites that can demonstrate that physical conditions of the lot create practical difficulties in complying with Quality Housing bulk regulations and would adversely affect the building's layout or site plan, the special permit would permit a modification of a limited series of non-height regulations, including: lot coverage, yards, courts, street wall location, minimum distance between windows and walls or lot lines, and sloping base plane regulations.

Affordable housing developments, where at least 50 percent of its floor area is allocated for income-restricted housing units or Long-Term Care facility, would have a means of modifying the maximum base height, overall building height, and maximum number of stories permitted where the development site presents configuration issues. Where developments can demonstrate that physical conditions of the lot create practical difficulties in complying with Quality Housing bulk regulations and would adversely affect the building's layout or site plan, the special permit would allow modification of all bulk regulations except floor area, including: lot coverage, yards, courts, street wall location, minimum distance between windows and walls or lot lines, and sloping base plane regulations, as well as base height, setback distance, and maximum height. The Special Permit would restrict flexibility by limiting the maximum number of stories to those set in Section 23-664 (Enhanced height and setback regulations for certain buildings) for the applicable zoning district.

Because it is not possible to predict whether a BSA Special Permit would be pursued on any specific site in the future, the RWCDs does not include specific development sites that would utilize the provision. Instead, a conceptual analysis is provided to generically assess the potential environmental impacts that could result from the use of the proposed discretionary action.

### **BSA Special Permit for the reduction of existing parking spaces for income-restricted housing units within the Transit Zone**

The Proposed Action includes a provision for a discretionary action that would allow for the reduction or elimination of previously required parking for low-income units, within the Transit Zone. Because it is not possible to predict whether an action would be pursued on any specific site in the future, the RWCDs does not include specific development sites that would achieve the reduction or elimination of existing parking. Instead, a conceptual analysis is provided to generically assess the potential environmental impacts that could result from the reduction of, and development on, previously required parking for affordable and senior housing pursuant to the discretionary action.

### **BSA Special Permit to reduce previously required parking for Affordable Independent Residences for Seniors, outside of the Transit Zone**

The Proposed Action includes a provision for a discretionary action that would allow for the reduction of previously required parking for "non-profit residences for the elderly" outside of the Transit Zone. The proposed underlying parking requirement equal to 10 percent of dwelling units would continue to apply. Because it is not possible to predict whether such action would be pursued on any specific site in the future, the RWCDs does not include specific development sites that would achieve the reduction or elimination of existing parking. Instead, a conceptual analysis is provided to generically assess the potential environmental impacts that could result from the reduction of, and development on, previously required parking for senior housing pursuant to the Special Permits.

## **BSA Special Permit for the reduction of parking spaces to facilitate affordable housing, within the Transit Zone**

The Proposed Action includes a provision for a BSA Special Permit that would allow for the reduction or elimination of required parking for market-rate units in a new development that includes low-income units within the Transit Zone. Because it is not possible to predict whether a BSA Special Permit would be pursued on any specific site in the future, the RWCDs does not include specific development sites that would achieve the reduction or elimination of existing parking. Instead, a conceptual analysis is provided to generically assess the potential environmental impacts that could result from the reduction of required parking for market-rate units as part of a development that includes low-income units.

## **CPC Special Permit for the reduction or waiver of parking requirements for accessory group parking facilities within a Large-Scale Residential Development or a Large-Scale General Development**

The Proposed Action would create a City Planning Commission Special Permit under Section 74-53 that would allow group parking facilities in large scale residential, community facility, or general developments, in conjunction with a bulk modification, to reduce or waive the number of required accessory residential parking spaces, including any spaces previously required for an existing building.

In order to meet the findings, the development would need to be within the Transit Zone, and demonstrate that the reduction of parking spaces would facilitate the development of affordable housing units, that auto ownership patterns for the development's residents are minimal, that the reduction of parking spaces would not have undue adverse impacts, and that the reduction would result in a better site plan.

Because it is not possible to predict whether a CPC Special Permit would be pursued on any specific site in the future, the RWCDs does not include specific Large Scale developments that would achieve the reduction of required parking. Instead, a conceptual analysis is provided to generically assess the potential environmental impacts that could result from increased bulk.

## **CPC Special Permit to allow Long-Term Care Facilities in R1 and R2 Districts**

The Proposed Action would create a CPC Special Permit under Section 74-901 to permit Long-Term Care Facilities, including nursing homes in R1 and R2 Districts. Under the existing zoning, nursing homes in R1 and R2 districts are subject to discretionary review only when developing in a community district where there is a relative concentration of nursing home beds.

The Proposed action would not change the allowable floor area for Long-Term Care Facilities in R1 and R2 districts, as per Section 24-111, but would create a single special permit to allow Long-Term Care Facilities in R1 and R2 districts, and another special permit to allow such facilities to apply for the higher Section 24-11 floor area.

In order to meet the findings, the development would need to demonstrate that such use is compatible with the character or the future use or development of the surrounding area, and that the streets providing access to such use are adequate to handle the traffic generated by the use.

Because it is not possible to predict whether a CPC Special Permit would be pursued on any specific site in the future, the RWCDs does not include specific development sites that might receive the Special Permit for Long-Term Care Facilities in the affected districts. Instead, a conceptual analysis is provided to generically assess the potential environmental impacts that could result from such development.

## **CPC Special Permit to allow additional bulk for Long-Term Care Facilities and certain community facilities in R1 and R2 Districts**

The Proposed Action would create a CPC Special Permit under Section 74-902 to permit certain community facilities in R1 and R2 Districts to modify their permitted bulk to the allowable community facility FAR and lot coverage as defined under Section 24-11.

In order to meet the findings, the development would need to demonstrate that the distribution of bulk on the zoning lot would not unduly obstruct light and air, that architectural and landscaping treatment and the height of the proposed buildings blends harmoniously with the surrounding area, that the proposed facility would not require any significant additions to the supporting services of the neighborhood, and that the street providing access to the development are adequate to handle the traffic.

Because this new CPC Special Permit is effectively a revision of an existing Special Permit with no substantive change, a conceptual analysis of this new discretionary action is not warranted.

## **CPC Special Permit to allow additional bulk for certain community facility uses in R3-R9 Districts and certain Commercial Districts**

The proposal modifies the existing Special Permit 74-902 (renumbered 74-903) for nursing home and health related facilities in all residence and most commercial districts where such facilities are not permitted as of right under Section 22-42. Under the Proposed Action, separate use and bulk permits are proposed for Long-Term Care Facilities in R1 and R2 districts, as discussed separately in this document, and a Special Permit to allow additional bulk for Long-Term Care Facilities or philanthropic or non-profit institutions with sleeping accommodations is proposed for R3-R9 districts.

In order to meet the findings of this Special Permit, the applicant must demonstrate that the distribution of bulk on the zoning lot would not unduly obstruct the access of light and air to adjoining properties or streets, and would result in satisfactory site planning and urban design relationships, and that the streets providing access to such uses would adequately handle the traffic generated by the project.

Because this new CPC Special Permit is effectively a revision of an existing Special Permit with no substantive change, a conceptual analysis of this new discretionary action is not warranted.

## **CPC Authorization to allow ~~Continuing Care Retirement Communities~~ Long-Term Care Facilities on lots greater than 10 acres in R1 and R2 Districts**

The proposal includes revisions to Section 22-42 that would replace the existing certification with a City Planning Authorization for ~~continuing care retirement communities (a subset of Long-Term Care Facilities)~~ in R1 and R2 districts on a zoning lot that is greater than 10 acres. The ~~continuing care retirement community~~ Long-Term Care Facility must also demonstrate that the design is consistent with neighborhood character and that an adequate buffer exists from nearby residences.

In order to meet the findings of the Authorization, the applicant must demonstrate that the design is consistent with neighborhood character and that an adequate buffer exists from nearby residences.

Because it is not possible to predict whether an Authorization would be pursued on any specific site in the future, the RWCDs does not include specific development sites that would seek to cite a ~~continuing care retirement community~~ Long-Term Care Facility in the affected districts. Instead, a conceptual analysis is provided to generically assess the potential environmental impacts that could result from such development.