

Commercial Uses Invading Mayor's Industrial Business Zones

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Background

Numerous studies have documented how the shortage of industrial space has contributed to the loss of well-paying manufacturing jobs in New York City. Most of this analysis has focused on zoning changes, illegal conversions, and variances, which have greatly reduced the amount of space available for manufacturing and other industrial companies. As a result of the shortage of space, manufacturing rental prices in the outer boroughs have skyrocketed. **Spaces in the outer boroughs that rented in the \$6-9 per square foot range in 2000 now rent for \$12-18 per square foot.**¹ Skyrocketing rents and real estate instability caused by development are outpacing any natural loss of manufacturing jobs and are directly and indirectly displacing hundreds of companies and thousands of jobs out of the city.²

To respond to this situation, in January 2005 Mayor Bloomberg announced a new industrial policy built around the need to stabilize the City's core industrial areas. At the heart of this policy was a promise to not rezone for residential use what the Mayor termed "Industrial Business Zones" (IBZs)— 16 areas of dense industrial jobs in the outer boroughs.

However, another major force contributing to New York's industrial real estate instability is the porous nature of New York's manufacturing zoning. Despite the name, manufacturing zoning allows a variety of non-industrial uses. This legal conversion of industrial space also contributes to displacement and land speculation. The IBZ designation is a policy statement that is not reinforced through zoning, and numerous non-industrial uses have located in these areas, undermining the intent of the policy and displacing industrial jobs.

NYIRN has been conducting research on changes of use and new uses and construction in the IBZs since their inception in 2005. Reviewing building permits issued since the announcement of the Mayor's industrial policy, we found 39 significant new non-industrial uses in seven of the city's 16 IBZs,³ including superstores, hotels, large entertainment uses, and commercial

¹ From NYIRN's database of real estate listings.

² Pratt Center for Community Development, *Making It in New York*, 2001

³ We found an additional 15 new non-industrial uses in two M-zoned Ombudsman areas next to the IBZs.

condos.⁴ These inappropriate uses in manufacturing havens threaten to undermine the Mayor's Industrial Policy and indicate that stronger, zoning-based protection is needed.

The fact that non-industrial uses remain as-of-right in manufacturing zones causes speculation that is disruptive to the industrial real estate market. NYIRN and our partners receive calls from dozens of businesses every year who own their buildings, are closing down and are seeking to sell or rent their building. Because uses such as hotels or superstores remain legal, these business owners will hold off from investing in their space and from renting to industrial businesses if they feel there is a chance they can attract commercial development. This speculation undermines investment in businesses and prevents usable space from being put on the industrial real estate market and being used by new and growing companies.

Projects that have been built or are in progress fall into several major types of uses:

Superstores

In most M-zones many types of retail stores (e.g. food and furniture) are limited to 10,000 square feet unless they obtain a special permit. While stores like IKEA complied with the spirit of the zoning resolution and sought a permit from the City Planning Commission, some food stores attempt to evade this restriction by seeking to build most of the store underground, (where it counts towards the parking requirement, but not for the floor area limit), such as the Gowanus Whole Foods.

There is no limit, however, on the size of certain types of retail (e.g. office supply, hardware, drug stores, and pet stores), allowing such superstores as Home Depot, Office Depot, and Petco in manufacturing zones. In 1961, few could have conceived of such stores growing over ten or twenty thousand square feet. Yet as a result of this loophole, there have been numerous "category killers" that have cropped up in manufacturing zones throughout the city.

While other retail stores are limited to 10,000 square feet, it is possible that a major auto-oriented department superstore such as a Wal-Mart could try to locate under one of these unlimited use groups or use the underground loophole to construct a store in a manufacturing zone.

⁴ We surveyed the Southwest Brooklyn, North Brooklyn, Flatlands/Fairfield, East New York, Long Island City, Maspeth and Greenpoint/Williamsburg IBZs.

The large footprint of these stores has a particularly strong impact on the manufacturing land market. Because most superstores are one story and the zoning resolution has high parking requirements for such uses, a single store takes up acres of land that could otherwise be used for industrial jobs. Particularly in farther-out areas (e.g. the Home Depot in Flatlands or the Staples in Greenpoint) are replacing active industrial spaces are being replaced by retail uses and large surface parking areas. We anticipate several more projects of this nature in Southwest Brooklyn and Gowanus.

Research Examples:

- 535 Morgan Avenue, Greenpoint – Staples; Discount store; Wardack Supermarket (former site of Interstate Bakery wholesale, warehouse & truck repair facility)
- 856-870 Remsen Avenue, Flatlands – 700,000 sf retail center including a Home Depot; (former city-owned distribution facility)

Entertainment and Food Establishments

M1 and M2 zones allow for entertainment and food establishments including places with live music. While food establishments are needed in manufacturing areas to serve workers and clients, there is little need to allow larger uses, especially entertainment-oriented uses like clubs and bowling alleys, in the densest manufacturing zones.

Research Examples:

- 200 N. 14th Street, Williamsburg – bowling alley/bar; gallery across street; another bar next door.
- 61 Wythe Ave, Williamsburg – bowling alley & club in former factory space
- 5913 Foster Avenue, Flatlands – fish bar and grill

Hotels

Hotels pose a particular problem for manufacturing zones. They are like residential dwellings in that people sleep and eat in them, the only difference from an apartment building being that the people who occupy the rooms change every few nights. This ostensibly avoids some of the

impact that conflicts over nighttime or early morning operations with new residents pose to longtime manufacturing businesses.⁵ However, hotels pay near-residential rates for land, which makes manufacturing businesses virtually certain to be displaced. Hotels also tend to attract new complementary entertainment and dining uses, which widens the impact on the neighborhood. Furthermore, the high job quality found in many Manhattan hotels is rarely found in the national chains or fly-by-night operators that typify outer borough hotels.

Under the zoning resolution, “transient hotels” are allowed in some manufacturing zones, while “residential hotels” are not. Several operations, most notably the Trump hotel condo building on Spring Street in the Hudson Square area, have tested this definitional scheme. In response the Department of Buildings has interpreted condo hotels (where different individuals own each hotel unit) to fall within the definition of transient hotels. This potentially opens up an even bigger loophole in the zoning resolution.

To date, there are 33 hotel projects in M-zones citywide, 12 of which are either within or adjacent to an IBZ, another 12 are in an Ombudsman area (manufacturing areas adjacent to the IBZ that receive services but do not have the guarantee against residential development), and the remainder are in M-zones outside of the areas covered by the Mayor’s industrial policy.

Research Examples:

239 Banker Street, Greenpoint: A former illegal residential conversion in the early part of the decade—tenants were previously evicted around 2003. Owner repeatedly tried to do further illegal conversion in 2004-2006. A new owner recently filed for a transient hotel permit, which was approved. Owner began renting to permanent tenants in 2009. Tenants were evicted by Fire Department because of gross fire code violations in September 2009.

80 Wythe Avenue, Williamsburg: Proposed conversion of loft building to hotel with additional floors.

52-34 Van Dam Street, Long Island City: 14 story Fairfield Inn-Marriott hotel in middle of the industrial area, very close to Newtown Creek

⁵ See NYIRN. *Illegal Residential Conversions in the East Williamsburg In-Place Industrial Park*. 2004.

Office and Hotel Condos

These buildings are potentially attempting an end-run around the manufacturing zoning designation of their sites. The condos are typically offered at \$300-\$450 per square foot, a price closer to the residential market than the outer borough office market. Beyond the fact that some of these developments' marketing convey the appearance that they are actually intended for residential use, condo ownership structure leads to three problems. The first is that once individual owners are in their units, it is difficult to force compliance with the zoning resolution through the Department of Buildings, which must deal with individual units. The second problem is that it potentially opens the building up to an easier route to a variance in the future by installing multiple invested individuals in a building with an incentive to convert to residential. The third is that while condo ownership might work for some businesses, it may make many businesses less competitive by leading them to invest in land instead of equipment, worker's skills, and product development.

Research Examples:

231 Norman Ave, Greenpoint: This site, a five-story loft building formerly housing a moving/warehouse company, is now a 68-unit commercial condo with individual unit bathrooms, private terraces, and a roof deck. There was initially some confusion by the marketer as to whether these were residential units, as the initial website did not qualify the units as business condos. Instead of the commercial-oriented ICAP tax break, the website initially showed condo buyers receiving the residential 421-a tax break. The current tenants are largely professional offices, such as a lawyer, doctor, and marketing company. (see <http://www.greenpointlofts.com/>)

249 Varet Street, East Williamsburg: This building, a former stuffed animal manufacturing facility deep in the heart of the North Brooklyn IBZ, was marketed alternately as a "hotel condo" or a "commercial condo" for "artists, impresarios and pioneers." Yet by all appearances the development is a residential development. There is no common space that would be necessary to provide the services that a "transient hotel" would require, nor any indication that hotel services are provided on the marketing website. The website also mentions a possible residential zoning change for the area and notes that the project has applied for a 25-year ICAP tax break. The project was issued a violation in August 2008 by the Department of Buildings for

an illegal residence on the first floor. The site is currently used as youth hostel. (*see <http://www.nylofthostel.com/>*)

About the IBZ program

The Mayor's Industrial Policy, established in January 2005, was an important step towards recognizing and protecting the City's industrial and manufacturing businesses. The policy created the Mayor's Office for Industrial and Manufacturing Businesses, and established 16 Industrial Business Zones to replace or update the pre-existing In-Place Industrial Parks (IBZs replaced nine IPIPs and added seven new industrial districts) with a promise by the Administration to not rezone these areas. Despite the positive steps of the 2005 policy, it still leaves manufacturing in the City quite vulnerable, primarily because it uses the current zoning codes, which allow many non-industrial uses as-of-right in M-zones. The policy only extends through the life of the Bloomberg administration and is subject to changes by the next administration.

Methodology

NYIRN downloaded the monthly compilation files of the Department of Building's job permit applications for January 2005 through August 2007 and combined them into one comprehensive database of 200,000 elements. Using a geocoding program and filtering for certain case characteristics (e.g. in manufacturing zone, applying for a change in use, etc.), we identified 587 cases in IBZs and Ombudsman zones (manufacturing areas adjacent to an IBZ that receive services but do not have the guarantee against residential development) where the application indicated a change from an industrial to a non-industrial use. Working with partner organizations, we visited 252 of the sites in the North Brooklyn, Greenpoint/Williamsburg, Southwest Brooklyn, Long Island City, East New York, and Flatlands/Fairfield IBZs to field check the data. NYIRN then researched the history of the lots using DOB's Buildings Information System to update more current permits and C of Os and progress at a site. We added additional field-checked leads to the list from media accounts and from partner organizations. We found 54 sites where there was a major enough change in use to have some impact upon the neighborhood, 39 of which were in IBZs, and the remaining 15 of which were in Ombudsman areas.

About NYIRN

The New York Industrial Retention Network (NYIRN) is a non-profit economic development organization working to retain and create good blue-collar jobs in New York City. NYIRN

provides free business services to local manufacturers, conducts research on industry and land use issues, and organizes advocacy efforts on behalf of New York City's manufacturing sector.

List of New, Significant Non-Industrial Uses in IBZs and Ombudsman Areas

Greenpoint/Williamsburg & North Brooklyn IBZs

<i>Address</i>	<i>Type</i>	<i>Description</i>
80 Wythe Ave	Hotel	Walentas purchased five-story loft building to convert to eight-story hotel in 2008. Permits issued Feb 2009.
190 N 14th Street	Unknown	Expanding 2nd and 3rd floors to apparent office use. Applied to DOB for "residential studios" in 2001 that was disapproved.
191 N 14th Street	Entertainment	"The Boiler" Art Gallery, opened 2009
200 N 14th Street	Entertainment	Bowling alley/bar opened 2007
4 Berry Street	Entertainment	Bar opened 2009
61 Wythe Ave	Entertainment	Bowling alley/music hall, opened 2009
239 Banker Street	Hotel/Residential	A former illegal residential conversion in the early part of the decade—tenants were evicted around 2003. Repeatedly tried to do further illegal conversion in 2004-2006. Owner recently filed for a transient hotel permit, which was approved. Owner began renting to permanent tenants in 2009. Tenants were evicted because of gross fire code violations in September 2009.
37 N 15th Street	Other	Music studio
106 Wythe Ave	Retail	Auto parts store in former Ko-Rec-Type factory. Owner is seeking additional retail options.
19 Thames St	Residential	Apartments created by illegal conversion identified by DOB June 2005.
243 Boerum St	Residential	Two story residential building that was approved as a "workshop/accessory artist residence"
249 Varet St	Hotel/Residential	Following the Trump model, units were originally offered as "hotel condos", now appears to be rented out as a youth hostel that opened in early 2009.
535 Morgan Ave	Large retail	Conversion of former Interstate Bakery warehouse site to 40,000 sf retail, including staples, large parking lot, 100,000 sf total lot size
15 Division Pl	Hotel	Hotel permit issued Aug 2009 to legalize unpermitted 2nd & 3rd floor expansion.
231 Norman Ave	Commercial condo	Commercial condos - "Greenpoint Lofts" project. On market since 2007, many units are still available.

Southwest Brooklyn IBZ (Gowanus, Red Hook & Sunset Park)

<i>Address</i>	<i>Type</i>	<i>Description</i>
266 47th Street	Unknown	Applied for new office building, speculation over possible hotel development
3rd Ave & 3rd Street	Retail	Gowanus Whole Foods
94 9 Street	Artist	Conversion of manufacturing space to artist studios
141 Dwight Street	Residential	Apparent residential building, self-certified filed as "house of worship" by Henry Radusky, who has had numerous issues with abusing self-certification.
146 Conover Street	Residential	Variance for residential approved in 2007
149 7th Street	Entertainment	The Bellhouse music club, opened fall 2008
424A 3rd Ave	Entertainment	Ultraviolet music club, not yet opened
349 38th Street	Hotel	Comfort Inn Brooklyn
247 49th Street	Hotel	Hotel by Sam Chang
244-254 59th Street	Hotel	Hotel by Sam Chang

Long Island City & Maspeth IBZs

<i>Address</i>	<i>Type</i>	<i>Description</i>
52-34 Van Dam Street	Hotel	Fairfield Inn by Marriott
37-24 24th Street	Office/Artist	Former Scalamandr� Silk factory, now offices and studios in 120,000 sf building
36-52 37th Street	Office	Conversion & enlargement of contractor building to offices
37-38 9th Street	Office	New 3 story office building approved, construction has not proceeded since then.
42-45 11 Street	Hotel	11 story hotel, approved Oct 2006, still in construction
47-07 30th Place	Office	Large loft building converting many floors from manufacturing to offices
47-11 Van Dam Street	Entertainment	Very large internet caf� & paintball store
54-35 48th Street	Other	Artist use

East New York & Flatlands IBZs

<i>Address</i>	<i>Type</i>	<i>Description</i>
157 Snediker Ave	Community Facility	Day care & church
2550 East New York Ave	Hotel	Imperial Hotel
2473 Atlantic Avenue	Hotel	Quality Inn
2336 Linden Blvd	Hotel	Permit for hotel issued 2007
5913 Foster Ave	Entertainment	Fish Eye Bar & Grill, former garage
856-870 Remsen & 8719-8929 Avenue D	Large retail	Major retail development by city, including a Home Depot

Southwest Brooklyn Ombudsman Area (M-zoned areas of Gowanus)

<i>Address</i>	<i>Type</i>	<i>Description</i>
611 Degraw St	Hotel	Choice Hotels
92 3rd Street	Hotel	Developed by Peter Moore Associates
279 Butler Street	Hotel	Days Inn
181 Third Avenue	Hotel	Nine story hotel under construction, DOB issued permit 2007.
190 4 Avenue	Residential	Conversion of manufacturing to likely second floor residential
383 Carroll Street	Residential/Artist	Conversion of manufacturing space to artist uses and caretaker apartment
630 Sackett Street	Artist	Conversion from factory to dance studio
181-187 Third Avenue	Hotel	Fairfield Inn

Long Island City Ombudsman Area⁶

39-35 27th Street	Hotel	Unknown hotel
38-28 27th Street	Hotel	Unknown hotel
38-30 28th Street	Hotel	Unknown hotel
40-03 29th Street	Hotel	Clarion
39-12 29th Street	Hotel	Holiday Inn
39-06 30th St	Hotel	Unknown hotel
27-16 40 Ave	Hotel	Unknown hotel

⁶ Some areas in the LIC Ombudsman area are zoned manufacturing. Others were rezoned to mixed use that allows unrestricted residential conversion. All of the development listed here was initiated when the manufacturing zoning was in place.