

# Unequal Exceptions: Zoning Relief in New York City, 1998–2017

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## Abstract

Zoning relief, the process of exempting individual properties from land-use regulations, is a widespread yet underexplored planning practice. A mixed-methods analysis of applications to the Board of Standards and Appeals in New York City between 1998 and 2017 examines three clusters of zoning relief. The results suggest a strong relationship between relief and neighborhood socio-political capital and underscore relief as a powerful form of ad hoc planning. Zoning relief practices in New York City deepen inequalities but also facilitate planning goals such as disaster recovery and allowing families to grow in place. Zoning relief has long-lasting consequences on urban development and deserves increased attention from planning scholars.

## Keywords

zoning implementation, spatial analysis, neighborhood change, collective efficacy, zoning variances, special permits, ad hoc planning, land-use institutions, zoning relief, incrementalism

## Introduction

Zoning practice can significantly influence development patterns and land values and as a result, is a key arena for competing planning ideas and interests. Yet zoning relief, or the issuance of variances, waivers, and special permits that exempt individual properties from existing regulations, receives little attention from planning scholars, with some notable exceptions (Faga 2014; Fawaz 2017; Zhao 2011). Not only do planning academics understudy exceptions in land use, local actors concerned with shaping the city also overlook their role; indeed, a land-use advocate in Los Angeles refers to relief as the “dirty little secret” of the city’s zoning code (Brasuell 2013). Examining the zoning relief process illuminates the cumulative impacts it produces on the built environment and removes the daily practice of zoning implementation from its black box.

This paper provides an examination of zoning relief applications submitted in New York City between 1998 and 2017 and profiles three clusters of zoning “exceptions” in depth.<sup>1</sup> Our analysis aims to address two questions. First, what is the geography of zoning relief in New York City? Second, how does the Board of Standards and Appeals (BSA) negotiate between its stated goal to enable flexibility and its reputation as a co-opted authority whose decisions reinforce existing inequalities? Our analysis of the practice and outcomes of zoning relief supports two overarching findings. First, the geographies of zoning relief demonstrate a pattern of differentiated access that primarily benefits advantaged groups.

Second, zoning relief serves as a type of incremental planning that produces long-term impacts on planning outcomes and processes. Both findings illustrate how ground-level practices shape the city and arguably “become” planning.

## Background and Context: Zoning Relief in New York City

Progressive-era reformers helped adopt New York City’s first comprehensive zoning ordinance in 1916 (Fischler 1998) and almost immediately established the BSA (Williams 1922) to institutionalize flexibility and avoid “constitutional confrontations” (Revell 2003, 210). The ordinance vested the BSA with powers to modify existing zoning in cases that demonstrated “practical difficulties or unnecessary hardship.”<sup>2</sup> The BSA’s liberal approach to administering relief caused considerable conflict with other agencies and residents, prompting legislation that placed greater limitations on zoning relief in the mid-twentieth century (“Zoning Variances in New York City” 1967, 122).<sup>3</sup> The first and only

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major overhaul to the city's zoning code,<sup>4</sup> in 1961, targeted the many "loopholes" from the "loosely controlled variance procedure" (*Report of the City Planning Commission* 1960, 702) and required relief applications to fulfill five provisions:<sup>5</sup>

1. that there are *unique physical conditions* . . . inherent in the particular zoning lot . . . [causing] practical difficulties or unnecessary hardship;
2. that because of such physical conditions there is no reasonable possibility that the development of the zoning lot will bring a *reasonable return*;<sup>6</sup>
3. that the variance, if granted, *will not alter the essential character of the neighborhood*;
4. that the practical difficulties or *unnecessary hardship* claimed as a ground for a variance have *not been created by the owner*;
5. the variance, if granted, is the *minimum variance necessary to afford relief*.

The BSA immediately incorporated the new criteria into the review process—and also quickly developed workarounds.<sup>7</sup>

Today, as in the 1960s, the BSA's discretion resides largely outside of public deliberation through pre-vetting applications and interactions with a cadre of experts that finesse applications to meet the criteria ("Zoning Variances in New York City" 1967, 127). As a result, "each variance is like a special snowflake" (personal communication with BSA director, March 2016). Applicants substantiate compliance with two supporting documents prepared by a specialized group of lawyers and consultants, a neighborhood review and an environmental review. The BSA views this pre-vetting process as saving property owners from the costly financial and area viability studies required for a full application (personal communication with BSA director, March 2016). Pre-vetting significantly influences who receives relief as the board has high acceptance rates for final applications. In 1964, the BSA approved 89 percent of applications ("Zoning Variances in New York City" 1967), while our analysis also found an 89 percent approval rate between 1998 and 2017.<sup>8</sup>

The BSA's decisions are not confidential but have limited public review. The BSA sends applications to the local community board, borough president, city council members, and the Department of City Planning for a nonbinding review and rarely anticipates resistance (personal communication with BSA director, March 2016). A five-member mayor-appointed board, which includes at least one architect, one planner, and one engineer from at least three of New York's five boroughs, formally votes on applications bimonthly. While hearings are public and recordings posted online (City of New York 2015), civic groups have criticized the BSA's application process for its lack of transparency and its power to shape neighborhoods outside the planning process ("Zoning Variances in New York City"

1967; Municipal Art Society 2005). BSA decisions are subject to relatively little judicial and legislative oversight; challenges, which go through the New York State Court of Appeals, are infrequent.

## Zoning Relief and Planning

One of urban planning's key paradoxes is that it relies on static regulations to influence dynamic processes of urban development. Zoning embodies this characterization by codifying rules for a relatively frozen vision of the city (Hirt 2014). How does a complex city like New York reckon with the impracticality of fixed land regulations? Zoning relief, along with neighborhood rezonings (Hum 2010), contextual zonings (Lander and Wolf-Powers 2004), and eminent domain (Fainstein 2005), provide mechanisms that make zoning flexible and responsive to local needs and the changing city (Zhao 2011). While necessary, reliance on relief to shape urban development can be problematic in at least two ways. First, when the BSA moves beyond its supportive planning role, it can become an administrative backdoor to more comprehensive forms of planning, "consciously circumventing the authorizing Resolution and making its own policy decisions" ("Zoning Variances in New York City" 1967, 128). Second, when the "safety valve" of relief becomes a "floodgate opened regularly by political pressure," it can reflect a co-opted, interest-laden process (Kayden 1992, 567; Shapiro 1969). We connect these concerns to literature on the role of community connections and incrementalism in land-use planning in the following.

## Community Connections and Zoning

Planning bureaucracies rely on zoning and relief to shape cities for the "public good," but residents also utilize regulatory tools to shape their neighborhoods (Rojas 2010; Whittemore 2012). New Yorkers have been working with and against the zoning code since its adoption for an array of normative ends (Goldwyn and Renner 2017). In the 1900s, residents of Fieldston/Riverdale in the Bronx successfully lobbied the city for restrictions to prevent densification and the perceived threat of immigrant, working-class newcomers (Goldwyn and Renner 2017), mirroring advocacy for low-density zoning nationwide (Fischel 2015; Hirt 2013; Levine 2006). To more inclusionary ends, artists applied for variances in the late 1960s to occupy live-work loft spaces in NYC's SoHo and ultimately convinced the BSA to create an expedited permit process in their favor (Goldwyn and Renner 2017; Zukin 1982).

Connections to elected representatives and planning officials often determine which communities can actually facilitate change. Leading up to the zoning revisions of 1961, well-connected civic groups organized against the BSA when they perceived it was overstepping its administrative

mandate (“Zoning Variances in New York City” 1967), similar to a 2016 case of residents contesting a relief-facilitated luxury development on the Upper West Side (Stone 2016). While New York’s Uniform Land Use Review Procedure (ULURP) requires public consideration of resident opinion from impacted community boards during rezonings, wealthier and higher educated neighborhoods generally have more influence over land-use decisions (Bae 2017; Marcuse 1987). In his analyses of zoning in Los Angeles and Durham, Whittemore (2012, 2017) identifies a dominant trend of “the most powerful usually winning at the expense of others” (2012, 393). Institutional histories shaped land-use provisions in favor of the urban elite, often to the detriment of lower-income, minority communities.

Neighborhood influence over land-use decisions often relies on socio-spatial networks, what Sampson (2012) calls a community’s “collective efficacy.” In US cities, collective efficacy produces “shared expectations for control” (Sampson 2012, 152), predicated on trust in local institutions to sustain functioning neighborhoods, and can significantly impact planning (Briggs 2008; Evans 1996; Healey 1998). Institutions solidify differential access (Healey 1996) through tools like zoning relief processes—which in turn perpetuate patterns of inclusion, exclusion, and even the “nature of collective action” (Rydin and Pennington 2000, 162). Because privileged residents can better access planning departments’ primary tools for shaping development, they can enact their neighborhood visions and further isolate themselves through land use.

Municipal responses also institutionalize differential access, in part by concealing implicit biases or exclusionary aims within “technical” decisions. Following complaints from the primarily white population, planners in a Minneapolis suburb imposed a restrictive zoning ordinance on a Hmong-owned slaughterhouse that engaged in ritual animal sacrifice, citing the owner’s failure to secure proper permits for commercial activities (Trudeau 2006). Similarly, New York’s community board leaders tend to minimize the views of foreign-born residents (Hum 2010), as in one rezoning of the Lower East Side that, against the desire of the majority-Chinese residents, prioritized a pro-growth agenda backed by the neighborhood’s gentrifying population (Stein 2016).<sup>9</sup> The practice of land use can prioritize a specific “politics of belonging” through seemingly technical regulations (Trudeau 2006, 421).

### *Incrementalism and Zoning Relief*

As a widespread “workaround,” zoning relief aligns with planning’s understanding of incrementalism as piecemeal adjustments intended to alleviate present social problems (Etzioni 1967). If zoning is the “tail wagging the dog” of planning (Alterman 1980), relief appears, in some cases, to “wag the tail” of zoning. Scholars often critique the relief process as undesirable. Owens (2004) shows multiple historic

cases of overreach from variance boards in North Carolina while Riesman (1990) has described variances in Boston as clouded by the “intrusion of political influence” (22) into a process initially intended to “guard the integrity of zoning” (38). Citing examples from Los Angeles, Repking and Paradise (2009) encourage more “legally defensible alternatives” to variances, namely zoning code amendments.

Many investigations of zoning relief focus on how ad hoc practices both undermine comprehensive planning goals and produce tangible negative impacts. The Municipal Arts Society (2005) argues that “although [NY] City Planning is the agency traditionally charged with planning the City, the BSA has become a source of unexpected change in some communities” (195). After incorporating in 1960, the Planning Commission of Commerce, California kept neighborhoods afloat through incremental zoning variance decisions that discouraged industry from enveloping residential portions of the city while industrial actors built hazardous toxic sites *as-of-right* (Boone and Modarres 1999). Concurrent decisions that facilitated hazardous industry while protecting proximal residential land resulted in 12,000 people, 90 percent of whom were Latino, living near thirty-eight dangerous Toxic Release Inventory (TRI) sites by the 1990s (Boone and Modarres 1999). Seen in this light, the ad hoc actions of planners, regardless of their intentions, may pave the path to hell.

Past work also suggests that ad hoc decision-making processes are more prone to political capture than publicly reviewed ones. Schroetlin (2011) observed that the Nebraska state court’s deferential appeals process for variances “can easily lead to problems of corruption and violation of the spirit of the zoning ordinances” (1173). Relief has serviced property-led economic development despite community opposition in the New York City neighborhoods of Williamsburg and Long Island City (Curran 2007; Wolf-Powers 2005). While incremental changes may help keep zoning codes relevant, these findings underscore how zoning relief can undermine comprehensive planning efforts and deepen inequalities. Largely left out of these conversations are the potential benefits that incremental zoning relief provides.

In summary, the empirical work on zoning relief suggests that relief boards function as “under-the-radar” planning entities rather than supporting actors making marginal changes to existing regulations. Incremental relief can reflect the interests of the most powerful through a piecemeal erosion of the public principles embedded in zoning (Etzioni 1967; Selznick 1949). Although both planners and residents can manipulate regulatory tools, residents’ access to these tools—and the resources to leverage them—is often skewed along racial and class lines. Yet viewing zoning relief solely as an unaccountable usurper in the land regulation process ignores potentially positive ways that certain communities leverage it for meaningful change. In the analysis that follows, we investigate the positive and negative impacts that zoning relief has on New York City neighborhoods.

## Methodological Approach

To examine zoning relief in New York City, we employed a mixed-methods approach. We first scraped and assembled a database of relief applications from the public archive maintained by the BSA.<sup>10</sup> The data set includes relief codes, dates, and descriptive text on 8,342 applications submitted between January 1, 1998, and June 30, 2017.<sup>11</sup> After removing duplicate entries and those without identifying information or sufficient geographic data,<sup>12</sup> our final data set contains 8,106 zoning relief applications over almost 20 years. We complemented quantitative analysis with qualitative data, including interviews and reviews of relevant regulatory processes such as neighborhood rezonings and programs like Build It Back.

We initially identified geographic clusters and gaps of zoning relief applications using local indicators of spatial association (LISA) tests for statistical significance.<sup>13</sup> We also examined applications by type of relief (e.g., variances, special permits, and waivers) and submission year. While our initial geo-statistical analysis identified some citywide patterns, such as sparse applications in predominantly black neighborhoods, statistically significant clusters suggested that more interesting dynamics resided in smaller geographies and within (rather than across) types of relief.

The data's heterogeneity as well as the lack of any existing "zoning relief" typologies in the scholarly literature prompted us to organize our analysis by clusters. We employed a mixed-methods, multiple case-study approach (Creswell 2007; Flyvbjerg 2001; Yin 2013) where quantitative analysis and data visualization played a critical role in identifying both questions and cases. Inspired by methods that explicitly embrace heterogeneity and convergences (Hajer 1995; Hirschman 1970; Ostrom 1990), we present the findings in three stories that illustrate zoning relief in action.

We developed the three stories by triangulating data from relief applications with existing regulations, neighborhood dynamics, and interviews.<sup>14</sup> We deepened this analysis by coding long-form descriptions accompanying each application to capture characteristics not detailed by the BSA database.<sup>15</sup> Finally, we aggregated relief applications by community district and census tract to identify intersections with socioeconomic data using the 2000 census and the American Community Survey (2005–2009, 2008–2012).

## Results

Zoning relief in New York City exhibits distinct spatial patterns. Citywide quantitative analysis of relief applications yielded two clear patterns that strongly suggest uneven access to zoning relief by race and income.<sup>16</sup> These findings further support the unsurprising notion that zoning relief, like zoning, is a political process with unequal outcomes. To explore the intricacies of zoning relief, we profile three major relief clusters: special permits for home expansion, special

permits and waivers for disaster recovery, and variances for converting manufacturing to residential use (Figure 1).

### *Relief for the American Dream: Special Permits for Single Family Home Expansion*

In New York City, zoning relief enables owners of one- and two-family homes to extend their building's footprint and bulk beyond zoning specifications, a key tool for "allow[ing] families to grow in place" (Brenzel 2016). The largest cluster of applications for small-scale expansions closely mapped to an ethnic and religious community in southern Brooklyn whose compelling cultural needs for expansion and strong knowledge networks facilitate the uptake of zoning relief among residents.

Single- and two-family homes represent 17 percent (1,459) of all BSA applications between 1998 and 2017 (Figure 1) despite accounting for less than 10 percent of housing units in the city (Armstrong et al. 2010). More than 60 percent (888) of these relief applications are clustered in a south Brooklyn special overlay district (73.622) established by city council in 1998 (Figure 2).<sup>17</sup> Properties in this district are exempt from select special permit requirements, such as lot coverage, open space, and proof of financial hardship, making it easier for landowners to comply with BSA standards for relief.<sup>18</sup> Although the BSA's mandate is confined to individual properties, overlay districts, like 73.622, leverage the relief process to address neighborhood-level hardships that "may reflect the unreasonableness of the zoning ordinance itself" (Cohen 1994, 180).<sup>19</sup> While the outer boroughs have comparable numbers of low-density areas (i.e., R1/R2 zoning) and types of properties eligible for expansion via special permits (Figure 2), the special district covers just a handful of community boards in Brooklyn. Home expansion is easier for residents living in the district compared to other parts of the city.

Inside the overlay district, one-quarter of all special permit applications for single family home expansion (341) cluster within the neighborhood of Midwood/Marine Park (Figure 2),<sup>20</sup> a primarily Jewish area with a history of social organization, strong and unified voter turnout, high incomes, and cohesive advocacy.<sup>21</sup> While 50 percent of Brooklyn's Jews consider themselves highly engaged in their community, the UJA-Federation of New York estimates that 67 percent of Jews in the Midwood area are highly engaged (UJA-Federation of New York 2011). Midwood's collective capacity partially results from residents' unique needs; community members often are from Sephardic (North African/Middle Eastern) backgrounds and have large families with strong logistical and cultural bonds to the neighborhood, including the need to live within walking distance of other observant families, yeshivas, and synagogues (Chafetz 2007). One woman who grew up in Midwood described the local synagogue as the "great unifying factor" for Syrian Jews, where "one declared one's religious and social place in the community" (Cohler-Esses 2011). Community cohesion

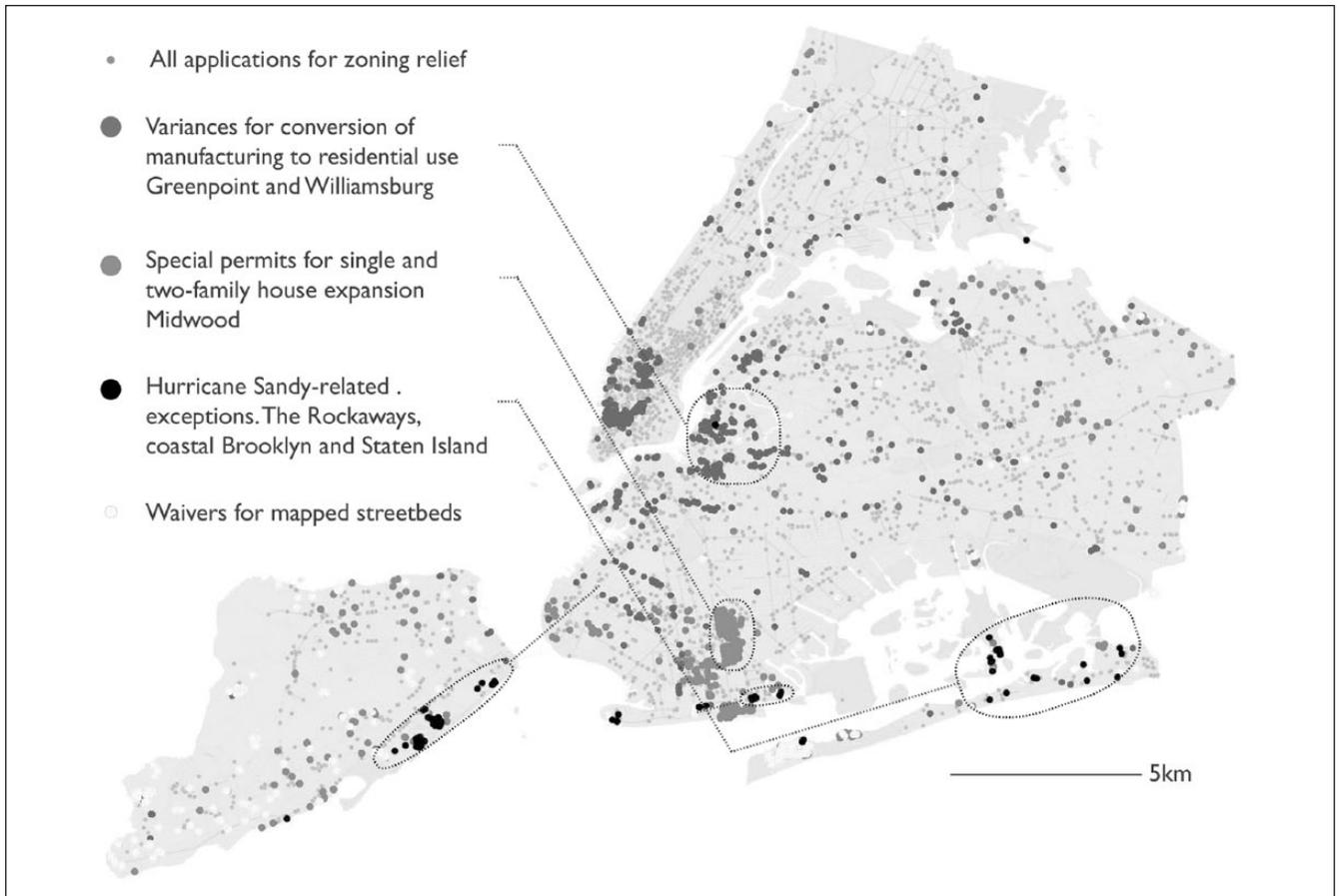


Figure 1. Zoning relief applications in New York City, 1998–2017.

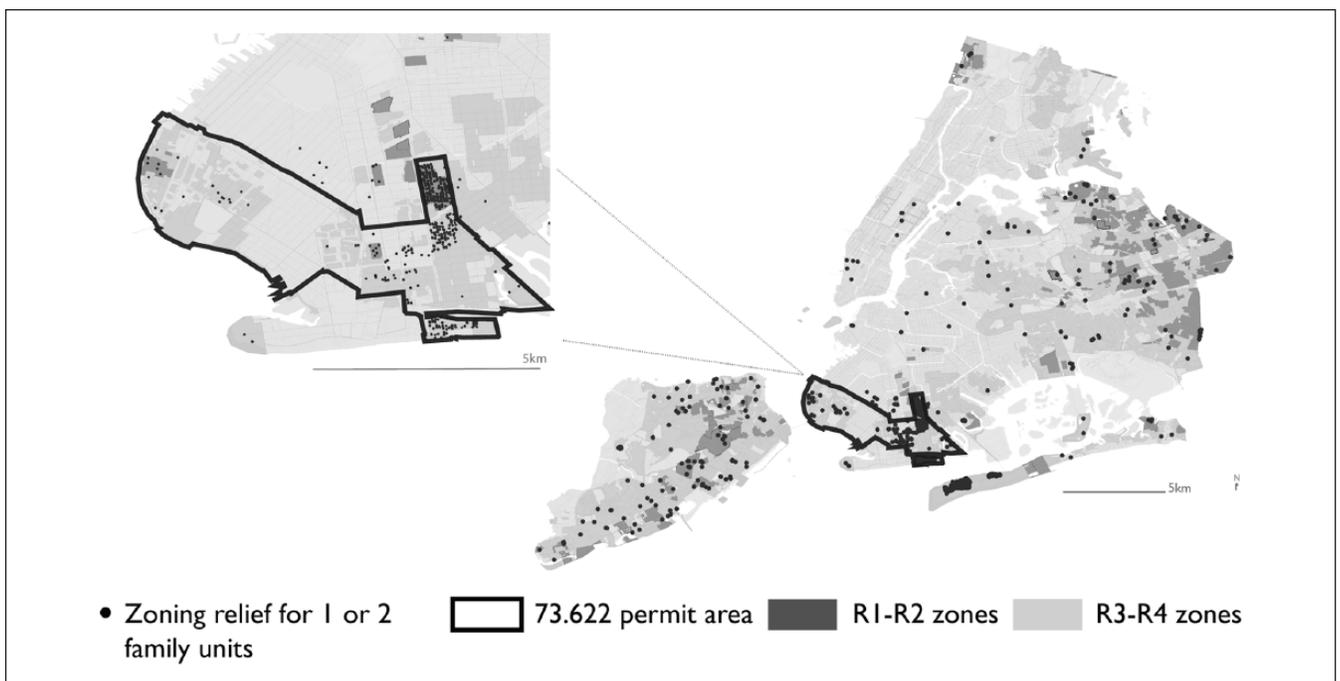


Figure 2. Applications for residential expansion and the 73.622 zoning overlay district.

influences the local real estate market as many homes in the area reportedly sell by “word of mouth” (Toy 2009).

A number of local organizations and networks contribute to the socio-political capacity of the neighborhood, with some providing direct assistance to the relief process. In 2009, the chairman of the local community board noted that they often helped residents use variances to convert larger homes into synagogues (Toy 2009). Flatbush’s Council of Jewish Organization’s website lists “obtaining licenses and permits” as a service they offer. A recent issue of the JCC of Marine Park’s monthly magazine includes a promotion from TNB Architects, an upscale firm that “excel[s] at finding unique solutions to maximize limited space” (JCC of Marine Park, 2018, 87) and whose website claims excelling at “navigating the labyrinth of requirements and obstacles for approval” for home renovations. Knowledge of land-use issues is also a local political imperative; JCC’s monthly magazine recently called for readers to support candidates that encourage “up-zoning” that “allows our growing families to remain in Brooklyn” (JCC of Marine Park 2018, 16).

Special permits for single family home expansion in southern Brooklyn illustrate how the relief process can provide tangible benefits by allowing families and the communities they create to remain in their neighborhood. Yet this example also suggests that the ability to grow in place is not distributed equally across neighborhoods; access to relief appears highly linked to the socio-political connections and administrative savviness of residents who can successfully navigate the process. Although New York City has many ethnic enclaves, Midwood’s Orthodox Jewish community is one of the few communities taking advantage of the 73.622 overlay designation. While zoning relief has the potential to deliver tangible benefits to city residents, uneven access to expedited relief for single family home expansions further hinders the ability of poorer and minority property owners to improve the value of their homes, contributing to a cycle of asset inequality (Mukhija and Loukaitou-Sideris 2015).

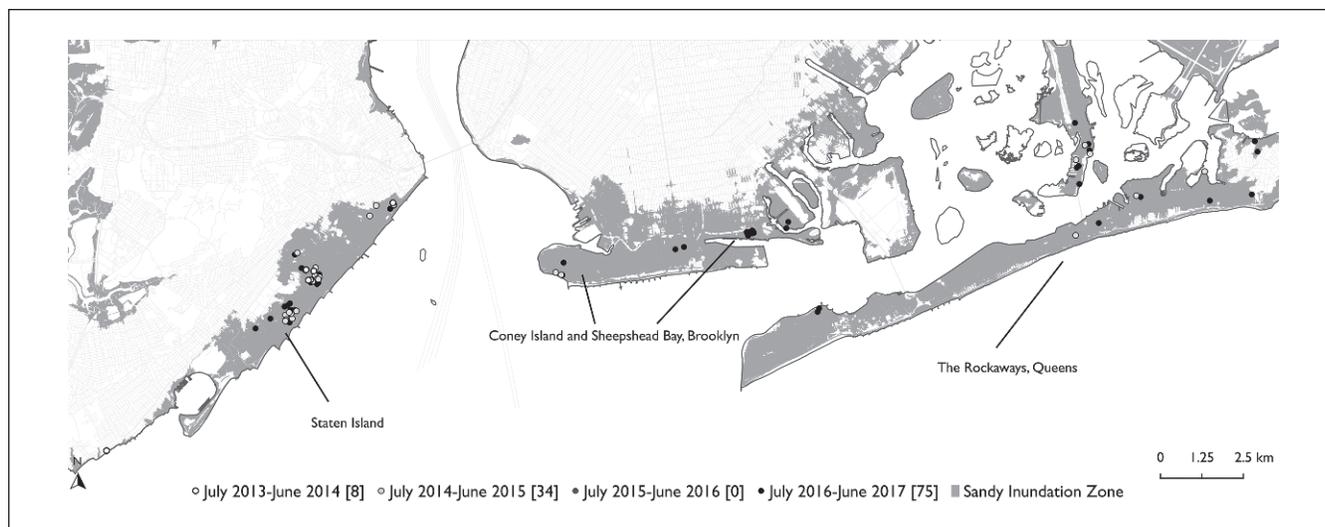
### *Relief for Unequal Recovery: Special Permits in the Build It Back Program*

Low-income communities of color in coastal areas are vulnerable to extreme weather events in US cities (Bullard and Wright 2009), a trend that mirrors historic zoning policies that clustered minority residents near environmental hazards (Boone and Modarres 1999). Although New York City’s response to Hurricane Sandy, which hit the city on October 29, 2012, has been cited as a successful and coordinated government recovery effort (Parris 2014; Rosenzweig and Solecki 2014), not all communities received assistance at the same pace. Despite indiscriminate degrees of damage in coastal areas of Brooklyn, Queens, and Staten Island, the BSA’s administration of special permits to facilitate rebuilding illustrates unequal access to recovery-related relief that correlates with race and socioeconomic status.

City and state agencies responded to Hurricane Sandy’s damage through a coordinated program called Build It Back, which granted homeowners access to \$1.7 billion in aid and used the BSA to administer special permits for construction<sup>22</sup> (NYC Mayor’s Office 2017). By October 2017, nearly all of the 8,300 single family homes in the city’s Sandy-related construction pipeline had received financing for repairs (NYC Mayor’s Office 2017). A subset of property owners required waivers for homes located on unmapped streets, while others required special permits for lessening bulk regulations when their homes needed to be replaced. The Build It Back program shortened the relief process for these properties from three to six months to less than forty-five days (Mayor’s Office of Housing Recovery Operations 2016).

Because the BSA was responsible for expediting recovery in Build It Back, which applications were processed in a timely manner demonstrates who was privileged in program administration. Between July 2013 and June 2017, there were 117 applications for special permits and waivers related to the Build It Back program; 44 percent were located in Staten Island, 38 percent were in Brooklyn, and 18 percent came from the Rockaways in Queens (Figure 1).<sup>23</sup> These numbers conceal the fact that property owners in Staten Island, who skew wealthier and whiter than their counterparts in Brooklyn and the Rockaways, received relief sooner than property owners in other boroughs. Staten Island residents submitted all of the eight applications in the first year (July 2013–June 2014) of the program. The second year the BSA administered recovery-related relief (July 2014–June 2015), Staten Island residents submitted more than two-thirds of all applications. Importantly, the BSA did not process any Build It Back–related applications in the third year of recovery efforts (July 2015–June 2016), producing a noticeable lag between recovery implementation in Staten Island and the other outer boroughs affected by the storm. In the fourth year of BSA recovery efforts, Brooklyn and Queens caught up, with over half of the applications from Brooklyn, 20 percent from Queens, and 25 percent from Staten Island (Figure 3).

While disaster relief after Sandy predominantly aided lower- and middle-income households,<sup>24</sup> data from census tracts that had one or more applications for relief in the five years following Hurricane Sandy show socioeconomic and racial discrepancies. Looking at the data by year shows that homeowners from predominantly non-Hispanic white and wealthier areas were able to secure recovery assistance first. Namely, census tracts that had Sandy-related relief applications submitted in the first year of the program were 80 percent non-Hispanic white, 49 percent white ethnic,<sup>25</sup> and only 1 percent African American, with a median household income of \$79,527. Census tracts with applications from the fourth year of the program were 71 percent non-Hispanic white, 32 percent white ethnic, and 11 percent African American, with a median household income of \$52,933.



**Figure 3.** Special permits related to Build It Back recovery, 2013–2017.

Our analysis of social and political networks in Sandy-affected neighborhoods demonstrates how and why Staten Island residents received relief first. In 2010, there were more than seventy local homeowners and civic groups on Staten Island’s South Shore alone (*Staten Island Advance* Editors 2010), while the Rockaways has half (32) as many associations (Queens Community Board 14 2018). Such groups were instrumental in brokering recovery efforts between city representatives and communities. For instance, the Midland Beach Civic Association in Staten Island hosted a community resource meeting on recovery efforts with local officials and nonprofits four months after Sandy (Rich 2013). At that meeting, the head of the Staten Island Taxpayers Association attributed another neighborhood’s inclusion in a buyout program to strong activism around storm recovery efforts since a 1992 nor’easter and encouraged attendees to contact local civic groups for information on similar programs (Rich 2013). Civic groups in the Rockaways, in comparison, were less connected to the BSA and Build It Back program. A representative from a longstanding community development corporation in the Rockaways informed us that while they aide homeowners through refinancing programs, they had no resources dedicated to helping residents navigate the Build It Back program or storm recovery more generally.

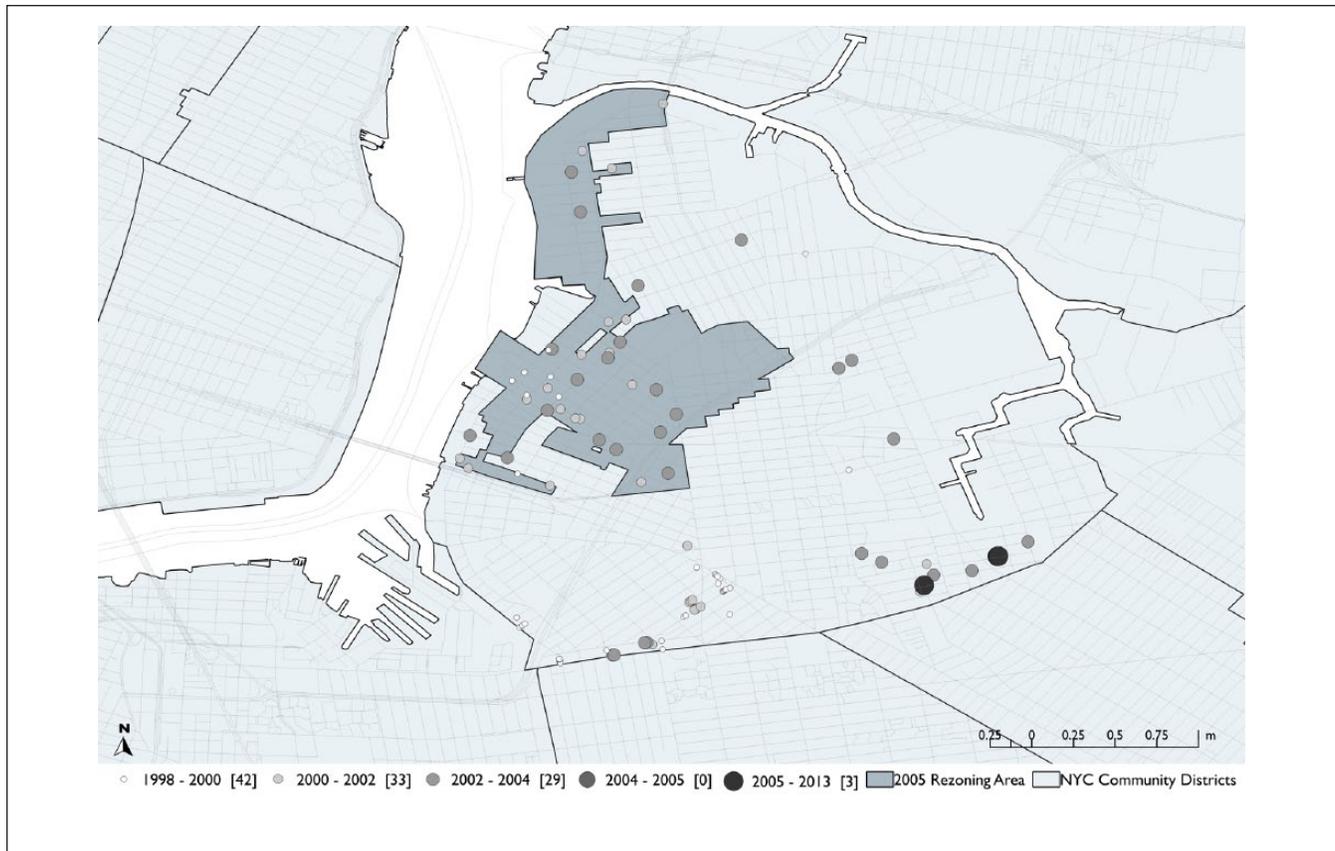
Local media coverage expanding public awareness about the BSA can also explain differential uptake post-Sandy. Since 2010, two local papers in the Rockaways have published a total of 13 stories that mention the BSA, while the *Staten Island Advance* has published more than 100 BSA-related stories. Stories in the *Staten Island Advance* include an overview of the BSA’s functions and board members (Sherry 2016), coverage of a local councilmember criticizing the BSA (Wroblewski 2013), and an op-ed critiquing the BSA’s

issuance of permits in Sandy recovery for lacking a comprehensive planning vision (Laline 2014).

Past work on Sandy has noted the links between race, prior social vulnerability, and risk, as well as the important role of community ties in recovery (Klinenberg 2013; Schmeltz et al. 2013). Graham, Debuequoy, and Anguelovski (2016) describe how a strong network of multiracial community groups on Manhattan’s Lower East Side were instrumental in garnering support for rebuilding efforts downtown, especially when compared to predominantly African American areas of the Rockaways. When paired with socioeconomic indicators and observed over time, the geography of Sandy-related BSA applications illustrates what has consistently been demonstrated in previous work on environmental justice: Lower-income, minority areas applied for and received benefits at a slower pace than whiter, wealthier areas, potentially exacerbating inequalities that existed before the storm.

### *Relief for Gentrification: Variances for Property-Led Development in Brooklyn*

One of the criteria for issuing relief is that approved changes “will not alter the essential character of the neighborhood.” Yet, as the Brooklyn neighborhoods of Williamsburg and Greenpoint gentrified in the late 1990s and 2000s, zoning variances became a key tool for developer-driven change. Paired with discordance in the city’s plan for the area, developers proactively used zoning variances that the BSA readily approved. Through setting the process of growth in motion, developers preempted a controversial 2005 rezoning that granted significant height allowances for new buildings along the Williamsburg/Greenpoint waterfront and cemented the area as a high-end residential enclave (Curran 2007; NYC Department of City Planning 2006).



**Figure 4.** Applications for use conversions in Williamsburg/Greenpoint, 1998–2013.

Use variances are one of the most controversial types of relief as they “enable a landowner unfairly to receive a substantially larger return on property than a similarly situated landowner who cannot engage in the use” (Cohen 1994, 331). As a result, some states only grant use changes through rezonings (Zhao 2011). New York City, however, administers use conversions as a form of zoning relief. Between 1998 and 2016,<sup>26</sup> 50 percent (107) of relief applications from the Williamsburg/Greenpoint community district sought changes from manufacturing and industrial to residential use. The use of relief was notably high in the years prior to the rezoning, with 97 percent (104) of the conversion applications in the community district occurring between 1998 and 2004. More than one-third (38 percent) of all conversion applications in Williamsburg/Greenpoint during this period were clustered in the area that was eventually rezoned. In the years following the May 2005 rezoning, from 2006 to 2013,<sup>27</sup> there were only three applications for use conversions, all of them located—unsurprisingly—outside of the rezoned area (Figure 4).

Manufacturing jobs in the former shipping and industrial hub of Williamsburg/Greenpoint declined from 100,000 in 1961 to 12,000 by the 1990s (Brooklyn Public Library 2005), prompting a need for regulatory change. Although the shift

from manufacturing and industrial uses was largely influenced by globalization, the haphazard move toward high-end residential use was influenced by local mayoral administrations. Embracing the perspective “that the market should have a bigger impact in deciding what greater uses should be allowed” (Rosenberg 2014, 1), the Giuliani administration, and the Bloomberg administration that followed it, eschewed formal planning in favor of development-driven growth (Wolf-Powers 2005).

While the city wavered on its plans for the area, zoning relief provided private developers with an avenue for revamping the neighborhood. Qualitative narratives show that the move toward residential uses in Williamsburg/Greenpoint began illegally as landlords allowed for de facto conversions in industrial buildings by turning a blind eye to artists who signed commercial leases but also lived in their workspaces (Curran 2007).<sup>28</sup> Savvy property owners later forced out these tenants, using the BSA variance process to legally convert their buildings from manufacturing to residential use and secure higher rents. Formal changes to the zoning code were only publicly debated, adjudicated, and accepted in 2005, after over 100 properties in close proximity to the rezoning had already transitioned to residential use.

Zoning can guard against market-driven development by regulating how quickly and to what degree private actors can alter land uses and change neighborhoods. The liberal issuance of use variances and inconsistent planning goals in Williamsburg allowed residential conversions before engaging community members in the rezoning process, prioritizing and cementing developer's visions for the area over those of the community. This resulted not only in changes to the real estate market but also fomented distrust among residents and local officials for future rezonings and collective land-use decisions (Angotti and Morse 2016). In the case of Williamsburg/Greenpoint, the BSA's actions were a precursor to a larger scale rezoning, setting the stage with little community input for the massive transformation of the neighborhood.

## Discussion

The BSA's administration of exceptions over twenty years generates two major, albeit unintentional, consequences. First, the zoning relief process enforces existing inequalities by reproducing differential access to planning tools. Second, the relief process provides a venue for incremental planning that is tangential to planning processes and can substantially impact urban development patterns. The outcomes of this ad hoc process are both influenced by and demonstrative of broader socioeconomic forces. The intersecting themes of differential access and incrementalism are central planning concerns discussed in more detail in the following sections.

### *Differential Access to Relief*

Our analysis suggests that zoning relief, like other planning tools, builds on existing power structures in ways that further problematically distort access to resources (Maloney, Stoker, and Smith 2000; Schumaker 2013). The relative strength of social and community networks in home expansion (story one) and permits for Sandy relief (story two) illustrate how longstanding racial inequities and community connections generated through civic networks such as those linking community associations and city agencies, impact access to zoning relief. While residents of Midwood/Marine Park were able to use zoning tools to allow their families to grow in place, disaster-affected residents of Brooklyn and Queens applied for and received relief at a slower pace than their counterparts in Staten Island.

Like other forms of land-use planning, the zoning relief process in NYC is both shaped by and shapes institutions. The 73.622 district is a product of strong community organizing as existing residents participated in the expedited relief process. And selective uptake created the very conditions that foster stronger networks by allowing residents to grow in place. Meanwhile, grassroots rebuilding efforts in the predominantly minority community of the Rockaways, Queens, were largely reactive to the storm (personal communication with Rockaway Youth Task Force, May 2014)

and void of strong connections to local political institutions that could help expedite recovery (Schmeltz et al. 2013). "Civic infrastructure," (Graham, Debuequoy, and Anguelovski 2016, 112) through greater financial resources and access to bureaucratic agencies shaped the success of postdisaster resilience and recovery between neighborhoods. This is evident in more knowledgeable and resource-rich Staten Island homeowners applying for and receiving relief before Rockaway residents, whose community groups were less established and had fewer ties to local authorities.

In both stories one and two, the social networks of single-family homeowners facilitated access to zoning relief. Yet a neighborhood's collective efficacy or capacity does not operate independent of its local institutional arenas (Briggs 2008; Sampson 2012). The rules and informal strategies of public organizations often generate "the political context in which relations between governmental actors and voluntary associations take place," which then can shape and reinforce existing networks of social capital (Maloney, Stoker, and Smith 2000, 810). If social capital is self-productive, in that it fosters future problem solving and thus more social capital (Brown and Ashman 1996, 1477), then differential access to zoning relief that exacerbates inequality can also be mitigated through institutional mechanisms.

### *Relief as Ad Hoc Planning*

Our analysis also suggests that zoning relief is an example of incremental planning, where ad hoc decisions invariably reflect the interests of the most powerful (Etzioni 1967; Selznick 1949). Variances in Williamsburg/Greenpoint (story three) illustrate how ad hoc relief decisions are actually planning activities that create "obduracy" (Beauregard 2015, 133) in development patterns. Some of these patterns align with broader planning goals (waterfront redevelopment) while others result in more negative outcomes (decreasing residential affordability). Ad hoc regulatory changes are particularly worrisome when actors use the relief process to avoid public consultation.

Story three illustrates how relief becomes a type of incremental planning in certain neighborhoods. Connected interests, in this case, private developers, were able to leverage the relief system for their own benefit, circumventing community resistance to help gentrify the neighborhood. On the other hand, relief can also help incrementally achieve planning goals like infill development. In mostly middle-class areas of Queens and Brooklyn, scattered parcels that border water, natural and open areas, and utility or transport lines cannot be developed without a waiver<sup>29</sup> from the BSA.<sup>30</sup> To encourage infill development on these parcels as the city grows, the BSA coordinates with the planning department to facilitate waivers for corner lots (personal communication with BSA director, March 2016). In this case, the BSA takes a proactive approach to relief—identifying parcels that meet requirements and working with developers and landowners

to incrementally densify the outer boroughs. While both examples show how incremental decisions create long-term consequences for the built environment, the case of Williamsburg highlights how ad hoc decisions can conflict with equitable planning, whereas infill development shows how relief can facilitate sounder planning goals.

## Conclusion

How do relief decisions made at the margins of zoning practice reflect on the identity of planning? By mapping patterns of zoning relief, we illustrate how exceptions to the rules of zoning function as an important planning tool that disparately impacts neighborhoods in New York City. Our analysis identifies differential access and ad hoc decision making as central features of the zoning relief process. Like other planning tools, our findings suggest that zoning relief produces unequal outcomes not “by design” but through its interactions with existing topographies of inequality. Regardless of a planner’s best intentions, it is the implementation of policies that matters (Pressman and Wildavsky 1973). This paper demonstrates that understanding land use requires a critical examination of zoning relief implementation. Although outcomes are a primary concern when local governments craft regulations, it is only through evaluating practice that planners can change institutional processes to achieve desirable social outcomes.

In New York City, zoning relief yields significant planning outcomes. Influenced by community connections and economic interests, the process appears to primarily benefit advantaged groups. While proposals for land-use change still primarily originate from the city’s planning department, the outsized role of adjacent para-agencies like the BSA show a need for increased levels of coordination at the citywide scale. In May 2017, the New York City Council passed nine bills aimed at increasing transparency in the zoning relief process by reforming the BSA’s procedures (Mashayekhi 2017). New guidelines support coordination and transparency by requiring the BSA to provide written responses to community- and borough-level recommendations and appoint a “coordinator” from the Department of City Planning to testify in defense of existing zoning regulations at BSA hearings. The legislation also establishes financial disclosures proving that applicants qualify for an exemption and mandates that testimony before the BSA be made under oath. The BSA must also biannually report the number of applications (filed, approved, and denied) and pre-application meetings it holds to city council and create an online map of applications since 1998. These efforts should raise awareness and increase oversight of BSA actions, making them more accountable to community representatives. Transparency is especially important as zoning and zoning relief are increasingly used to achieve a widening range of policy objectives.<sup>31</sup>

BSA reforms should not be limited to procedural changes, although these are important. Considering the

issues of differential access profiled here, we suggest that the BSA take a more proactive role in shaping equitable relief uptake. We envision programs that raise awareness about the benefits of zoning relief for owners in lower-income and minority areas where relief is scarce. Complementing community outreach efforts with low-interest loan or grant programs that help owners with redevelopment costs would be even more beneficial. New guidelines require that the BSA hire a certified real estate appraiser; we suggest that the BSA also retain consultants to help lower-income owners prepare applications in neighborhoods where relief is not commonly used. Although it may seem wasteful to spend money helping a single owner, our research suggests that access to relief is influenced by social and political networks, implying that targeted neighborhood outreach can spread the use of relief by a broader community. Zoning relief can be a key tool for helping communities grow in place and shape local development; low-income and minority residents should also be able to access critical tools to build wealth.

Planning scholarship can benefit from further examination of zoning relief in New York City and beyond. In New York, legislation that requires the BSA to formally document its activities and make data publicly available should help researchers concerned with equitable development examine outcomes along racial, ethnic, and economic lines. Other city agencies should also consider making their relief processes more transparent to the public, while scholars should embrace the opportunity to examine the impacts of “the most powerful agency no one has heard of” (Mashayekhi 2017). A critical evaluation of the “muddling through” (Lindblom 1959) of zoning practice is key to effectively (re)structuring institutional processes to achieve desirable social outcomes.

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## Notes

1. In this paper, we refer to zoning exceptions by their formal legal term, *zoning relief*. We recognize that *relief* is a flawed term in that it implies that regulation is fundamentally burdensome. Legal scholarship often uses *exceptions* and *variances*

- interchangeably, which technically excludes some forms of relief, such as special permits, included in this analysis.
2. The legal authority for the Board of Standards and Appeals (BSA) was based on two provisions; Section 7(e) of the 1916 zoning resolution, which allowed for a relatively straightforward renewal of special permits, and the precedent set in *Village of Bronxville v. Francis*, which allowed for variances dealing with area (bulk and height) to be held to a lesser standard than that of use conversions. The Standard State Zoning Act created a “quasi-judicial” board adjudicating relief decisions, which was adopted by most states in the 1920s (Ellickson and Tarlock 1981).
  3. *People ex rel. Beinert v. Miller*, 188 App. Div. 113, 176 N.Y.S. 398 (2d Dep’t 1919). Similar responses to the perceived widespread discretion of relief were echoed elsewhere, for example, in Philadelphia (“Zoning Variances and Exceptions: The Philadelphia Experience” 1955).
  4. New York is not an anomaly. Three comprehensive zoning ordinances have been adopted by the city of Chicago, whereas Los Angeles is in the process of drafting their third comprehensive zoning code (but fourth land-use plan).
  5. City of New York, 2015, emphasis added.
  6. Nonprofit organizations are exempt from this provision.
  7. Less than three years after the city passed the new regulations, *NYC Housing and Redevelopment Bd. v. Foley*, 23 App. Div. 2d 84, 258 N.Y.S. 2d 526 (1965) accused the agency of failing to adhere to the new guidelines. The appellate court decided in favor of the BSA, allowing it to continue “business as usual.”
  8. Legal scholarship corroborates high approval rates, with infrequent challenges to zoning relief across several contexts (see Moore 2011, 441).
  9. Across the city, the majority of “upzonings” during the Bloomberg administration predominantly occurred in neighborhoods of color while protective “downzonings” occurred in majority white areas (Armstrong et al. 2010).
  10. Database of decisions accessible at <http://www1.nyc.gov/site/bsa/applications/bsa-decisions.page>. We excluded approximately 500 applications with pending outcomes, which had all been submitted in the previous nine months.
  11. The BSA online database is updated frequently by BSA staff members. We collected the data on July 11, 2017.
  12. Sixty-two percent of the unmapped applications (146) allowed construction of new developments on streets that have not yet been mapped on NYC’s current LION file or with commercial providers such as OpenStreetMap or GoogleMaps. More than three-quarters of the unmapped observations (178) occurred in the three community boards located in Staten Island, 152 of which were in Community Board 3.
  13. The local indicators of spatial association (LISA) analysis identified multiple geographical clusters of relief. High clusters were found in downtown Manhattan and Staten Island; low clusters were in Upper Manhattan, the Bronx, and East Brooklyn.
  14. We excluded appeals to decisions made by the Department of Buildings and the Fire Department (728 applications) because they involve a different administrative process.
  15. We created several new variables representing applications’ official regulatory category and affiliation with frequently used phrases such as *mapped streetbed* and *physical culture establishment*.
  16. A Pearson correlation using 2000 Census data showed that the number of BSA applications correlated positively with the percentage of non-Hispanic white residents (+.22,  $p < .001$ ) and negatively with the percentage of non-Hispanic African American (−.14,  $p < .001$ ) and Hispanic (−.10,  $p < .001$ ) residents. In addition, the number of BSA applications was negatively correlated with the poverty rate (−.13,  $p < .001$ ) and positively correlated with household income (.16,  $p < .001$ ).
  17. In the spring of 2016, Brooklyn Community District 10 successfully petitioned to be removed from the designation, citing unwelcome density that had coded language about immigrant families. The resolution was updated March 27, 2016, and took effect in November of 2016.
  18. Unlike zoning relief, zoning overlay districts must be approved through the legislative ULURP.
  19. See a useful genealogy of the rise of special districts in Midtown in Kwartler (1989, 207–11).
  20. Determined by less than .2 miles away from the nearest three other homes. Radius measured within QGIS using the WGS 1984 projection.
  21. Turnout for census tracts studied was in the top 20 percent of all tracts citywide, according to a June 2012 analysis by the New York City Campaign Finance Board.
  22. Forty-two percent of buildings in the surge area are single-family homes, which partially explains the focus of Build It Back on aiding owners of one- to four-family units (Furman Center 2013). Given longstanding histories of racialized exclusionary zoning policies in the United States, helping single-family homeowners can be construed as inherently biased against low-income, non-Hispanic white populations (Hirt 2014; Whittmore 2016).
  23. There was one application from a Bronx homeowner in Year 4. Because the coastal areas of Staten Island, Brooklyn, and Queens made up the overwhelming majority of applications, we chose to focus on these areas.
  24. Areas most impacted by Sandy were relatively low-income; roughly 55% of households in owner-occupied units and 85% of renters in the surge area that received assistance from the Federal Emergency Management Agency (FEMA) earned less than \$60,000 a year (Furman Center 2013).
  25. Classified as the percentage of the population that identified as having Russian, Italian, Irish, or Scandinavian ancestry based on 2008–2012 American Community Survey data.
  26. There were no relief applications in Williamsburg in 2017.
  27. There were no applications specifically for conversions in Williamsburg after 2013.
  28. Nick Zinner, guitarist of the NYC-based indie rock band Yeah Yeahs Yeahs, captured the scene in the neighborhood in the summer of 2000. “I lived in Williamsburg, in an illegal loft with ten other people . . . that’s a cliché at this point, I know” (Goodman 2017, 139).
  29. Waivers are relatively widespread; of the 8,106 applications for relief, 24 percent (2,008) are request waivers for development on a “mapped streetbed,” visualized in Figure 1. Of those, 1,075 fell under Section 36 of general city law that details process for granting exceptions for buildings not facing the street, and 497 referred to Section 35 that makes provisions

for areas where the imagined city—mapped but not yet constructed streets—had not yet realized the expected development, or where “the plans” didn’t make sense.

30. This is because as-of-right development is prohibited in areas where “a street or highway” appeared on the 1916 zoning map.
31. For example, the BSA is assuming responsibility for exceptions to Mayor de Blasio’s Mandatory Inclusionary Housing plan, a key tool for creating affordable units through set-asides in neighborhood rezonings.

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