

Housing and Classrooms, Not Parking: Overcoming Zoning Gridlock in NoHo

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Introduction

If New York City is to mitigate its housing shortage, local land use regulation needs to take advantage of the early 20th century investment in subway transit, by allowing new housing at high densities in transit-rich areas. Simultaneously, the city needs to support the expansion of its higher education institutions to ensure that its future labor force is equipped with the skills and education required to maintain the city's position at the center of one of the nation's most productive metropolitan areas.

The NoHo neighborhood in Manhattan is a striking example of a failure to update land use policy in furtherance of these priorities. The location is one of the best for transit in Manhattan, with four subway lines (B, D, F and M) serving the Broadway-Lafayette station on Houston Street, another (the 6) serving the connected Bleecker Street station and the Astor Place station on Lafayette Street, and the R and W serving the Eighth Street station on Broadway. The neighborhood bustles with pedestrians heading to or from home, school or work.

One would think the real estate in the neighborhood would be quite valuable. Indeed, the area is a hotbed of construction. A seven-story commercial building is under construction at 300 Lafayette Street, at the southwest corner of Houston Street. A block to the west, another six-story commercial building is under construction at 19 East Houston Street. A third ten-story commercial and community facility building is under construction at 363 Lafayette Street.

And yet land uses in the NoHo neighborhood seem in many places curiously out-of-sync with its transit accessibility, bustling surroundings and designated landmarks and historic districts. As one walks up Lafayette Street, one encounters a single-story commercial building on the northwest corner at Bleecker Street, where a subway entrance is located. Continuing north, toward Astor Place, one encounters two open parking lots and a parking garage.

Other major streets seem just as anomalous. Along the east side of Broadway, close to Greenwich Village and NYU's main campus, many retail storefronts sit empty. Along the wide Bowery, open lots and one-story buildings persist as well. One last oddity—NoHo abounds with health clubs and gyms.

As interesting as what NoHo has, is what it does not have. NoHo is a primarily residential neighborhood but not a dense one. A second interesting aspect of NoHo is that NYU largely stays west of Broadway. This major university has a limited presence in NoHo, although it would seem to be an ideal area for the university to expand while limiting conflicts with the dense residential neighborhoods of Greenwich Village and the Lower East Side.

One explanation is essential to these observations. The area's peculiar zoning, combined with historic district controls, effectively keeps out many of the land uses that would, on economic rationales alone, wish to locate there, and creates incentives for other uses. On the whole, the zoning keeps NoHo underdeveloped relative to the theoretical zoning it has, and the transit infrastructure that makes it so accessible. More sensible zoning would lead to investments that would benefit both the neighborhood and the city as a whole.

NoHo contains several individual city landmarks and is almost entirely within three historic districts. NoHo's architectural heritage is an important asset to the neighborhood and for the city as a whole. But it need not be an impediment to the redevelopment of sites that do not contribute to the neighborhood's historic character.

Origins of NoHo

The zoning history of NoHo is intertwined with that of SoHo, the larger and more storied artists' district of the 1960s and 1970s south of Houston Street. This report focuses on NoHo, because its more compact size and less consistent land use pattern should make land use regulatory changes easier to contemplate.

NoHo is a neighborhood of Manhattan that is zoned today M1-5B, and is generally bounded by Broadway, East Houston Street, Bowery and Astor Place. NoHo is comprised of parts of three census block groups, two in Census Tract 55.02 and one in Census Tract 57. Together, these census block groups included 4,129 persons in the 2010 Census.¹ Much of this population, however, likely lives in two high-rise buildings located outside of NoHo on the block west of Broadway and north of Waverly Place, or on three blocks east of Mulberry Street and south of Bleecker Street, which are considered part of the Little Italy neighborhood.

¹ U.S. Census Bureau, 2010 Census: Apportionment Data Map.
<https://www.census.gov/2010census/popmap/>.

Figure 1. NoHo



Source: <https://zola.planning.nyc.gov/>, NYU Rudin Center for Transportation, 2018 (Ari Kaputkin, map designer)

The area was first developed in the early 1800s as a high-end residential neighborhood, with several houses of worship and nonprofit institutions. By the mid-1890s, it had evolved into an entertainment district. A few buildings remain from this early period, but the neighborhood is dominated by commercial loft buildings, mostly constructed after the Civil War through the early 1900s.²

By the 1920s the area was in decline. In its historic district designation report the Landmarks Preservation Commission attributes this decline to an aging building stock, the difficulty of upgrading older loft buildings in the wake of new code requirements enacted following the Triangle Shirtwaist fire in 1911, and the desire of textile firms to be close to the department stores

² Presa, Donald G., Virginia Kurshan, Gale Harris, and Jay Shockley. "NoHo Historic District Designation Report." New York, NY: New York City Landmarks Preservation Commission, June 29, 1999, pp. 5–19.

http://home2.nyc.gov/html/lpc/downloads/pdf/reports/NoHo_HD.pdf.

relocating to Midtown.³ The area may also have been disrupted by major public improvement projects. In the 1890s and early 1900s, what is now Lafayette Street was constructed by connecting Lafayette Place, north of Great Jones Street, to Marion Street, which ended just north of Prince Street. The improvement allowed for the construction of the city's first subway, opened in 1904.⁴

The Lafayette Street construction required the demolition of several buildings and resulted in leftover slivers of vacant land and an oddly-shaped narrow block configuration between Crosby and Mulberry Streets, south of Bleecker Street. The neighborhood was further disrupted by the widening of Houston Street in the early 1930s for construction of the crosstown portion of the Sixth Avenue subway. Seemingly to preserve both the Cable Building on the northwest corner of Broadway and the Puck Building on the southeast corner of Lafayette (both designated New York City landmarks today), the widened street forms a diagonal between Broadway and Lafayette, creating oddly-shaped triangular lots that stayed vacant or developed with single-story buildings for decades (some remain in this condition). While the subway opened in 1936, the construction of the widened roadbed did not begin until 1957, and was completed in 1963.⁵

A 1955 fire insurance map⁶ shows the most common type of building to be “Lofts,” with garages, parking and gas stations to be important secondary uses. Only a few buildings are given names: The Hebrew Aid Society in the building that today is the Public Theater on Lafayette Street (originally the Astor Library, and a designated New York City landmark); the Bayard-Condict Building on Bleecker Street, designed by Louis Sullivan and also a designated landmark; the Hubbs Building at the southeast corner of Lafayette Street and East Fourth Street; and the buildings on Cooper Square occupied by Schieffelin & Co. and the Carl Fischer sheet music publishing company.

In the new New York City zoning resolution that became effective in 1961, this area, with few residents, was zoned M1-5. This district allowed industrial and commercial uses, but not

³ Ibid., p. 19.

⁴ Percival, Marianne S., and Kathryn E. Horak. “NoHo Historic District Extension: Designation Report.” New York, NY: New York City Landmarks Preservation Commission, May 13, 2008, pp. 15–16. <http://home2.nyc.gov/html/lpc/downloads/pdf/reports/NOHOExtensionReport.pdf>.

⁵ Gray, Christopher. “Streetscapes/Houston Street; Amid the Giant Ad Signs, New Buildings Sprout.” *The New York Times*, April 18, 2004. <https://www.nytimes.com/2004/04/18/realestate/streetscapes-houston-street-amid-the-giant-ad-signs-new-buildings-sprout.html>.

⁶ G.W. Bromley and Company, Manhattan Land Book of the City of New York. “Plate 23, Part of Section 2.” New York Public Library Digital Collections. <https://digitalcollections.nypl.org/items/59881180-4682-0132-40b2-58d385a7b928#>.

residences, and a limited number of community facility uses (not including colleges and universities). The floor area ratio is 5.0 for commercial and manufacturing uses and 6.5 for community facilities. An oral history transcript by Edwin Friedman, a New York City planner who worked on the 1961 zoning, explains the reasoning for this mapping:

The Canal – Houston Street industrial area (M1-5) extends north of Houston to approximately 8th Street. A great deal of thought was given to joining Greenwich Village with the area now known as the East Village. However, the nonresidential uses along Broadway and Lafayette were strong, and indications of a trend towards residence were scant. Thus, the industrial wedge ... separates Greenwich Village from the East Village area.⁷

In the 1960 Census, Tract 55, which extended from LaGuardia Place to Bowery between Houston and 4th Streets, including large areas not within NoHo, had a population of 3,605. Tract 57, including the portion of NoHo north of East Fourth Street, had a population of 162.⁸

NoHo as a Preserved Industrial Area with Housing for Artists Only

The Department of City Planning's discussion of Manhattan Community Board 2 in the 1969 proposed "Plan for New York City" states, under the heading of "Industry," that

The largest concentration of industry in the district occupies a 40-block area between Canal, West Houston and Lafayette Streets and West Broadway. ... More than 1,100 firms provide some 25,000 unskilled and semiskilled jobs in such industries as textiles and apparel, printing and graphic arts, plastic goods and hardware.

Increasing numbers of artists are beginning to occupy the smaller loft spaces vacated by industries moving from the area, particularly in the South Houston Industrial Area (SOHO). This is now

⁷ Friedman, Edwin. "The 1961 Zoning." New York, NY: New York City Department of City Planning, 1961, p. 43. <https://archive.org/details/1961zoning00frie>.

⁸ U.S. Census Bureau, U.S. Censuses of Population and Housing: 1960, Census Tracts, New York, N.Y. Standard Metropolitan Statistical Area, Part 1, New York City, p. 116. A scan of the Manhattan census tract map for 1960 can be found at http://archive.lib.msu.edu/DMC/US_Census_Maps/pdfs/00000004.pdf.

*illegal, but we are considering legalizing use by the artists of the narrow lofts that would otherwise be left vacant ...*⁹

Thus was foreshadowed a process of land use change in which the rundown industrial neighborhood between Greenwich Village on the west and the East Village, Little Italy and the Lower East Side on the east was rapidly transformed. In 1970 the Department of City Planning, attempting to preserve as much employment as possible, proposed a zoning amendment in which the SoHo area would be remapped to a new zoning district, called M1-5A, which would be the same as the existing M1-5 except that

*Joint Living-Work Quarters for Artists would be permitted in buildings which could meet the following conditions: that the building contained at least one Joint Living-Work Quarters for Artists on May 1, 1970, and that the building does not exceed 3600 square feet of lot area, unless it was held in cooperative ownership by May 1, 1970. These restrictions were designed to protect the larger loft buildings for manufacturing uses. The provision is made that an artist is a person so certified by The New York City Department of Cultural Affairs.*¹⁰

By the adoption of the proposal in 1971, there were two new districts: M1-5A, in which new Joint Living-Work Quarters for Artists were allowed, but there was no requirement for prior occupancy by an artist, and M1-5B, which was similar to the original proposal. The vesting date was moved up to September 15, 1970. In addition, the Commission agreed to a survey of the NoHo area (and Tribeca as well) to determine its suitability for the new zoning.¹¹

By 1975, the *New York Times* reported, “SoHo is no longer cheap...the younger artists are looking in NoHo, SoCa and TriBeCa—north of Houston, south of Canal and the triangle below Canal—for the cheap lofts they once went to SoHo for.”¹² In October 1975, the City Planning Commission

⁹ City Planning Commission. “Plan for New York City, 1969: A Proposal.” Vol. 4, Manhattan, p. 35. New York Public Library Digital Collections.

<http://digitalcollections.nypl.org/items/c42cb93f-8e74-ca65-e040-e00a18064e5c>.

¹⁰ CP-21256A, pp. 2–3.

<https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/CP21256a.pdf>.

¹¹ Ibid., p. 3.

¹² Ferretti, Fred. “SoHo Grows Up and Grows Rich and Chic.” *The New York Times*, October 12, 1975. <https://www.nytimes.com/1975/10/12/archives/-grows-up-and-grows-rich-and-chic.html>.

proposed to permit the conversion of loft space to housing, without limitation to artists, in an area of NoHo east of Lafayette Street, as well as an area of Tribeca.¹³

Implicit in the terms of this proposal was a recognition that once an area is opened up to residences, restricting occupancy to artists is a difficult undertaking. However, at a Community Board 2 hearing in October, concerns were expressed that opening up NoHo to residences generally would lead to rent increases, and that the artists' restrictions in SoHo should be extended to NoHo, with an exception for existing residents.¹⁴

This suggestion formed the basis for the zoning approved by the City Planning Commission on March 31, 1976. NoHo was separated from Tribeca and rezoned M1-5B (the rezoning extended from Broadway to the Bowery).¹⁵ The accompanying zoning text amendment stated that

*any existing occupant of a joint living-work quarters for artists which cannot meet the qualifications of the Department of Cultural Affairs may remain as a lawful use. This lawful use is nontransferable and ceases immediately upon the vacating of such space. Such occupants must register with the Department of Cultural Affairs in order to preserve their lawful status in their existing space ...*¹⁶

The Commission is silent in its report on the reasoning behind this language, but one can immediately see problems with implementing and enforcing it. The Commission set no deadline for registering with the Department of Cultural Affairs, did not determine what proof of "existing" occupancy would suffice, and did not address succession of an existing non-artist occupant by related persons. Effectively, the Commission was creating a large loophole in its land use framework, in which artists only would be permitted to live in NoHo because their activities were deemed compatible with industry.

In that same session in March 1976, the Commission made other changes in SoHo, which extended to the M1-5B mapped in NoHo. The amendment increased the permitted lot coverage for buildings permitted to have artists' lofts to 5,000 square feet, except for buildings fronting Broadway, where industrial uses were more prevalent. Ground floor retail was also restricted,

¹³ Fowler, Glenn. "Rezoning Sought for Loft Space." *The New York Times*, October 16, 1975. <https://www.nytimes.com/1975/10/16/archives/rezoning-sought-for-loft-space-city-planning-unit-asks-shift-for.html>.

¹⁴ Hudson, Edward. "NoHo Residents Resist Loft Zoning." *The New York Times*, November 9, 1975. <https://www.nytimes.com/1975/11/09/archives/noho-residents-resist-loft-rezoning.html>.

¹⁵ CP-23167. <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/CP23167.pdf>.

¹⁶ CP-23170. <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/CP23170.pdf>.

except for buildings in M1-5A with lot coverage less than 3,600 square feet, to preserve the most suitable space for industry.

In August 1976, the Commission added additional restrictions in SoHo and NoHo on eating and drinking places (limited to 5,000 square feet) and nightclubs and restaurants (permitted only by Board of Standards and Appeals special permit).¹⁷ While the Commission's report delicately avoids saying so directly, the demand to address the nighttime noise issues created by large entertainment uses marked the emergence of these areas as residential, not industrial neighborhoods.

In February 1981, the Commission approved zoning text amendments providing for conversion of oversized buildings in SoHo and NoHo by City Planning Commission special permit, and establishing a deadline of September 1, 1981 for filing proof of pre-existing occupancy in NoHo by non-artists.¹⁸ The Board of Estimate moved the date to January 4, 1982 and it was extended again by the Commission to July 31, 1982,¹⁹ and then to August 31, 1983.²⁰

The City Planning Commission termed the 1983 amendment the “final extension of the filing deadlines for NoHo non-artists.” However, this was not to be the case. In December 1986 the Commission revised the definition of “joint living-work quarters for artists” to include a unit occupied

*by any household residing therein on September 15, 1986 whose members are all unable to meet the artist certification qualifications of the Department of Cultural Affairs that registers with the Department of Cultural Affairs prior to (nine months from the effective date of this amendment); or ... by any person who by virtue of a relationship to a person [that is specifically entitled to reside] is entitled to possession.*²¹

The Commission stated in its report:

*This text amendment is needed to maintain neighborhood stability in the face of eviction pressures on the large number of households in SoHo/NoHo lacking artist certification. It is an interim measure. A broader study of SoHo/NoHo is now underway which is considering longer-range alternative approaches.*²²

¹⁷ CP-23250. <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/CP23250.pdf>.

¹⁸ N800458 ZRM. <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/800458.pdf>.

¹⁹ N820671 ZRM. <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/820671.pdf>.

²⁰ N830989 ZRM. <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/830989.pdf>.

²¹ N870206 ZRM. <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/870206.pdf>.

²² Ibid., p. 5.

The Commission's report cited a 1983 occupancy survey of SoHo and NoHo:

*It provided estimates of the proportion of artist and non-artist households in the district. At the time of the survey the area had approximately 8,700 residents in 3,900 households. Thirty percent of the units had a certified artist while an additional 34 percent of the households had a member who conceivably could meet the Department of Cultural Affairs' criteria for artist certification. The remaining 36 percent were clearly not certifiable. They were either non-artists, or worked in arts categories not considered certifiable by the Department of Cultural Affairs (i.e. commercial artists, artisans, architects, photographers, etc.).*²³

The Commission also cited the problem of household succession by non-artists:

*In the course of Departmental review of joint living-work quarters for artists' occupancy another issue arose regarding the residual family whose certified artist has died or moved out. Under current zoning at least one resident of a joint living-work quarters must be a certified artist; therefore an artist's family's right to remain in its home ceases should the artist leave or die.*²⁴

The Commission's 1986 change not only allowed non-artists to reside legally in SoHo and NoHo, provided they registered with the Department of Cultural Affairs within nine months, but confusingly designated their housing units as "joint living-work quarters for artists," thus creating uncertainty as to what, if anything, having a certificate of occupancy for this use actually means. The Commission also addressed the issue of succession, which would clearly apply to a large number of joint living-work quarters units in SoHo and NoHo in the future; as the neighborhood became highly desirable family members would naturally wish to remain even without the certified artist.

The Board of Estimate replaced the Commission's language, which clearly referred to family members and succession, with the more ambiguous "any person who is entitled to occupancy by any other provision of law."²⁵ The Board's resolution does not include an explanation of the change. However, it is likely that the intent was to add to the definition units legalized via Article 7C of the Multiple Dwelling Law, also known as the Loft Law. With the City's support, the law had been passed in 1982 to provide a process for legalization of residential lofts that did not have a proper certificate of occupancy. However, the law had required the residential use be permitted by

²³ Ibid., p. 2. The Department of City Planning published its survey in 1985 as "SoHo/NoHo: Occupancy Survey," 1983. Cited in Hudson, James R. "Organized Groups, Land Use Decisions, and Ecological Theory." *Sociological Perspectives*, 31, no. 1 (1988): 122–141.

²⁴ Ibid., p. 3.

²⁵ Calendar No. 166, January 8, 1987.

zoning²⁶; in SoHo and NoHo, where only joint living-work quarters for artists were permitted as a manufacturing use, units legalized under the Loft Law were so listed on their new certificates of occupancy, even though no artists certified by the Department of Cultural Affairs lived there or would be required to do so in the future. The Board of Estimate's change did not alter the legal status of these units, which was based on state law, but cross-referenced them in zoning. However, the change highlighted the issue of what a "joint living-work quarters for artists" actually was.

In the 1987 legislative session a new section was added to the Loft Law. The 1987 amendments overrode the requirement for zoning consistency, provided that the units "had residential occupants on May first, nineteen hundred eighty-seven in units occupied residentially since December first, nineteen hundred eighty-one that were occupied for residential purposes since April first, nineteen hundred eighty."²⁷ Unlike the city's zoning grandfathering provisions, there was no filing deadline. Residents need not make their presence known to governmental authorities, unless and until the landlord attempted eviction for illegal occupancy.

The combined effect of all the grandfathering provisions, filing deadline extensions, and state overrides was to make clear that there would never be any concerted effort to evict non-artists from SoHo and NoHo. Any sizable group of non-artist residents faced with enforcement action would be able to work through the political process at the local or state level to be allowed to remain. Despite the protestations of the City Planning Commission of its intent to preserve SoHo and NoHo as industrial areas, the neighborhoods rapidly took on a largely residential and commercial character.

Historic Preservation in NoHo

Nearly all of the area in NoHo is encompassed within three historic districts designated by the Landmarks Preservation Commission: NoHo (1999), NoHo Extension (2008) and NoHo East (2003). The historic districts ensured strict oversight over new buildings and enlargements and alterations of existing buildings, to ensure consistency with the historic character of these areas. However, they also provided additional mechanisms to allow for non-artists to live in NoHo.

§74-711 of the Zoning Resolution is a flexible provision that allows, by special permit of the City Planning Commission, use and bulk (except floor area ratio) restrictions to be waived. This provision is intended to help relieve property owners of the burdens of maintaining a historic building by providing avenues for development or conversion that are not available generally within the applicable zoning district. In 2008 the City Planning Commission granted a special permit for

²⁶ Multiple Dwelling Law, §281, Laws of 1982, Ch. 349.

²⁷ Amendments to Multiple Dwelling Law, §281, Laws of 1987, Ch. 466.

the construction of a 15-story, primarily residential building with 147 units on East Fourth Street at Cooper Square in the NoHo M1-5B district. The applicant agreed to restore the Skidmore House, a designated landmark on the same zoning lot. The residential building has been erected as 2 Cooper Square.

In 2003 the City Planning Commission approved amendments to Section 74-712 of the Zoning Resolution. As amended, this zoning provision allows, by City Planning Commission special permit, waiving use restrictions for new construction on lots in historic districts that for vacant sites, land with minor improvements, or sites where not more than 20 percent of the site is occupied by an existing building, in M1-5A and M1-5B districts located within historic districts. The Commission concurrently approved an application for the construction of a 14-story, predominantly residential building in SoHo. The Commission stated in its report that

Development of vacant sites in the M1-5A/5B districts is significantly restricted by the districts' use regulations. Implicit in the Section 42-14D regulations governing the M1-5A/5B districts is the prohibition on new Use Group 2 residential uses and the restriction of as-of-right new construction to a specific set of conforming uses which include light industry, warehousing, wholesaling, parking facilities, and hotels. Joint Living-Work Quarters for Artists (JLWQAs) are the only form of dwelling units allowed in the M1-5A/5B districts and are allowed only by the conversion of existing buildings

SoHo and NoHo are confronting increasing development pressures for new residential development, as evidenced by the granting of several Boards of Standards and Appeals variances for residential use over the past few years. Since zoning does not prescribe the bulk controls to be used in conjunction with a use variance, residential buildings proposed pursuant to a BSA variance routinely exceed the 5 FAR allowed in the M1-5A/5B districts.²⁸

The special permit provision was amended further in the following years, to increase the number of eligible sites. As a result, several residential buildings have been constructed in SoHo and NoHo pursuant to approved special permits. In NoHo, these include 688 Broadway, a seven-unit predominantly residential building.²⁹

²⁸ C 030490 ZSM, pp. 2–3.

<https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/030490.pdf>.

²⁹ C 140055 ZSM. <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/140055.pdf>.

Mandatory Inclusionary Zoning

In 2016 the city adopted the de Blasio administration's mandatory inclusionary zoning policy. This included a new zoning provision, Section 74-32, "Additional Considerations for Special Permit Use and Bulk Modifications," which stipulates that:

Where a special permit application would allow a significant increase in residential floor area ... the City Planning Commission, in establishing the appropriate terms and conditions for the granting of such special permit, shall apply [Mandatory Inclusionary Housing program] requirements

This provision was immediately applied by the Department of City Planning to NoHo special permit residential conversion and new construction applications. However, applicants did not find the new terms economically supportable. The result of the change was not to secure affordable housing³⁰ in connection with residential conversions and new construction; rather, it was to ensure that no new applications for residential conversions or new construction would be reviewed that exceed the mandatory inclusionary zoning minimum threshold of 10 units or 12,500 square feet of floor area.

Board of Standards and Appeals Actions in NoHo

With the underlying zoning largely unchanged despite the rapid evolution of NoHo into a high-end residential and commercial neighborhood, and the City Planning Commission special permit process politically fraught and uncertain, the Board of Standards and Appeals (BSA) has taken on an important role in facilitating land use changes. The BSA grants zoning variances, based on findings of hardship or, in the case of non-profits, practical difficulties in complying with zoning requirements. In some cases, the Zoning Resolution permits the BSA to allow site-specific land use changes by special permit. Unlike zoning changes and special permits by the City Planning Commission, the BSA's actions are not subject to City Council review and therefore, provide a relief outlet in situations where zoning is otherwise frozen due to a political impasse.

The BSA's searchable database of its decisions goes back to 1998. In the past two decades the BSA has granted variances for nine residential (i.e., not joint living/work quarters for artists) buildings in NoHo with a total of 71 units. Seven of these buildings are completed and two are under construction. The Board also granted a variance for the conversion of the upper nine floors of the

³⁰ The requirements of the Mandatory Inclusionary Housing program are described at <https://www1.nyc.gov/site/planning/zoning/districts-tools/inclusionary-housing.page>.

ten-story 726-730 Broadway, one of the largest buildings in NoHo, to academic use by New York University, primarily scientific research laboratories and teaching facilities.

Under certain conditions, BSA may permit schools in M1 zoning districts by special permit. BSA has permitted a private high school in NoHo at 38-50 Cooper Square. The Zoning Resolution also specifies that health clubs, categorized as “physical culture establishments” are permitted only by BSA special permit. While this is a more restrictive provision than the underlying commercial or manufacturing zoning in most parts of the city, in M1-5B districts, it is less restrictive. Other types of ground-floor commercial use require a City Planning Commission special permit, or a BSA variance. BSA has permitted ten physical culture establishments in NoHo, three of which are still under construction. Although the number of health clubs in NoHo may simply be a reflection of high demand, the relative procedural ease of the BSA special permit process could also be a factor.

While many retail spaces have obtained special permits from the City Planning Commission to provide ground floor retail, BSA has granted nine variances for ground floor or cellar retail. Five are in buildings that also include residences. Three of the retail spaces that received variances are still under construction.

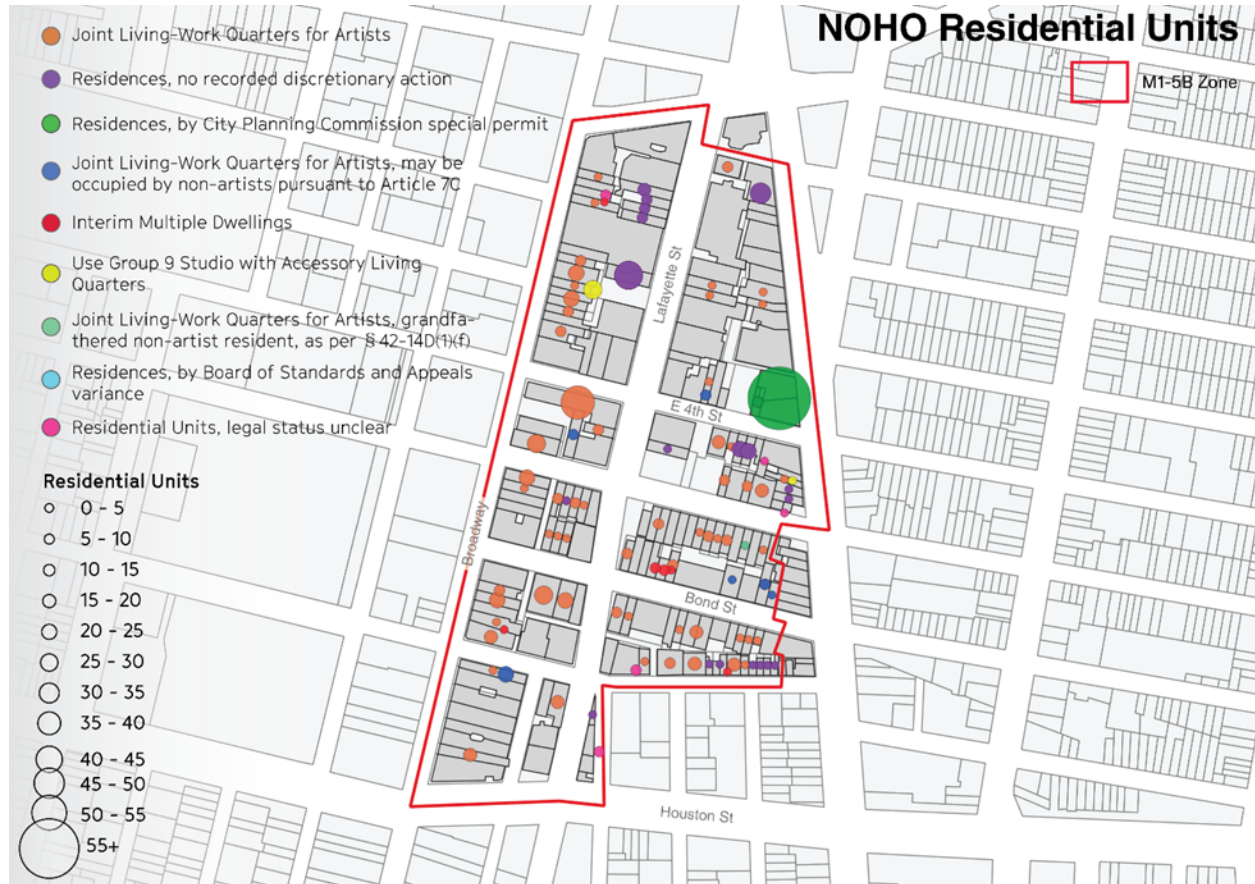
NoHo Today: Housing

It is difficult to get a precise reading on the number of residential units in NoHo. Different sources give different numbers. The Department of City Planning’s PLUTO database, derived from property tax records, lists 1,046 units.³¹ A closer look involving the examination of certificates of occupancy³² and other data sources yields a very similar number, 1,036, although there is substantial variation on a lot-by-lot basis. This detailed breakdown is shown in Table 1 and mapped in Figure 2.

³¹ The data can be downloaded at <https://www1.nyc.gov/site/planning/data-maps/open-data.page>; the specific blocks comprising NoHo were selected from the Manhattan borough data on July 23, 2018.

³² Searchable at <http://a810-bisweb.nyc.gov/bisweb/bispi00.jsp>.

Figure 2



Source: NYU Rudin Center for Transportation, 2018 (Ari Kaputkin, map designer)

Table 1. Residential Units in NoHo, July 2018

<p>Joint Living-Work Quarters for Artists (either restricted to artists certified by the Department of Cultural Affairs or not otherwise specified)</p> <p>Source: NYC Dept. of Buildings, Certificates of Occupancy; NYC Loft Board, researched by the Department of City Planning in 2016 (Author's files); Loft Board orders at https://www.nyls.edu/cityadmin/.</p>	515, of which 214 were legalized through the MDL Article 7C process
<p>Joint Living-Work Quarters for Artists, grandfathered non-artist resident, as per §42-14D(1)(f) of the Zoning Resolution</p> <p>Source: NYC Dept. of Buildings, Certificate of Occupancy</p>	1
<p>Joint Living-Work Quarters for Artists, may be occupied by non-artists pursuant to Article 7C of the Multiple Dwelling Law (Loft Law)</p> <p>Source: NYC Dept. of Buildings, Certificates of Occupancy</p>	47
<p>Interim Multiple Dwellings pursuant to Article 7C of the Multiple Dwelling Law (Loft Law)</p> <p>Source: New York City Loft Board, http://www.nyc.gov/html/loft/html/buildings/search-results.shtml?street= and Loft Board orders at https://www.nyls.edu/cityadmin/.</p>	28
<p>Use Group 9 Studio with Accessory Living Quarters</p> <p>Source: NYC Dept. of Buildings, Certificates of Occupancy.</p>	24
<p>Residences, no recorded discretionary action</p> <p>Source: NYC Dept. of Buildings, Certificates of Occupancy and visual inspection of buildings constructed prior to 1961 zoning restrictions and designed and constructed for residential use.</p>	156
<p>Residences, by Board of Standards and Appeals variance</p> <p>Source: BSA Decisions.</p>	77 (includes 9 under construction)
<p>Residences, by City Planning Commission special permit</p> <p>Source: City Planning Commission Reports, http://a030-cpc.nyc.gov/html/cpc/index.aspx.</p>	158 (includes 6 under construction)
<p>Residential Units, legal status unclear</p> <p>Source: DCP Pluto listing, no certificate of occupancy posted online by NYC Dept. of Buildings, visual inspection of building constructed prior to 1961 zoning restrictions indicates building not designed for residential use.</p>	30
Total	1,036

Five hundred fifteen, or about half the residential units, are shown on their Certificates of Occupancy as Joint Living-Work Quarters for Artists, subject to the underlying definition of this use in the New York City Zoning Resolution. Three hundred one of these units secured certificates of occupancy through the city's normal permitting process. These likely include units with occupants "grandfathered" under the zoning amnesties enacted in 1976 and effective until 1983, and again enacted in 1986 and effective until the following year. Only one additional unit has its amnesty status specifically listed on its certificate of occupancy. It seems implausible that no other units were affected by these amnesties.

In addition, research in the New York City Loft Board's files by the Department of City Planning in 2016, supplemented by research in Loft Board documents searchable online, revealed that an estimated 214 of these joint living-work quarters units became residences through the Multiple Dwelling Law Article 7C, or Loft Law, process. These units were illegally occupied during specified "window periods" by non-artists and legalized pursuant to state law. Such units fall under paragraph (c) of the zoning definition—"occupied by any person who is entitled to occupancy by any other provision of law"—and should be viewed as under no obligation to be occupied by artists certified by the Department of Cultural Affairs.

Faced with a situation in which it was issuing certificates of occupancy that appeared to be for artists' occupancy and were in fact unrestricted, the Department of Buildings in some cases added a notation that specific joint living-work quarters units could be occupied by non-artists pursuant to Article 7C. Forty-seven units have this notation. While helpful in providing correct information to residents and the public, the notation does not appear to create a status for these units that is legally distinguishable from that of the Article 7C units without this notation.

There are 28 Interim Multiple Dwellings. These are units that entered, but have not exited, the Article 7C legalization process and are regulated by the Loft Board.

Twenty-four units are Use Group 9 artists' studios with accessory living space, according to their certificates of occupancy. This status, a mechanism to evade the prohibition on residences in a manufacturing zoning district, was eliminated by amendments to the zoning definition of accessory use in 1979³³ but not applied retroactively.

There are 391 residential units as per certificates of occupancy, or that predate the 1961 zoning restrictions on residences and thus have legal non-conforming status. Of these, 77 are pursuant to

³³ N790734 ZRY. <https://www1.nyc.gov/assets/planning/download/pdf/about/cpc/790734.pdf>.

Board of Standards and Appeals variances since 1998, when such decisions began to be available online in a searchable format. Nine of these units remain under construction as of July 2018.

An additional 158 of the residential units are pursuant to City Planning Commission special permits. Of these, six remain under construction as of July 2018. Finally, thirty units are listed in PLUTO in buildings that do not have certificates of occupancy in the Department of Buildings' online database. The regulatory status of these units could not be verified.

In summary, only about one-third of the housing units in NoHo are “joint living-work quarters for artists” that might once have had as a resident an artist certified by the Department of Cultural Affairs. The remaining units are mainly either joint living-work quarters legalized or legalizing through the Article 7C process, presumably because they did not have a certified artist as a resident, or legal residential units with no special occupancy status. A few units are in the obsolete “accessory” category or can't be categorized.

Even the one-third figure probably overstates the number of units in NoHo that once were the home of a certified artist. The 1983 survey of both SoHo and NoHo found that only 30 percent of occupied units included a certified artist. The repeated zoning amnesties for non-artists living in NoHo would likely not have been supported by the City Planning Commission and the Board of Estimate, had there not been sizable populations pressing for them.

NoHo Employment

The most recent Census data on workers at the workplace by industry are American Community Survey data for the 2006–10 period. These are available for the two census tracts, 55.02 and 57, that cover NoHo and some peripheral areas, including some NYU buildings between Broadway and Mercer Street, as well as the large 770 Broadway office and retail building.

In the 2006–10 period, the two census tracts had an average of 19,735 workers. The largest industry categories were Educational, Health and Social Services, with an average of 4,440 workers, and Professional, Scientific, Management, Administrative and Waste Management Services, with an average of 3,900 workers, followed by Information, with 2,620 workers, and Retail Trade, with 2,220.³⁴

³⁴ CTPP Part 2 Table A202104 - Total Workers, 16 Years and Over, by Industry at Workplace, New York City, 2010 Workplace Census Tracts, U.S. Census Bureau, American Community Survey 2006–2010 Five-Year Estimates. Special Tabulation: Census Transportation Planning; published by NYC Dept. of City Planning. <https://www1.nyc.gov/site/planning/data-maps/nyc-population/american-community-survey.page>.

Colleges and Universities

In addition to the large building that obtained a BSA variance at 726 Broadway and its fitness center at 404 Lafayette Street, NYU operates in several other NoHo buildings. The Admissions Office and other administrative functions are located in an office building at 383 Lafayette Street. The Center for Ballet and the Arts, the New York Institute for the Humanities and the Arthur L. Carter Journalism Institute are located at 20 Cooper Square. Next door, Cooper Union's administrative offices are at 30 Cooper Square.

Ground Floor Use

A June 2018 survey of ground floor uses in NoHo (Figure 3) found that these are dominated by retail, eating and drinking establishments, and other service uses. Very few industrial businesses remain in ground floor spaces. Vacancies are notably high in the Broadway corridor. This appears to be due to a combination of zoning restrictions and market conditions, since many of the vacant storefronts have certificates of occupancy for retail, while a few do not.

Figure 3

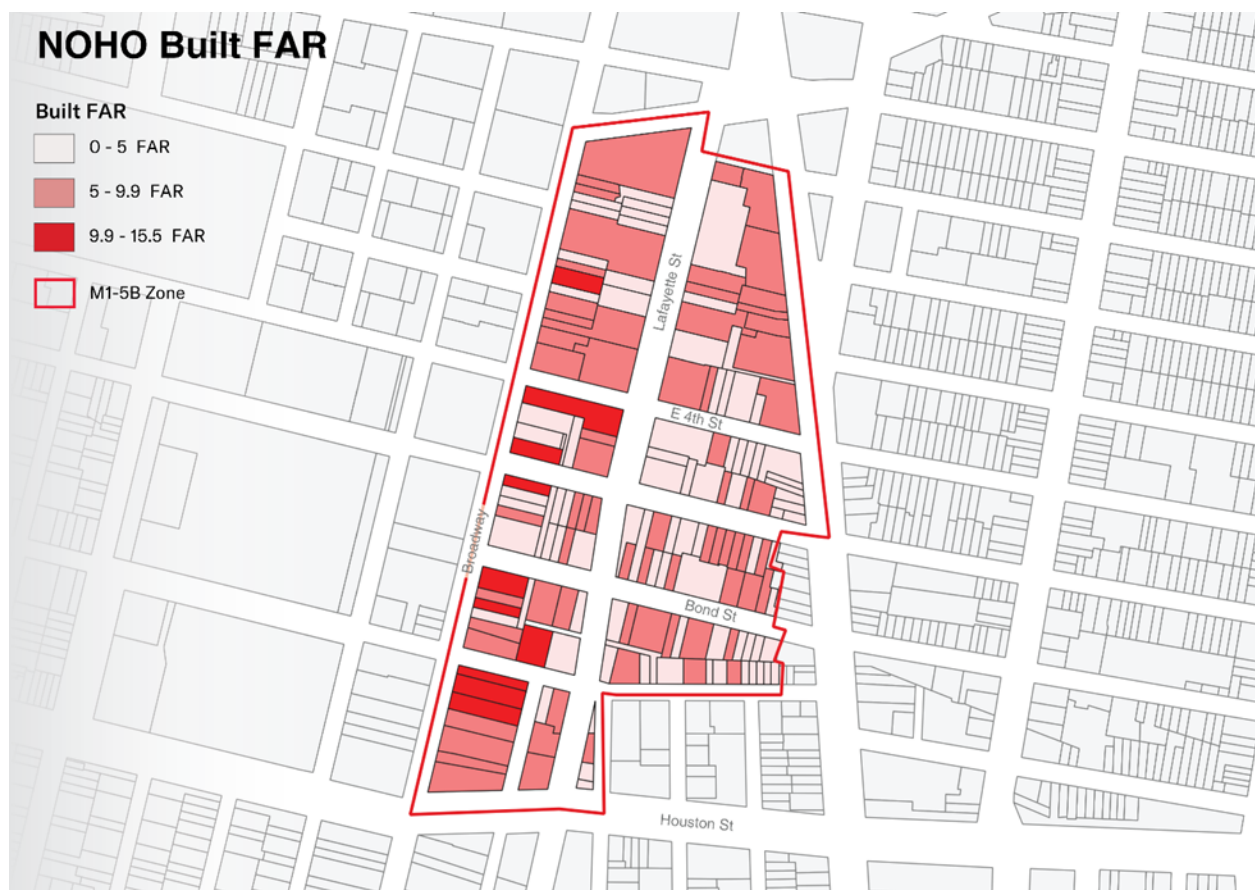


Source: NYU Rudin Center for Transportation, 2018 (Ari Kaputkin, map designer)

Floor Area Ratios

Although zoned at 5 FAR for commercial buildings, NoHo has numerous larger buildings, according to the Department of City Planning's PLUTO database (Figure 4). Each of the city blocks that lie between Broadway and Lafayette Street has at least one building of 9.9 FAR or more. Most of these buildings face Broadway, but some also front on Lafayette Street; the landmark Bayard-Condit Building faces Bleecker Street.

Figure 4



Source: NYU Rudin Center for Transportation, 2018 (Ari Kaputkin, map designer)

Conclusions and Recommendations

In reviewing the history of land use regulation in NoHo, one is struck by the sheer amount of administrative effort that has gone into regulating land use on a lot-by-lot basis, indeed sometimes a floor-by-floor basis. The Department of City Planning, City Planning Commission, Board of Standards and Appeals, Landmarks Preservation Commission, and Department of Buildings are all continually engaged in complex and contentious reviews. This is not effort well spent. The neighborhood is affluent. The two Census tracts covering NoHo and some of the surrounding area, 55.02 and 57, had a median household income, according to the American Community Survey five year data for 2012-16, of \$134,722 in 2016 dollars, compared with \$55,191 for New York City.³⁵ Other, similarly affluent neighborhoods do not enjoy comparable control over land use change.

The bewildering complexity of the interaction between zoning and other applicable laws in determining who is allowed to live in individual units in specific buildings is unique to SoHo and NoHo. To successfully enforce these regulations, the Department of Buildings would need to keep detailed files on each household. No city administration has ever been interested in committing the level of resources that would be necessary to achieve this. Nor would there be great appetite for the level of intrusiveness that would be necessary to determine if a certified artist remains in the unit, or a heretofore grandfathered tenant, or a spouse, ex-spouse, domestic partner, child or other legal successor of such an individual. At most—and it has always been unclear to what extent—the restrictions on residents make some units harder to sell or rent and depress some prices or rents. They do not create an affordable neighborhood or affordable housing in any meaningful sense.

Nor do the M1-5B special regulations achieve a superior pattern of land use. The zoning rules were originally put in place to reconcile the inflow of residents with the preservation of industrial activity, but industry has left. The neighborhood is a mix of residences, offices and institutions, with ground floor retail. As such, it is similar to many other areas in Manhattan with good transit access. What is unusual is the persistence of parking lots, garages and one-story buildings along major streets amidst high levels of investment in surrounding buildings, as well as the inconsistency of ground floor uses, with many vacancies. These likely are at least in part the consequence of the difficulty of the approval process for land use changes that are logical and consistent with the surrounding context. No industrial activity is being preserved by throwing up these procedural

³⁵ Data selected from the NYC Department of City Planning's Population Fact-Finder, which can be accessed at <https://www1.nyc.gov/site/planning/data-maps/nyc-population.page>.

obstacles, and the public loses when the City Planning Commission and elected officials pretend otherwise.

A sensible zoning scheme for NoHo could include the following elements:

- ◇ All existing code-complying Joint Living-Work Quarters for Artists should be permitted as-of-right to change their certificates of occupancy to Use Group 2 residences. The city's position that such changes, which could be accomplished under current zoning by special permit, trigger the city's mandatory inclusionary zoning policy, based on a change of use from manufacturing to residential, is misguided. The neighborhood has long been residential, not manufacturing. Only a minority of units were ever artists' live-work spaces. Moreover, the policy is not only misguided but ineffective. It accomplishes nothing but zoning stasis. Since the buildings are already occupied, no set-aside for affordable housing is possible, nor is there any economic incentive to make a payment in lieu of affordable housing in smaller buildings where this is permitted.

This change would provide regulatory consistency and facilitate the operation of a normal real estate market. Department of Buildings plan examiners and City Planning staff would no longer need to be expert zoning and Loft Law historians. Rental units that are rent-stabilized would remain so.

- ◇ Nonresidential space above the first floor existing in 1961, which can now be converted to Joint Living-Work Quarters for Artists, should be permitted to be converted to residences. Lot coverage limitations should be eliminated since there is no longer any industry to protect in large buildings.

The Departments of City Planning and Housing Preservation and Development need to study the practicality of continuing to apply the mandatory inclusionary zoning policy to conversions in NoHo. Unlike the case for existing units, there is the physical possibility of setting aside space for affordable housing. However, existing loft buildings often lay out poorly for small units, because of high lot coverage and narrow interior and rear courts, and large units more typical of NoHo conversions are less feasible for low-rent housing. An alternative would be a larger payment-in-lieu threshold (currently it is the lesser of 25 units or 25,000 square feet).³⁶ However, to make this workable the city would need to reconsider its current required payment. HPD's proposed payment for the city fiscal year that began in July 1, 2018 is \$1,075 per square foot of required affordable floor area for Manhattan Community District 2. A 25,000-square-foot conversion with a 25 percent affordable floor area requirement would pay \$6,718,750. It is likely that most property

³⁶ New York City Zoning Resolution, §23-154(d)(3)(v).

owners, faced with such a payment to the city, would preserve the existing use, which in most cases will be office space. A regulation that permits housing in theory, but not in practice, might just as well be an explicit prohibition. Housing is a compatible use in existing buildings in NoHo; the city needs housing, and a way needs to be found to allow conversions in practice.

- ◇ New residential construction at 10 FAR would be permitted on lots fronting NoHo's wide streets—Broadway, Lafayette Street, Bowery and Houston Streets, provided that such lots are currently vacant, developed with single-story commercial buildings, or used as parking. This would allow significant amounts of new housing in an area that has excellent transit access and many walk-to-work employment opportunities. An FAR of 10 would be consistent with many buildings in the area.

Unlike with conversions, the application of the city's mandatory inclusionary housing program would not be fatal to the feasibility of this housing development. The neighborhood's housing market is strong enough for market rents to be sufficiently high, along with Section 421a tax exemption, to provide the cross-subsidy necessary to support affordable housing. At 10 FAR, housing would be able to out-compete office use, which would continue to receive only 5 FAR.

The sites (Figure 5) qualifying for this proposed provision are nearly all located in historic districts and would thus be subject to Landmarks Preservation Commission review. The sites³⁷ include:

1. 724 Broadway, a single-story retail building currently occupied by a fast-food restaurant. Wedged between two much taller buildings, the site has a lot area of 3,648 square feet.
2. 55 Bleecker Street, a one-story retail building at the northwest corner of Lafayette Street. The lot area is 7,838 square feet.
3. A 9,261-square-foot parking lot located at the northeast corner of Great Jones Street and Lafayette Street.
4. 403 Lafayette Street, a parking garage on an 11,985-square-foot site.
5. 410 Lafayette Street, a parking lot on an 8,020-square-foot site.
6. 358 Bowery, a single-story retail building on a site of 8,705 square feet. This is the only one of the eligible sites that is not in an historic district.

³⁷ Lot areas are calculated by the Department of City Planning PLUTO database, accessible at <https://www1.nyc.gov/site/planning/data-maps/open-data/dwn-pluto-mappluto.page>.

Figure 5



Source: NYU Rudin Center for Transportation, 2018 (Ari Kaputkin, map designer)

The combined lot area of the six sites is 49,457 square feet. Multiplied by 9 FAR of residential (1 FAR would likely be commercial) yields 455,409 square feet of residential floor area, of which at least 25 percent would be required to be affordable. Such development could be a significant gain for the community and for the city.

- ◇ Any floor area that is currently nonresidential, in a building that has no residential units, could be converted to college or university use. Most such space would be offices today, although the certificate of occupancy may reflect historic industrial use. On currently nonresidential lots, new or enlarged college or university uses would be allowed, up to the underlying FAR for community facilities, which is 6.5 in an M1-5 district. There is no land use basis for prohibiting colleges and universities in a neighborhood that is otherwise a mix of offices and residences—such uses are allowed throughout the Manhattan commercial districts (C4, C5 and C6) that allow office buildings. Moreover, NYU and Cooper Union are already present in NoHo.

- ◇ Ground floors should be permitted to be retail. As with large buildings, there is no longer any industry to preserve. Most ground floors are retail already, and the regulatory uncertainty concerning the status of some retail uses provides no public benefit.

With this zoning framework, NoHo would come to resemble much more closely the commercially-zoned C6 districts that surround it, rather than the current mix of contemporary uses and lots that remain static from its past history as a low-value area. The community would get regulatory consistency, as well as a more vibrant and exciting neighborhood with more housing, some of it below-market. The city would get a reduced administrative burden, more affordable housing and compatible expansion of its higher education institutions. Off-street parking may become scarcer, but given the accessibility of the area by transit, this is a price well worth paying.