

Illegal Residential Conversions in the East Williamsburg In-Place Industrial Park

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May 2004 Updated Version

Following a meeting with the Department of Buildings (DOB) in May 2004, minor revisions were made to this report to incorporate new information about the procedures for issuing, adjudicating and collecting building occupancy violations issued by the DOB. No substantive changes were made to this report. Revisions are described below:

- The Department of Finance was included as a group sharing responsibility for illegal conversions of industrial space. Information was added about the Department of Finance's role in collecting Environmental Control Board (ECB) fines, and the results of that process.
- The process involving non-complying Certificates of Occupancy was clarified. DOB does not do a final inspection to verify a new Certificate of Occupancy (required for the issuance of one) unless a building owner makes the request. The request is not voluntary, but as there is no time limit for this procedure, building owners who do not wish to operate lawfully simply do not ask DOB to inspect them again. Additionally, DOB does not initiate this final inspection.
- The process involving the issuance of additional violations to buildings in non-compliance was clarified. The DOB can issue additional violations to buildings in non-compliance, and on a continuous basis. Additional violations for non-hazardous activity (such as occupancy violations), however, will only be issued if illegal activity is reported, such as by calling 311, and the DOB sends an inspector to investigate. The DOB does not proactively revisit non-complying buildings. If a building owner found to be in non-hazardous non-compliance enters into a stipulation agreement, which is essentially a promise to correct the violation, the DOB is precluded from issuing additional violations. This is the only instance in which DOB should/could not be issuing repeat violations to repeat offenders. Additionally, it was explained that the DOB tends to not issue multiple violations, such as violations for both Certificate of Occupancy and the Zoning Resolution, because the ECB will ultimately dismiss one of them.

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INTRODUCTION

Purpose of the Study

Over the past few years, residential uses have increased dramatically in the East Williamsburg In-Place Industrial Park (EWIPIP), an area targeted by both New York City and New York State for economic development purposes.¹ For decades, East Williamsburg has been a thriving industrial district and the City supports the industrial businesses in the area through its funding of the industrial park. In addition, most recently, the City determined not to encourage residential development in the EWIPIP by not including it in its rezoning proposal for Greenpoint/Williamsburg because of the stable number of industrial jobs in the park.

Nevertheless, the accelerating conversion of industrial space, almost all of which is illegal, threatens the continued viability of the EWIPIP. Increased residential uses decrease the amount of space available for job creation, inflate the cost of the remaining space and increase the potential for conflict between businesses and residents over such issues as trucking, parking and noise, which often results in increased ticketing of the businesses.

The increase in residential activity can be attributed to the rise of residential real estate costs in New York City in general and Greenpoint-Williamsburg in particular, the aesthetic appeal of loft space for residential uses, and the lack of enforcement by the Department of Buildings and other agencies charged with enforcing compliance with the City's zoning code.

At least 27 buildings have been either partially or completely converted illegally inside the industrial park, resulting in a loss of approximately 500,000 sq. ft. of industrial space and an increase in the cost of doing business for the remaining businesses. In addition, the City's failure to impose and collect fines for violations of the zoning and building codes in East Williamsburg alone results in the loss of millions of dollars in revenue each year.

The Department of City Planning (DCP) has proposed to change the zoning in Greenpoint-Williamsburg, a mixed residential-industrial neighborhood that is very near the EWIPIP, to encourage more residential development. DCP is not proposing any rezoning within the EWIPIP but, in fact, seems to view the park as a safe haven for companies that are displaced from the rezoned Greenpoint-Williamsburg area. The scale and severity of the conversions, however, undermine DCP's relocation strategy.

Recognizing the real estate pressures the impending rezoning of the Greenpoint-Williamsburg area will have on existing businesses throughout the overall community, and therefore the critical need for stable industrial space in the EWIPIP, the New York

¹ New York City designates areas as industrial parks. The State has designated the EWIPIP and the nearby Brooklyn Navy Yard as an Empire Zone which confers a variety of tax benefits and priority in State funding for businesses in the area.

Industrial Retention Network (NYIRN), in collaboration with the East Williamsburg Valley Industrial Development Corporation (EWVIDCO), undertook this study of illegal conversions inside the EWIPIP.

This study documents the severity of the problem and the failure of some City agencies to enforce the law, and recommends changes to both the zoning and the administrative process needed to address the problem. The study reveals a troubling inconsistency between the City agencies charged with setting economic development and land use policies and other agencies that must collaborate to implement those policies.

While the study is based on research conducted only in the EWIPIP, the same regulatory and enforcement structure governs the other industrial parks. The weaknesses discovered in that structure in the EWIPIP are likely to be present in those other areas as well. The recommendations should therefore benefit the In-Place Industrial Park (IPIP) program city-wide.

Background on the East Williamsburg In-Place Industrial Park

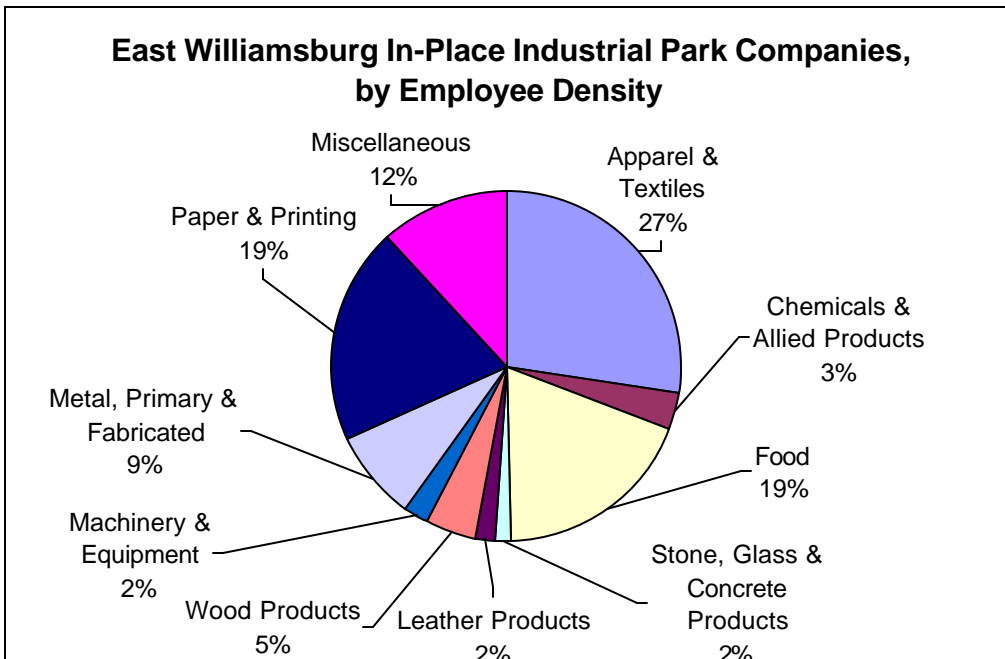
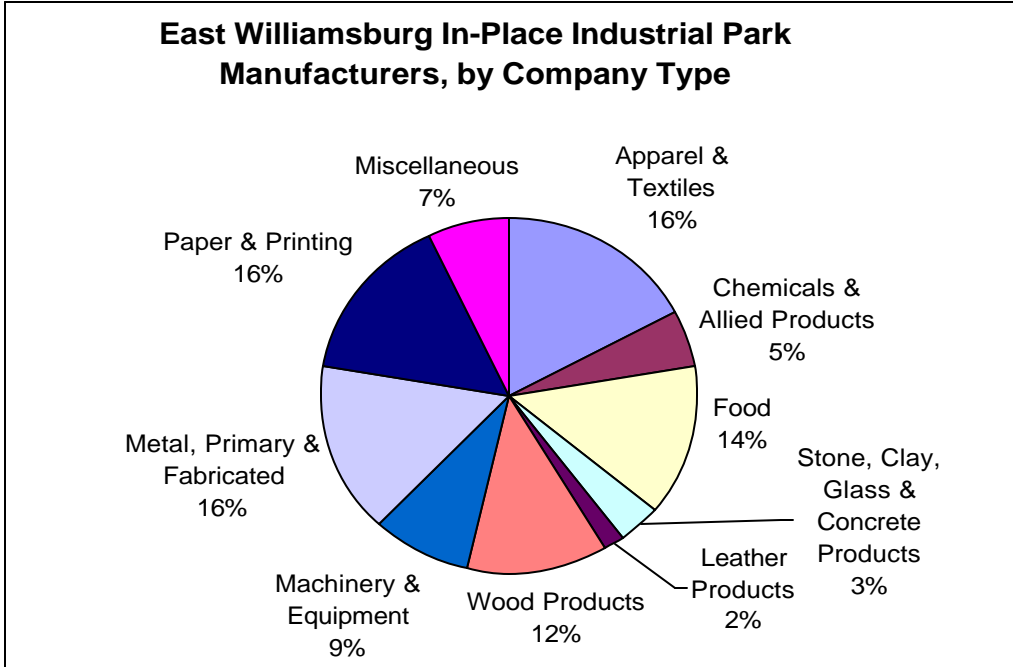
The East Williamsburg In-Place Industrial Park (EWIPIP) is one of eight industrial parks created in the 1980s in an effort to improve the environment for manufacturing firms in New York City. The EWIPIP is located in the northern portion of Brooklyn in Community Board 1, abutting the Newtown Creek and the English Kills waterways. Businesses located in the park have easy access to the Brooklyn-Queens Expressway and the Williamsburg Bridge.

The City's IPIP program, a partnership between the many businesses operating within each park's boundaries, New York City's Department of Small Business Services² and non-profit Local Development Corporations (LDCs), was envisioned to provide stable, high-quality, industrial areas where manufacturers could locate. City capital funds are used to improve the parks' infrastructure such as their roadways, and operating funds are used to hire the LDCs to manage the parks and provide services to the businesses located within an IPIP. A variety of tax credits and utility discounts are available from State and Federal geographic-based incentive programs that overlay IPIP locations. For example, the East Williamsburg IPIP is located in the North Brooklyn-Brooklyn Navy Yard Empire Zone, a State-run program.

The East Williamsburg Valley Industrial Development Corporation (EWVIDCO), founded in 1981, provides business services to the East Williamsburg IPIP. The mission of EWVIDCO is to "improve the neighborhood in and around the East Williamsburg Industrial Park by providing programs and services that develop a positive climate to attract and retain business." Services include: routine IPIP area surveillance to improve security, marketing the park and the City and State programs, employment services to link area residents to employment with businesses in the park, and providing updates on relevant business and government developments.

² Jurisdiction for managing the IPIP program was recently transferred from the New York City Economic Development Corporation to the Department of Small Business Services.

A diverse mix of roughly 450 manufacturing and industrial companies, employing over 10,000 people, exist in the East Williamsburg IPIP³. Companies are involved in a wide variety of operations from food processing to metal fabrication to wholesale distribution. NYIRN has in-depth information on 120 of the 450 companies. These 120 were used as a sample to project the distribution illustrated by the charts below.



Source for both charts: New York Industrial Retention Network, 2004.

³ East Williamsburg Valley Industrial Development Corporation (EWVIDCO)
New York Industrial Retention Network
May 2004

FINDINGS

NYIRN, in collaboration with EWVIDCO and area manufacturers, documented 30 locations within the East Williamsburg IPIP that contain conversions of industrial space (See Map 1). All but three of these buildings have been converted illegally from industrial to residential use.

Currently, the southern section of the industrial park is under intense pressure from illegal residential conversions (See Map 2). Areas surrounding the L train stops at Montrose Avenue and Morgan Avenue have been particularly affected, and continued residential conversions inside the IPIP will further undermine conditions for manufacturers. Unfortunately, the City is doing little, such as enforcing the zoning or carefully scrutinizing applications for building permits, to address this problem.

1. There Are Few Legal Residential Uses in the EWIPIP

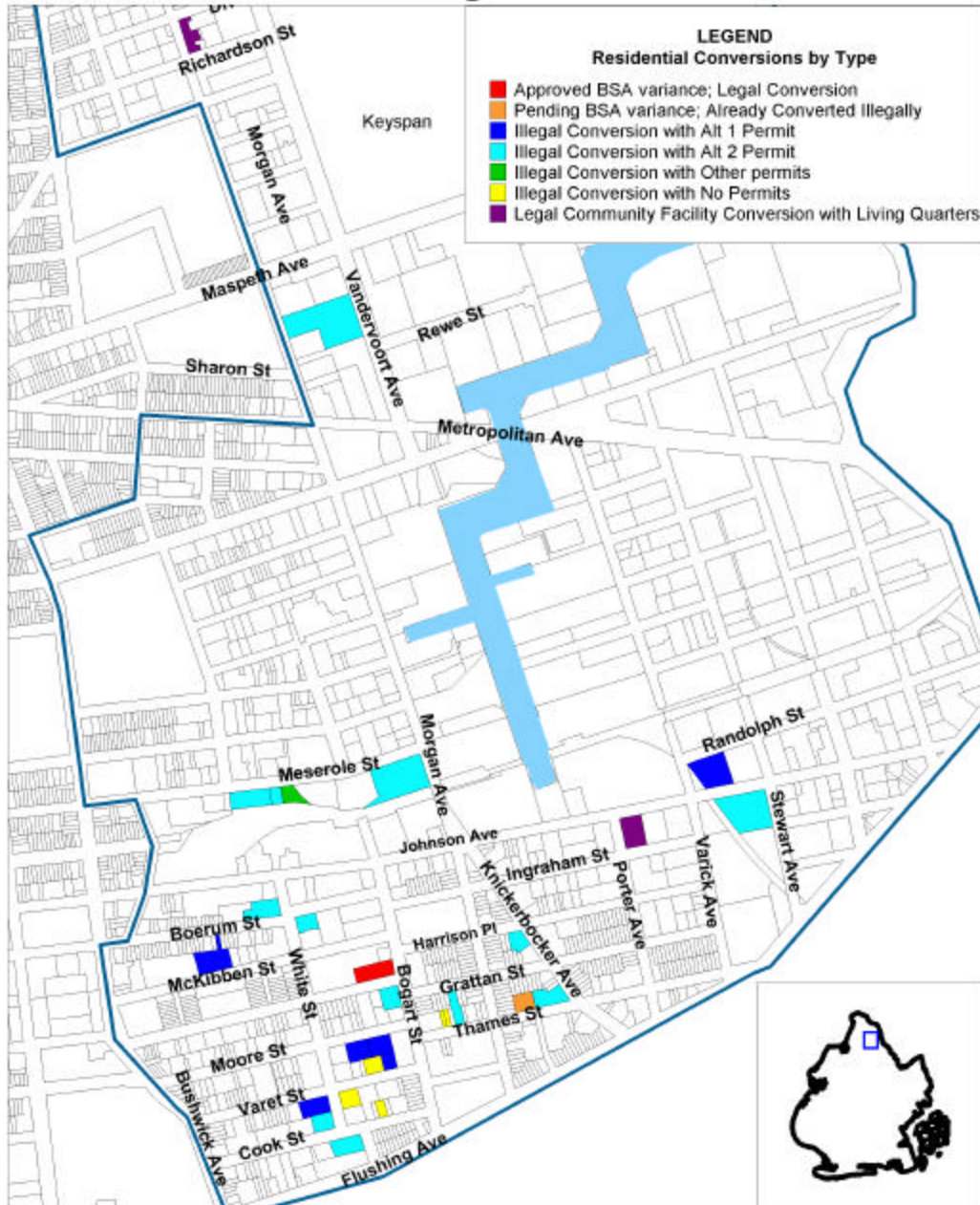
Most of the EWIPIP is zoned M1-1, M1-2 and M3-1, which allows for a variety of manufacturing and industrial uses, and prohibits residential use as-of-right. There are several buildings in the industrial park that have been residential for decades, most of which predate the 1961 rezoning, and are legal non-conforming uses. These buildings are typical of the residential building stock surrounding the IPIP, with one exception: 248 McKibbin Street. This building looks like an industrial loft building but is legally zoned for residential uses. (The aforementioned buildings are not designated on the maps.) 315 Seigel Street is the only building in the park that has received a zoning variance issued by the Board of Standards and Appeals (BSA) for residential conversion.

Two buildings have legal community facility uses with living quarters: 488 Morgan Ave. which received a BSA variance to convert an industrial building into a school for special needs students with 90 beds and 89 Porter Avenue which has been converted into a homeless shelter. **All other residential conversions in the industrial park are illegal.**

Receiving a BSA variance is the only legal way to convert industrial space for residential uses in the industrial park. Currently, there is one building with a pending BSA variance application, which already has residential tenants living there illegally. A second BSA application was recently withdrawn, and a third application was denied in January 2004 (the denied application was for a building with residential tenants already living there illegally).

MAP 1

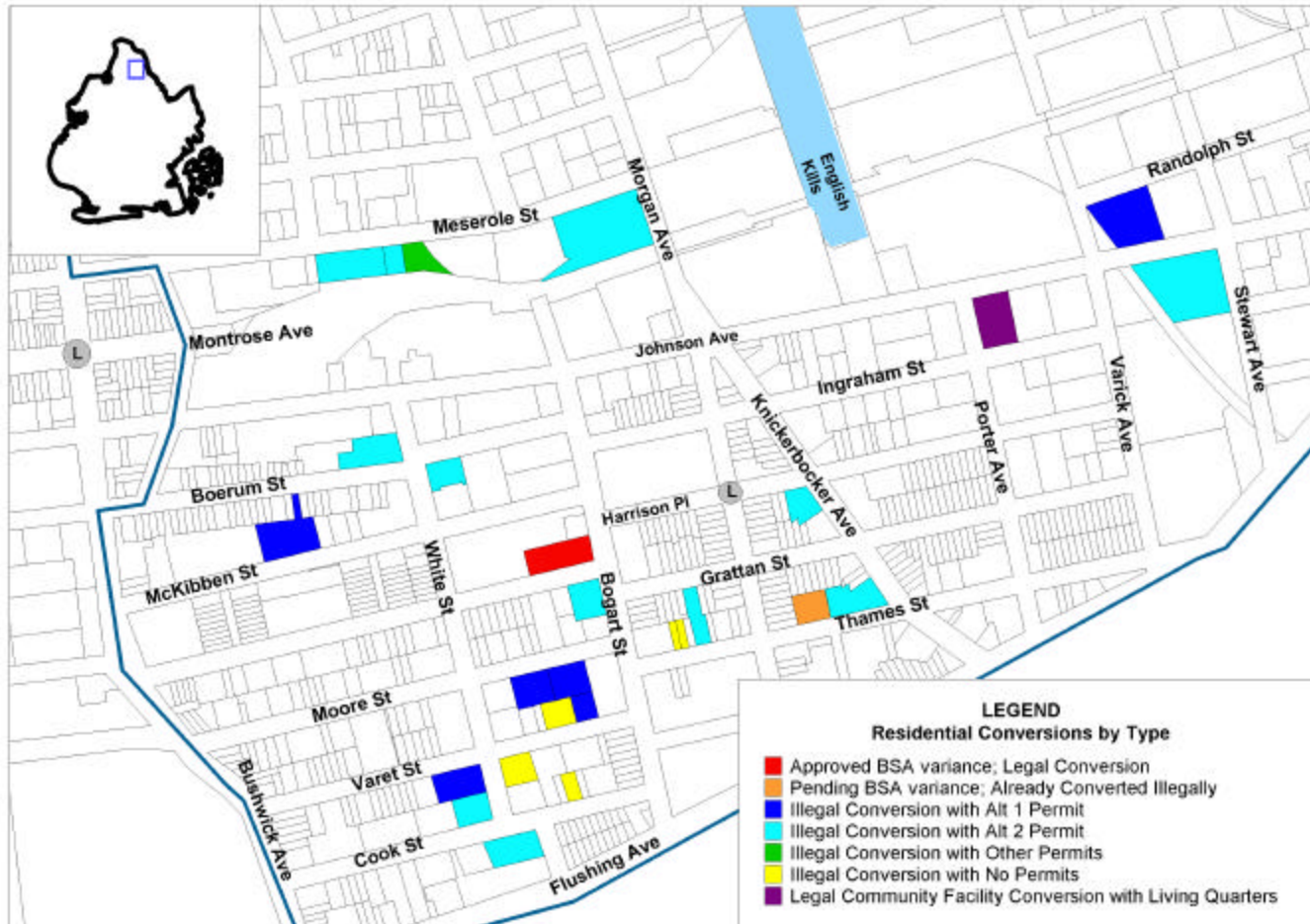
Residential Conversions in the East Williamsburg In-Place Industrial Park



Source: NYIRN and East Williamsburg Valley Industrial Development Corporation, 2004.

MAP 2

Residential Conversions in the East Williamsburg In-Place Industrial Park Southeast Section



Source: New York Industrial Retention Network and the East Williamsburg Valley Industrial Development Corporation, 2004.

Artist live-work space is not allowed in the EWIPIP. There are a few misconceptions about what is allowed by the Zoning Resolution in areas zoned for industrial uses. Artist live-work spaces, defined in the zoning text as Use Group 17D, are **not allowed in East Williamsburg**. These spaces are only allowed in the specific buildings identified by the “Loft Law.” Artist studios/lofts, defined in the zoning text as Use Group 9A, are allowed to exist in certain industrially zoned areas, including East Williamsburg, but as work-only spaces – living is not permitted.⁴ In East Williamsburg and elsewhere, it is illegal to live in an artist studio/loft.

2. Many Industrial Buildings Have Been Illegally Converted for Residential Development

There are at least **27** buildings in the EWIPIP that have illegal residential uses. Some building owners have converted their properties without any Department of Buildings (DOB) permits; others have obtained DOB permits that do not reflect the nature of their actions.

Six groups share responsibility for the illegal conversions: the owners who illegally convert their buildings from industrial to residential use; the architects and engineers hired to file the permits and create residential spaces; the Department of Buildings (DOB) which grants building permits for buildings that comply with the Zoning Resolution and is charged with enforcing the Zoning Resolution; the Environmental Control Board (ECB) which imposes fines as outlined in the City’s Administration Code; the Department of Finance which collects ECB fines; and the Board of Standards and Appeals (BSA) which has the ability to grant variances to the zoning resolution.

A. Building Owners

Many building owners in the park have sought to maximize their profits by illegally converting their industrial spaces to residential ones. Most industrial space in the East Williamsburg IPIP rents to a manufacturer for about \$8 per square foot.⁵ The average rent for residential loft space in and adjacent to the East Williamsburg IPIP is about \$12-19 per square foot, and as high as \$25 in Williamsburg’s Northside.⁶ The potential for larger profits is a huge motivator to convert industrial space, and building owners will continue to do so unless they face severe consequences making the practice no longer profitable.

Based on NYIRN’s review of files at the Department of Buildings and interviews with DOB employees, it appears that building owners have illegally converted their spaces in

⁴ The Loft Law was created to allow designated buildings in specific areas (Soho and Noho), called Interim Multiple Dwelling (IMD) buildings, to become legalized for artist live/work use. Only IMD buildings allow for certified artists to live and work. The Loft Board was established to oversee this process, and according to the Loft Board, there are no IMD buildings located in East Williamsburg as of May 2003. See Loft Board Rules, Title 29 of the Administrative Code of New York City, and Article 7-C of the Multiple Dwelling Law.

⁵ EWVIDCO

⁶ Rent figures were confirmed by Firpo Kenn Realty and averages calculated by a random selection of advertisements for loft space in Williamsburg and East Williamsburg on Craigslist.com and loftrenters.com.

at least two ways: by either converting their space without obtaining any type of DOB permits or obtaining DOB permits that authorize some type of construction, but not for residential use.

A common illustration of the latter method is a building owner filing with the DOB for construction of artist studios/lofts, which do not permit residential uses. This type of application is known as an “Alt 1 permit.” An Alt 1 permit authorizes a change of use such as the conversion of manufacturing space (Use Groups 16-18) to artist studios/lofts (Use Group 9A). Work begins and the owner installs features such as bathrooms, dishwashers and refrigerators. Through interviews with DOB employees, it appears there are no clear criteria for determining if a unit is being used for artist studios as opposed to living quarters. Despite the typical residential amenities, unless a stove or a bathtub or shower is present, then it may be considered a work only space.

DOB does not necessarily do a site visit to ensure compliance with the building permits. Owners are required to invite DOB back for a final inspection to obtain a new Certificate of Occupancy, but this is generally not the practice, as there is currently no filing deadline that owners must adhere to. After DOB inspects the building while it is under construction, the owner installs the stove or other appliances that were previously absent during the inspections and the apartment is ready to go on the market for residential use. If the DOB is not asked to make a second inspection, the owner operates the building with the old, and incorrect, Certificate of Occupancy. To date, none of the six building owners who have received an Alt 1 permit to construct artist studios/lofts, and now house residential tenants, have requested a second inspection by DOB to approve a new Certificate of Occupancy.

An alternative strategy for an illegal conversion is for the owner to apply for an “Alt 2 permit” which permits interior demolition and partitioning, but not a change of use. Often times, a building owner will obtain an Alt 2 permit to carve out the space for residential uses but not apply for an Alt 1 permit. Often, owners go well beyond the scope of what is allowed in their Alt 2 permits to create residential units. Twelve buildings with illegal conversions in the EWIP have received only Alt 2 permits.⁷

B. The Architects and Engineers

The DOB allows New York State certified registered architects and professional engineers to file self-certified applications for permits.⁸ In addition to allowing for self-certification of permits, architects and engineers have the authority to self-certify final inspections for Alt 2 and Alt 3 (minor work) completed jobs, in place of DOB final inspections. The rationale behind the self-certification process was that applicants will adhere to all applicable zoning laws and building codes and not risk their professional certifications.

⁷ Two of these locations attempted to obtain Alt 1 permits, but had them denied by DOB.

⁸ See DOB Operations Policy and Procedure Notice #3/03 located at:
<http://www.nyc.gov/html/dob/html/oppn0303.html>

Eight buildings found to contain illegal conversions had either Alt 1 or Alt 2 plans, or a combination of both types, self-certified for compliance. Four of the six buildings that received Alt 1 permits to create Use Group 9A artist studios/lofts, and now house illegal residents, had those permits self-certified.

One such building, 260 Moore Street, received Alt 1 permits in May 2003 to construct artist studios/lofts. All of the applicable plans were self-certified. In August 2003, the DOB found that much of the work done (like plumbing, sheet rocking and metal framing) did not conform to the plans that had been approved, and the building was issued a violation for the offense. At the same time, it was noted by DOB that the building contained residents on all floors, and was also issued a C of O violation.⁹ These fines have yet to be paid.

Neither the applicant nor the filing representative has been the subject of DOB or State disciplinary action for falsifying permit applications.¹⁰ The same applicant and filing representative have self-certified permit applications on two other locations within the EWIPIP that are operating as residential buildings: 250 Moore Street, otherwise known as “Bush Gardens,” and 255 McKibbin Street.

C. Department of Buildings

The extraordinarily lax standards and procedures used by the Department of Buildings create a situation that makes it easy, low-risk and profitable for owners to convert their buildings to residential uses, thereby encouraging the development of residential buildings in industrial areas. Owners face few and minimal fines, and little interference with the construction process.

The DOB does not initiate or routinely perform follow up inspections on buildings that have received permits to create work-only artist studios/lofts or interior partitioning. Under current DOB regulations, the agency is required to do a final examination of a building *if* the owner requests certification for a new Certificate of Occupancy. As there is currently no time limit for owners to do so, those owners wishing to operate an illegal residential building simply do not file for a new C of O certification. This loophole allows owners to have plans approved by the DOB, but not verified for compliance.

Through interviews with various DOB employees, it became evident that there is a misunderstanding regarding the Loft Law and where it applies. As already stated, artist live/work space is not allowed in East Williamsburg. DOB inspectors stated that it is difficult to determine if a residential use is part of a live/work arrangement as stipulated in the Loft Law or not. However, since the Loft Law does not apply in East Williamsburg, that determination is irrelevant.

The DOB is not aggressively pursuing violators—especially known repeat violators. Fines are issued infrequently, and many buildings in non-compliance will receive only a

⁹ Records obtained from the Building Information System, located on the DOB’s website at <http://webapps.nyc.gov:8082/bisweb/bsqpm01.jsp>

¹⁰ DOB 2003-1998 IAD Disciplinary Actions. Located at <http://www.nyc.gov/html/dob/html/pera.html>

single fine per year. Of the 27 buildings identified as containing illegal conversions, only 14 have received fines by the DOB. Of those 14 buildings, only 4 have received multiple fines, and only 2 have been fined more than once in the same year.

Additionally, while the DOB has the authority to stop the creation of residential units before they are occupied, and force owners to comply with their building's legal use, it is not doing so in East Williamsburg. The DOB can take action during the conversion of a space, or after a space has been illegally converted. The department can force owners to revert their buildings back to the legal use as defined by the zoning text or issue violations that impose fines and/or imprisonment upon owners found to be in non-compliance.

Forcing building owners to comply once residents have already occupied the illegally converted buildings could create a hardship for the residents. That is why it is critical that the DOB act aggressively during the permitting and construction period before residents have moved into the buildings.

The DOB can issue violations for two different types of infractions: violations of the Certificate of Occupancy and violations of the Zoning Resolution (see fine structure on page 11).

Certificate of Occupancy Violations

The DOB can issue violations for buildings in non-compliance with its Certificate of Occupancy. After the violation is issued, the building owner has 35 days to rectify the situation and provide a certificate of correction to the DOB's Administrative Enforcement Unit (AEU). If compliance is demonstrated, the fine may be waived. If compliance is not demonstrated, a fine will be issued by the ECB. Irregardless of the compliance finding, the DOB can issue additional violations to a building until the violation is corrected.¹¹ At the very least, this structure allows the DOB to issue roughly 10 violations per year to non-complying buildings, and could generate upwards of \$90,000 per building per year in fines.¹² The fine structure allows DOB to issue violations but does not mandate the department to do so.

Zoning Resolution Violations

The DOB can also issue violations to the owner of a building found to be in non-compliance with the Zoning Resolution, such as having residential tenants living in a building zoned for manufacturing uses only. This infraction carries a specific and separate fine structure as that of other violations, such as Certificate of Occupancy

¹¹ Under Title 27 (Construction and Maintenance), Chapter 1 (Building Code), Subchapter 1, Administration and Enforcement, Article 22 Certificates of Occupancy of the Administrative Code of New York City: §[C26-121.3] 27-215 Altered buildings and §[C26-121.5] 27-217 Change of occupancy or use. Additional violations will only be issued if illegal activity is reported, such as by calling 311, and the DOB sends an inspector to investigate.

¹² Penalties are outlined in articles 26-126 and 26-126.1, Title 26 Subchapter 1 of the Administrative Code of New York City. Timeline and procedures for violation corrections are outlined in article 26-126.2, Title 26 Subchapter 1 and in Reference Standards Selected Rules, Chapter 13, Subchapter A, 13-01 of the Administrative Code of New York City. Fines calculated based on the 35-day timeframe for corrections. According to the AEU, violations can be issued continuously, regardless of previous violations.

violations.¹³ Unfortunately, the DOB has not used this power. None of the buildings in the EWIP that were issued violations by the DOB for Certificate of Occupancy violations were also issued Zoning Resolution violations.

D. The Environmental Control Board

Once a violation is issued by the DOB, documentation of the violation is sent to the Environmental Control Board. The ECB adjudicates the violations according to the fine structure outlined below. Certificate of Occupancy violations fall under “Additional and Alternative Civil Penalties.”

Violations of the Zoning Resolution	MINIMUM FINE	MAXIMUM FINE
First Violation	\$250.00	\$1,000.00
Second Violation	\$500.00	\$1,000.00
Third and Subsequent Violations	\$5,000.00	
Additional/Alternative Civil Penalties¹⁴	MINIMUM FINE	MAXIMUM FINE
First Violation	\$0.00	\$2,500.00
Second or Subsequent Violations	\$0.00	\$10,000.00

While it has the authority to do so, the ECB does not impose maximum fines on violators, even after multiple offenses, and generally dismisses violations issued by DOB that it views as duplicative, such as a Zoning Resolution violation when a Certificate of Occupancy violation has also been issued. A total of 22 fines were issued to the 14 buildings found to be in Certificate of Occupancy violation. Of those 22 fines imposed, 4 were for \$2500 and the others for \$800 or less. The fines imposed on the owners of 255 McKibbin St and 9 White St. (shown below) help to illustrate this point.

ADDRESS	TAX BLOCK	TAX LOT	ZONING	DOB/ECB infraction code	year fined	\$ amount imposed	\$ amount paid	NOTE
255 McKibbin St.	3082	65	M1-2					
				B02 27-215	Oct-99	\$350.00	\$350.00	paid
				B03 27-217	Oct-99	\$0.00	\$0.00	dismissed
				BH7 27-217	Sep-00	\$2,500.00	\$0.00	overdue
				B03 27-217	Sep-00	\$2,500.00	\$0.00	overdue
				B03 27-217	Dec-00	\$800.00	\$800.00	paid
9 White St.	3117	29	M1-2					
				B03 27-217	Nov-88	\$2,000.00	\$2,555.00	paid
				B03 27-217	Dec-00	\$400.00	\$400.00	paid

¹³ Penalties are outlined under Title 26 (Housing and Buildings), Chapter 1 (Department of Buildings), Subchapter 1 General Provisions of the Administrative Code of New York City: §[643a-12.0] 26-126 Violations of zoning resolutions.

¹⁴As outlined in 26-126.1, “Any provision of subchapters 1, 2 and 3 of chapter 1 of this title [Title 26] and all other provisions of chapter 1 of Title 27 or any provisions of the zoning resolution and related rules and regulations,” fall under this fine structure.

Given the violation timeframe and penalty structure as outlined above, New York City could have collected **\$422,500** in fines (between October 1999 and December 2003) from the owners of 255 McKibbin Street. Instead it has issued fines totaling only \$6,150.00 of which it has **only collected \$1,150**. The City could have collected a total of **\$302,500** (between December 2000 and December 2003) from the owners of 9 White Street, but has only issued a total of \$3,200, and collected only **\$2,955**. (The cumulative fines calculated for both buildings are only for Certificate of Occupancy violations since neither has received Zoning Resolution violations.) **The City has foregone more than \$700,000 in revenues at these two buildings alone by not aggressively enforcing the law.**

Market Rate Loft Development Costs Owners Little

An example of a building that has not been properly fined is 255 McKibbin Street, which is currently being converted into a residential building and received an Alt 1 permit but not a BSA variance. In May of 2003, the DOB issued permits allowing for the construction of Use Group 9A (artist studios/lofts). Despite documentation of illegal residents in the building dating back to 1999 and the construction of 40 apartment units since 2000, the agency approved the permit request. Since 1999 the building has been issued only five violations for occupancy infractions, and has paid only \$1,150.00 in related fines referred for adjudication.¹⁵ The building owner has never been issued a violation for a Zoning Resolution violation. 255 McKibbin currently contains some occupied units and others are currently available for lease. Asking rents for the units begin at \$2000 and up, and each apartment comes with a full bath and a full kitchen including a stove. Laundry facilities are located in the building.

*The interior of an available apartment at 255 McKibbin Street:
A full kitchen, including stove is pictured.*



¹⁵ Records obtained from the Building Information System, located on the DOB's website at <http://webapps.nyc.gov:8082/bisweb/bsqpm01.jsp>. Of the fines issued for Certificate of Occupancy violations at this address, \$5000 remains outstanding.

E. Department of Finance

The Department of Finance (DOF) is responsible for the collection of ECB fines through their Collections and Data Management division. Bills are mailed out once DOF is notified by ECB that a fine has been levied. According to the DOF, ECB fines are the most difficult debt to collect, and it seems that there are several problems in the collection process including poor communication between ECB and Finance, computer systems that are not synchronized and contain differing data, and problems with vendor inaccuracies.¹⁶

According to records obtained from the DOB's Building Information System, less than half of the fines levied by the ECB, just \$7, 983.58 of a mere \$18,100, have actually been collected by the DOF (see Appendix 2). Two thirds of the uncollected fines date back several years to 2000 and 2001.

F. Board of Standards and Appeals

The BSA has the power to grant variances to the zoning resolution and allow for the legalization of residential conversions in the IPIP. Two locations within the park have already received variances: a 90-bed educational facility¹⁷ and a 51-unit apartment building. One other variance application with existing residential tenants is pending at 47 Thames Street. If approved, the pending application will result in the legalization of an additional 23 housing units.¹⁸ The issuance of BSA variances in such instances would reward the building owners for previously violating the zoning code and the building's Certificate of Occupancy.

Like the lax procedures at DOB, the BSA has applied very low standards for the issuance of variances. The BSA may grant a variance if it finds that complying with the zoning causes a hardship for the applicant. The City Charter spells out the criteria which an applicant must prove to establish a hardship. However, the BSA has established a very low burden of proof for applicants seeking to meet the criteria. The criteria are:

- that there are **unique physical conditions**, which prohibits development that complies with the Zoning Resolution in terms of use or bulk;
- that because of such physical condition, development in compliance with the Zoning Resolution will not bring a **reasonable return**;
- that the variance will not alter the **essential character of the neighborhood**;
- that the owner or predecessor in title has not **self- created the hardship**; and
- that the variance applied for is the **minimum variance necessary** to afford relief.

While each case must be decided on its individual merits, there are clearly important policy issues resulting from the City's designation of an area as an IPIP that may not be

¹⁶ Testimony of DOF Commissioner Martha E. Stark before a joint hearing of the Committee on Finance and the Select Committee on Technology in Government. Located at: http://www.nyc.gov/html/dof/pdf/02pdf/stark_ecb.pdf.

¹⁷ As per EWVIDCO, the construction contract to build this school was pulled by the Administration for Children's Services in February of 2003, and the property remains undeveloped. According to information provided by the Board of Standards and Appeals, the variance is still approved.

¹⁸ Information on pending and approved BSA variance requests obtained from Brooklyn Community Board 1 and the Board of Standards and Appeals.

given adequate weight by the BSA and should either be incorporated into the Charter's criteria or taken into consideration by the BSA. Designation of an IPIP should create a strong presumption against certain findings which the applicant should have to overcome to obtain a variance.

Findings of “**unique physical conditions**” that make a building unsuitable for industrial uses should be rare in an IPIP because the area has been designated as an IPIP precisely because it is appropriate for industrial use and at the time of designation is being used by industrial tenants. For example, applicants often allege that a building is inappropriate based on little more than the fact that it is multi-storied. While large-scale manufacturers tend to prefer single-story buildings, the small scale manufacturers that are more typical in New York City tend to be willing to trade single-story buildings for proximity to their market. The success of the Brooklyn Army Terminal, the Brooklyn Navy Yard and the Greenpoint Manufacturing and Design Center, all large industrial projects with multi-storied buildings which are relatively close to the EWIPIP, illustrates the continued viability of such buildings in New York.

Findings that the “**essential character of the neighborhood**” will not be altered as a result of a variance should be very difficult to prove given the IPIP designation reflecting City policy to enhance the area for industrial use. Similarly, it may conflict with State policy if the area is designated as an Empire Zone for economic development uses, as is the EWIPIP.

3. An Increase in Residential Development Adversely Effects Existing Industrial Businesses

An increase in residential activity in the EWIPIP negatively impacts industrial businesses in a number of ways.

- Residential conversions decrease the amount of space available for industrial activity. EWVIDCO, which manages the IPIP, estimates that there is currently a vacancy rate of approximately 8% in the industrial park (about 450,000 sq. ft.). EWVIDCO estimates that about 500,000 sq. ft. of manufacturing space has already been illegally converted. Jose Leon, the Executive Director of EWVIDCO, states that the conversions are making space “more and more difficult to find and to negotiate or bargain for.” Companies looking to expand in the IPIP agree. Companies now being displaced by the real estate speculation along the Greenpoint/Williamsburg waterfront which is now being rezoned are also increasing demand for space in the EWIPIP.

9 White Street

The history of 9 White Street illustrates both the problems presented by residential conversions in the park and some of the flaws in the BSA process. The building has housed illegal residents since 1988. They have been fined several times, but each time the amount was minimal and some of the fines remain unpaid. In October 2001, the owners applied for a variance, which after much delay was finally denied in January 2004. Despite opposition by area manufacturers, the owners of 9 White St. were granted eight separate BSA hearings allowing them ample time to make their case for the granting of a variance.

At one of the BSA hearings, a local manufacturer provided written objections to the granting of the variance on the basis that residential tenants have continued to disrupt deliveries and other operations at his adjacent business. He indicated that the granting of this application will most likely result in the relocation of his business out-of-state, a loss of almost 200 jobs, many of which are held by people from the adjacent neighborhood.

The BSA's final resolution to deny the variance was largely due to the applicant's failure to prove the area was residential in character. The Board recognized that the eight buildings surrounding 9 White Street that were residential were converted illegally. However, nowhere in the resolution did it mention that 9 White Street itself had already been illegally converted. The denying of this variance marks a significant turn in the BSA's recent history of practically rubber stamping variance requests to convert industrial property. Only time will tell if the Board will continue to deny variances that seek to capitalize on illegally converted property.

9 White Street and 222 Varet Street; two illegal residential buildings located in the southern portion of the EWIP.



- Rents are escalating in the IPIP as companies and the encroaching residents compete for space, making it difficult for businesses to afford available properties. Company owners asked about area conditions gave statements such as, “costs are astronomical. Buildings in this area are rarely coming up” and “if I was renting, I’d probably be gone.” Owners are beginning to “warehouse” their space, essentially taking their properties off the market while they either wait for a variance approval or the area to tip more toward residential uses, and thus higher rents.

- As the number of residents in the EWIPIP increases, the potential for complaints and harassment of the businesses increase as well. An IPIP manufacturer states her situation plainly, “If our immediate area became a mixed zone, more than it is, we couldn’t operate.” She says that residents in her immediate area would complain and create problems for her business. She also notes that, “the people who work for us and live locally are being priced out of their neighborhoods.”
- As companies are forced from the area, the potential for job loss increases, particularly for local residents. The words of one manufacturer express the sentiment of many who are looking to expand their locations in the IPIP, “If things don’t improve, we will have to expand elsewhere.” Manufacturers with the ability and desire to grow their companies are facing huge obstacles with the increased costs of space in the IPIP and lack of sufficient space available to them.
- An increase in residential uses in the park undermines New York City’s ability to take advantage of State economic development benefits. Since the EWIPIP is also a designated State Empire Zone, businesses located in the district are offered an array of benefits and incentives. The fewer spaces for businesses in the park means the fewer benefits New York City companies obtain and the City is increasingly placed at a disadvantage in its ability to compete for State economic development benefits.
- The loss of industrial space in the EWIPIP sets a bad precedent for other industrial areas. East Williamsburg has long been viewed as one of the strongholds of New York City industry and as the park’s industrial integrity decays, it sends signals to property owners in other, perhaps less concentrated, industrial areas that residential conversion is an option.

East Williamsburg Food Manufacturer Threatened by Residential Development

For 30 years, Voila Bakery has been making high-end croissants, muffins and Danishes for New York City and tri-state supermarkets and retail stores. Despite recent profits, Voila's owners are only cautiously optimistic about their production growth in New York City due to real estate changes in the East Williamsburg In-Place Industrial Park where they are located. The 120 employee facility is gradually becoming surrounded and suffocated by residential activity.

Across the street from the bakery, a loft building was converted to a homeless shelter and on the Varick Street side of the block, the owner of a prime industrial loft building recently withdrew his variance application to convert to residential apartments once his case looked dismal at the Board of Standards & Appeals, the entity responsible for granting zoning variances. Within two blocks of the property, there are five other buildings that have residential tenants living illegally.

While Voila owns their property at 65 Porter Avenue, their plans to expand are becoming increasingly dim as surrounding space is either being converted, warehoused or offered at a price that can only be recouped by residential development. But even if they didn't expand, Voila is concerned that the growing number of residents in the area will generate complaints regarding limited street parking, truck traffic, noise and odors, creating unnecessary scrutiny and harassment from municipal agencies. Voila's fears are not unfounded: the owners cite Gillies Coffee, a 100 year old Sunset Park coffee bean grinder and distributor, that has been repeatedly fined this past year stemming from a nearby resident's complaint of coffee aromas. As a result, Gillies is considering a move to New Jersey.

Another challenge Voila faces is the loss of affordable residential space for local employees. Over 75% of Voila's workforce resides in the surrounding communities of Williamsburg, Bushwick and Ridgewood. The impending rezoning of the Greenpoint/Williamsburg waterfront and real estate speculation throughout North Brooklyn is forcing the local labor pool further and further away from East Williamsburg employment, a benefit that attracted Voila to the IPIP in the first place.

RECOMMENDATIONS

The recommendations summarized below are intended to apply citywide and would strengthen the IPIP program citywide.

1. Increase Enforcement

The increase in illegal conversions is largely due to the general awareness that enforcement by the DOB is practically non-existent. The lack of enforcement is an issue citywide and DOB currently lacks the resources to engage in a program of regular inspections and enforcement. However, it appears that the revenue that could be generated from enforcement would more than cover the costs of inspections.

DOB inspectors should repeatedly visit every building which has applied for an Alt 1 or Alt 2 permit, especially in an In-Place Industrial Park, and not wait to be requested back to approve a new Certificate of Occupancy.

Additionally, DOB employees must become better trained in the applicable zoning regulations, especially in regard to the Loft Law and where it is applied.

2. Implement New Penalty Structure to Discourage Conversions: Increase Fines and Their Frequency

The entire process for fining violations needs to be reformed as fines are not generally imposed. When they are imposed, they are rarely collected. When they are collected, they are inadequate to deter illegal conversions. Currently, the fines specified in the Administrative Code are nominal in comparison to the revenues which can be generated from illegal conversions. At the current level, they are a “cost of doing business” which can be absorbed given the high profit margins of residential development, and they do not discourage building owners from illegally converting their property.

Fines for violations of the Certificate of Occupancy violations should be increased to \$1,000 per illegal residential unit within the building. Furthermore, the inconsistency of fining for multiple violations must be corrected by automating fines for three and more offenses.

3. Establish Third Party Transfer Program for Existing Conversions

When issued, fines are often not collected and DOB has a limited range of options for enforcing the fines. DOB has the authority to order an illegally converted building to be vacated, but this would create a hardship on the residents. The challenge presented by the illegal conversions is to create a disincentive for building owners who illegally converted their buildings, but not harm the residents.

One strategy for achieving these goals would be to institute a system for third-party transfers similar to buildings in tax arrears where the violation and fine would create a lien on the property. Failure to pay the fine could lead to foreclosure and ownership would be transferred to a neighborhood not-for-profit organization. This would remove the incentive for illegal conversions, deter the spread of residential uses within the IPIP, protect the residents and possibly reduce the conflict between residents and businesses.

4. Establish Realistic Criteria for Evaluating Change of Use

The DOB must establish more realistic criteria to determine the intended use of a building applying for an Alt 1 permit, especially for a change of use to Use Group 9A (artist studios/lofts). For example, a fully built out kitchen with visible gas lines but without a stove is interpreted by some DOB inspectors as not intended for residential use. The DOB should add the presence of basic household appliances such as a stove, dishwasher, washer/dryer, or the presence of a bathtub/shower and laundry facilities as indications that the space is intended for residential use. This should give rise to a presumption that the application for the Alt 1 permit is misleading and therefore, the building warrants further investigation and inspections.

5. Begin Issuance of Zoning Resolution Violations

The DOB should begin issuing Zoning Resolution violations in coordination with violations of Certificates of Occupancy. This is within their authority and their failure to

do so is denying the City of revenue. Furthermore, not issuing these violations signals that adhering to the Zoning Resolution is voluntary.

6. Establish an Industrial Employment District

A major challenge for the City in sustaining the IPIPs for industrial uses is refuting the perception that the current zoning is not meaningful and therefore any type of development will be tolerated. In the EWIPIP, the threat comes primarily from residential encroachment into the IPIP. In other areas, such as Long Island City and Sunset Park, it comes from the conversion of industrial space to office and retail uses.

The perception that areas zoned for manufacturing, including the industrial parks, are up for grabs did not arise overnight but is in great measure the result of a history of decisions to encourage non-industrial uses in these areas. These non-industrial uses include superstores, adult-related retail and, in the EWIPIP, homeless shelters.

To reverse this perception, the Department of City Planning should establish an Industrial Employment District (IED) mirroring the boundaries of the East Williamsburg In-Place Industrial Park and other IPIPs. An IED is a zone where uses are limited to industrial such as the manufacturing, warehousing, and distribution of physical goods. Residential development is not allowed. Only industrial uses are permitted as-of-right and other commercial uses may be allowed through a special permit. Designation of an area as an IED would send a strong signal to the market that the zoning will be vigorously enforced, that parking, noise and other regulations will favor industrial uses, and that the City will provide services and capital improvements appropriate for an industrial area.

Establishing an IED in an IPIP will help minimize real estate speculation and offer industrial businesses the stability to invest in their properties and create more jobs.

7. Institute Citywide Conversion Fees

The City should institute a citywide system of “conversion fees” to recapture a portion of the value created when industrial property is converted to another use and use the revenue to pay for some of the costs that are imposed on the City to retain jobs displaced by the conversion. Conversion fees are a type of “impact fee” which are used throughout the United States to offset the burden that new development can place on a community where the development occurs. For example, impact fees are often imposed when a new housing project is constructed to help the municipality pay for additional road and sewer construction that is made necessary by the residential growth.

In New York, conversion fee revenue could be used to reduce the relocation costs for displaced companies and to help reduce the costs of developing new industrial space to replace the space lost as a result of the conversion. For example, revenues could be dedicated to a Trust for Industrial Space which could develop industrial property or help local non-profit development organizations to do so. The revenue could also be used to upgrade the operations of companies which remain located in increasingly mixed residential/industrial neighborhoods to minimize possible environmental conflicts with their new residential neighbors.

If the City had a system in place for assessing conversions fees, the conversion of buildings in the Greenpoint/Williamsburg Rezoning area would generate revenue which could be used to help the displaced companies move into the EWIPIP.