

Brooklyn Community Board 14
Summary of Conditions
Zoning for Quality and Affordability (ZQA) N 160049 ZRY

Background

Zoning for Quality and Affordability (ZQA) and Mandatory Inclusionary Housing (MIH) are complementary city-wide zoning text changes that share the stated purpose of incentivizing affordable housing. Both enable larger buildings to be constructed: ZQA by raising height limits for affordable or senior housing or a long-term care facility, and MIH by allowing a building of more than 10 units to grow by (typically) 50% or more in bulk if it uses 25%-30% of its floor area for affordable housing and requires a rezoning or special permit.

The Department of City Planning (DCP) emphasizes that MIH and ZQA are designed to work together – so much so that DCP’s descriptive literature portrays them as two interlocking pieces of a four-piece jigsaw puzzle (City Housing Subsidies and 421-a Reform are the remaining pieces depicted).

Characterizing MIH and ZQA as distinct but interdependent initiatives, DCP has chosen to certify them simultaneously for concurrent but separate public review. This decision has several important implications. It:

- Conveys so much information at once – hundreds of pages - that all but professional planners and land use experts are challenged to understand the implications of the proposed changes;
- Allows DCP to present MIH as a generic action under CEQR, the City Environmental Quality Review, thereby obviating the need to predict adverse environmental impacts of specific projects required under and incentivized by MIH;
- May generate objections that the separate CEQR consideration of MIH and ZQA constitutes segmentation, as discussed in Section 130 of the 2014 CEQR Technical Manual;
- Encourages community boards and others to rely heavily on DCP-prepared presentations and summary materials, which may not emphasize important information;
- Makes it impractical for reviewers to evaluate the two proposals independently.

Accordingly, Brooklyn Community Board 14 (CB14) will ask a uniform group of questions about MIH and ZQA, and will offer answers specific to each proposal:

1. Will they work to increase affordable housing?
2. Will they change the character of the community district’s neighborhoods?
3. Will they create challenges for service delivery and necessary infrastructure?
4. Will they affect the public’s ability to participate in the City’s land use process?

Zoning for Quality and Affordability

The proposed increases in building heights enabled by ZQA violate the understanding that convinced CB14 to endorse the 2005 Midwood Rezoning initiative, which included mapping of new low- and moderate-density contextual districts where modest increases in bulk were exchanged for imposition of contextual limits on building heights. In contrast, the community board's understanding was that, in non-contextual zones, existing height and bulk limits would remain in place, pending any subsequent rezoning action.

Similar expectations influenced the community board to approve the 2009 Flatbush Rezoning. Now ZQA is proposing that new multiple dwellings located in contextual districts, and medium-density Quality housing buildings in non-contextual districts, could be 5' higher than the heights on which on the 2005 and 2009 rezoning actions were based.

CB14 believes that this height increase would be a step towards eliminating the protections achieved in 2005 and 2009.

The increased height limit would have to be used in conjunction with elevation of the 2nd story of the building to 13' above grade. (This would yield either a first floor elevated up to 5' above grade or with a higher ceiling than is required under current zoning.)

The first option would improve the privacy of first floor residents by elevating windows above sidewalk sightlines. The second option would facilitate the use of first floor spaces for medical and dental offices, schools, houses of worship, etc., in residential districts, and retail spaces where commercial use is permitted. As an economic stimulus, the developer would receive a zoning floor area exemption of 100 square feet for each foot a lobby ramps up to reach an elevated first floor.

Community Board 14 feels this allowance is excessive.

Community Board 14 does not foresee significant adverse environmental impacts ensuing from the 5' building height increase, or from the proposed rules regarding facades, front yards, and setbacks. But these changes should not be viewed in isolation. The 5' height limit increase would be added to any other height increases tied to affordability (see below).

Affordability: Height Limits

ZQA would encourage the construction of affordable housing in both Voluntary and Mandatory Inclusionary Housing districts and affordable senior housing outside of Inclusionary zones by raising height limits for such housing by another 10' (one story) in an R6A zone (e.g., portions of Midwood and Flatbush) or another 20' (two stories) in an R7A zone (e.g., portions of Flatbush and Parkville, and along Ocean Avenue in Flatbush

and Midwood). Nursing homes and assisted living residences would benefit by being increased to the permitted floor area and same height limits as affordable senior housing.

The stated rationale for the propose height increases is to facilitate construction using existing allowable bulk limits. In addition, dwelling unit size rules would be relaxed, permitting smaller apartments.

Rear Yards

ZQA would relax rear-yard restrictions in Inclusionary Housing zones: Specifically, it would:

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 [than] “B” districts. This matches the flexibility already afforded to commercial or community facility uses or accessory off-street parking today.

This allowance would permit an increase in marketable floor area. It also would reduce the amount of ground-floor open space available for planting.

These changes would enable buildings, and eventually, neighborhoods, to accommodate more people. The Department of City Planning says it can’t predict how much population growth would ensue from new construction under ZQA in Brooklyn Community District 14; Brooklyn Borough Hall expects growth in CD14 to be minimal.

Although there is not much vacant property in CD14, the incentives offered by ZQA might prove sufficiently attractive to encourage land-banking in contemplation of tear-downs and new construction. Admittedly, this is very speculative (pun intended).

CB14 believes that the height increases and rear-yard uses proposed by ZQA in R6A and R7A zones are excessive. Lesser height increases can accommodate the allowed bulk. The justification for the proposed extension of common spaces into rear yards, “to allow for more-efficient buildings,” is a more palatable way of saying “to reduce construction costs.” While this would please developers, it would further reduce the amount of open space available for planting.

Affordable Independent Residences for Seniors

Community Board 14 agrees with the proposal to eliminate the distinction between non-profit residences for the elderly and similar for-profit residences, by defining both as affordable independent residences for seniors (AIRS).

According to DCP’s expanded description of ZQA, “The new floor area ratios would generally be 20 percent higher than what is permitted for other residences.” DCP’s 20% figure is inaccurate. The actual change would be closer to 25%.

CB14 believes that this 25% should not be added to any other bulk increase authorized under ZQA or MIH. Moreover, CB14 wishes to retain unit density controls for AIRS.

Long-term Care Facilities: Nursing Homes and Assisted Living Facilities

New York State law and regulations acknowledge numerous distinctions between the various classes of long term care facilities, primarily based on the level of care associated with each. Nursing homes, which provide the most intensive care and require the highest staffing levels, can have the greatest impact on a surrounding residential community, and impose different demands on municipal services and infrastructure support than do assisted living residences. These differences, reflected in the 2014 City Environmental Quality Review (CEQR) Technical Manual, merit different approaches to the assessment of site-specific impacts.

Under ZQA, a new definition, “long-term care facility (LTCF),” would replace “nursing home” and “assisted living residence,” subjecting them to the same set of land use rules.

Brooklyn CB14 disagrees with this proposal.

Discretionary Actions and Bulk

Currently, nursing homes are entirely prohibited in R1 and R2 districts. In other districts (R3 and higher), they require a CPC certification asserting that not enough of them have been built within the last three years “to threaten the land use balance in the community.” ZQA would eliminate the blanket R1-R2 prohibition for LTCFs, replace it with a R1-R2 Authorization requirement, and would eliminate the certification requirement elsewhere. This would make nursing homes as-of-right in R3 and higher districts.

DCP’s published rationale for eliminating a discretionary authorization requirement in R3 and higher zones is that the State certificate of need (CON) process already evaluates nursing home concentration issues. However, the CON does this on a community district basis. It does not provide for “site-specific review of projects with potential land use impacts or policy implications,” which remains the province of the municipality. It is this latter level of review which enables discovery (and stipulation of remediation) of impacts on neighborhood character, transportation, parking, infrastructure, emergency access, and sanitation storage and conveyance. These protections, provided by CEQR, would not apply if nursing homes were built as-of-right.

Neither would be some of the protections referenced in Section 74-90 of the Zoning Resolution. Specifically, paragraphs (a) and (b) stipulate that nursing home certification requires:

- (a) that the architectural landscaping treatment and the height of the proposed #building# containing such #uses# blends harmoniously with the topography of the surrounding area; [and]

(b) that the proposed facility will not require any significant additions to the supporting services of the neighborhood or that provision for adequate supporting services has been made;

The substitute section, 74-903, modifies and narrows these protections:

(b) In order to grant such a special permit for #community facility floor area ratio# or #community facility bulk#, as applicable, the Commission shall find that:

(1) the distribution of #bulk# on the #zoning lot# will not unduly obstruct the access of light and air to adjoining properties or public #streets#, and will result in satisfactory site planning and satisfactory urban design relationships of #buildings# to adjacent #streets# and the surrounding area; and

(2) the #streets# providing access to such #use# will be adequate to handle the traffic generated thereby or provision has been made to handle such traffic.

CB14 strenuously objects to these changes.

An unfortunate side effect of these changes could be the erosion of a useful (partial) definition of neighborhood character.

The community board's concerns are amplified by the magnitude of the proposed as-of-right floor area ratio (FAR) limits for LTCFs. Notably, under ZQA, in R5 and R4 districts, LTCF FAR would be increased by 54% and 72%, respectively. This could result in out-of-scale development and provide an incentive to concentrate such facilities in R5 and R4 districts, notably in Midwood, changing their character. The decision to grant these bulk increases should be discretionary.

Brooklyn CB14 believes that the proposal to make LTCF construction as-of-right in all R3- and higher districts should be modified to preserve the public's right to know about the potential adverse environmental impacts of such a project if it exceeds base FAR levels for residential use.

The community board is similarly concerned that as-of-right status for long-term care facilities in R3A, R3X, R4A and R5A detached home and R3-1 and R4-1 semi-detached districts could yield different building typologies and hasten changes in neighborhood character, if such uses were to occur on block fronts that are predominantly developed with detached homes. Such use could cause a residential zone to acquire some of the characteristics of a commercial zone. The community board wishes such blocks to retain their residential character.

The community board seeks that LTCF use in R3 and higher detached and semi-detached districts be pursuant to a Special Permit or City Planning Commission (CPC) Authorization as a means to provide standards of findings and community board input, and that the CPC have the authority, according to either an Authorization or Special

Permit, to approve the placing of long-term care facilities in these detached home districts.

In addition, for CD14's R5 zone in Midwood, which consists primarily of detached homes, the community board seeks the establishment of provisions consistent with ZR 23-011 regarding the Quality Housing Program for block faces on which 70 per cent or more of the zoning lots on the block face and its opposing block face are occupied by one-, two-, or three-family detached or semi-detached residences, that would trigger special permit review. The community board believes that this provision would reduce the likelihood that vacated homes on such streets are demolished to develop long-term care facilities and other out-of-context facilities.

Parking

The relaxation of parking requirements proposed for affordable and senior units, and the parking requirements stipulated for LTCFs, are based on several premises:

- Automobile ownership is lower among those who are elderly or low-income;
- The elderly travel less than others;
- Persons who live within the Transit Zone (less than a half-mile away from a subway station) have less need to own cars than those who live more than a half-mile away.
- Consultants and session workers at LTCFs can use public transportation.

Specifically, DCP's expanded ZQA description says:

“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”

But:

- DCP has not demonstrated that there are a significant number of unused accessory parking spots associated with multiple dwellings in CD14. The unit of analysis reported in DCP's assessment was not Community District specific.
- The criteria for eligibility to occupy ZQA's affordable housing units permit higher incomes than those that were used by DCP to predict low-income car ownership.

- A half-mile walk to a subway may prove unmanageable for elderly residents. So may be the stair climbing required for access to trains at stations lacking elevators.
- More elderly drive than used to. According to the CDC, nationally, “There were almost 36 million licensed older drivers in 2012, which is a 34 percent increase from 1999.”
- Commuter parking is at a premium in CD14. CD14 is a convenient park-and-ride location for drivers coming from southern Brooklyn and the Rockaways. Anecdotal evidence suggests that such drivers park on CD14 streets and ride the subway into Manhattan or downtown Brooklyn.
- Long-term care facilities are staff-intensive. Although full-time staff can use mass transit to commute to and from work, session workers and consultants frequently must drive between clients residing at different locations. LTCF use should increase a building’s accessory parking requirements, not decrease them. Provision for visitor parking must be maintained.
- ZQA’s increase in the number of allowable dwelling units eventually could lead to increased population density, and, barring dramatic changes in transportation patterns, to an increased demand for parking spaces. This would offset any reduction in parking needs attributable to lower car ownership by seniors.

Brooklyn Community Board 14 believes that ZQA’s proposed reductions in parking requirements are excessive and simplistic. The use of a dichotomous boundary to determine parking requirements, i.e., within or outside of a Transit Zone, can obscure neighborhood-specific features that affect the ability of residents and visitors to use mass transit.

CB14 believes that the proposal to make all R3 and higher LTCF use as-of-right has the potential to prevent community board input on the parking needs associated with such use.

The Board recommends that the parking requirements contained in ZQA be substantially modified to reflect these concerns.

Other Issues

The Referred Application and related documents occasionally are confusing and contain arguable statements. For example, the Introduction to ZQA (LR Item 3, Zoning for Quality and Affordability, N 160049 ZRY, Page 4) reads as follows (*italics added*):

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.* 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.*

It is the experience of CB14 that the review procedure inherent in discretionary actions such as special permits provides an early opportunity to discover ways to improve a project. The argument that special permits for all 49 facilities were approved begs the question of whether the special permit process triggered any useful review and mitigation of environmental and logistical issues.

The two italicized sections appear to contradict one another. Moreover, the sentence between these sections contains an arguable premise, i.e., that “long-term care facilities are...low-impact uses...”

As discussed above, CB14 believes that such uses can have substantial environmental impacts. Although this is but a single section, it raises questions about the reliability of the information in the ZQA application.

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Conclusions

Brooklyn Community Board 14 (CB14) strongly supports the publicly-stated goal of MIH and ZQA: to increase the amount of affordable housing in NYC. However, MIH and ZQA contain many provisions that are unrelated to this goal, or have the potential to eviscerate essential zoning protections.

Will ZQA work to increase affordable housing?

Perhaps in absolute terms but it also has the potential to reduce the percentage of affordable housing overall.

Will ZQA change the character of the community district’s neighborhoods?

Yes. It would increase population density by enabling buildings in contextual zones to increase bulk to allowable maximums. It would enable even more bulk by allowing ground-floor construction in rear yards. It would add incremental bulk by granting over-

generous floor area allowances in conjunction with lobby ramp construction. It would yield taller buildings with smaller rear yards. Both of the latter changes would tend to hurt the district's tree population. It would exacerbate competition for on-street parking.

Will ZQA create challenges for service delivery and necessary infrastructure?

Yes. With the possible exception of some new mass transit construction, the history of development in NYC typically shows that infrastructure lags far behind residential construction.

Will ZQA affect the public's ability to participate in the City's land use process?

Yes. It would enable construction of large buildings as-of-right, including long-term care facilities. These would be exempt from detailed environmental review. The CEQR scoping process, which typically allows community boards to hold public hearings prior to rendering comment, would be eliminated for as-of-right construction.

Summary

ZQA would

- Marginally increase population density;
- Create development incentives that could change the character of some CD14 neighborhoods, notably those encompassing R4 or R5 zones;
- Reduce the ability of elected officials and community boards to evaluate and achieve mitigation of adverse environmental impacts of certain developments;
- Exacerbate transportation problems for seniors and others;
- Vitiating the implied protections that underpinned the community's support for the 2005 Midwood and 2009 Flatbush rezoning actions.

For these and other reasons, Brooklyn Community Board 14 recommends substantial modifications to ZQA. The Board cannot endorse ZQA in its present form.