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# Helen Rosenthal

Council Member, 6th District



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Dear Neighbors,

On Tuesday, March 22nd, the City Council will vote on two amendments to the city's zoning text to help address New York's senior and affordable housing needs. After careful consideration and in light of substantial improvements made throughout the public review process, I am proud to support both Zoning for Quality and Affordability and Mandatory Inclusionary Housing. These are two of the tools necessary to resolve the affordable housing crises. Additional tools, such as funding to further subsidize deeper affordability and community infrastructure needs as well as legislation to address tenant harassment, must be implemented in tandem with zoning.

**There are over 200,000 seniors on wait lists for senior affordable housing across the city, spending an average of 7 years waiting to find a home they can afford.** More than 40% of all New Yorkers are rent-burdened, paying more than 30% of their income toward rent and at risk of having to choose between making the rent and other necessities. Zoning for Quality and Affordability (ZQA) and Mandatory Inclusionary Housing (MIH) are important pieces of an ambitious plan to tackle these challenges. ZQA will make it easier to build desperately-needed senior and affordable housing instead of market-rate development. MIH will ensure that upzoned areas throughout the city include thoughtful community planning, and are part of the affordable solution, requiring that all new development includes permanently affordable housing. **While neither ZQA nor MIH is perfect, both represent essential tools to move toward addressing our affordability crisis.**

What's more, both amendments were **significantly improved** as a result of community input, including the important work of Community Boards like our own CB 7. ZQA's broad array of technical tweaks to the city's zoning text has been streamlined and focused, with **only those changes most important to senior and affordable housing** remaining. **This meant eliminating changes that would have weakened our protection against the potentially dangerous and disruptive construction of sliver buildings as well as eliminating proposed height increases for market-rate buildings.** MIH was improved as well, made more transparent and accountable and modified to ensure **deeper affordability**. These proposals, as modified, strike an important balance and will work to provide more affordable housing without sacrificing

the character of our neighborhood. They go a long way toward showing that you do not have to choose between affordable housing and neighborhood.

Both ZQA and MIH are far-reaching and often very technical proposals and they have been easy to mischaracterize. There is misinformation on the possible effects of these proposals, but I want to assure you that I would not support a plan that displaces current residents or significantly changes the character of our neighborhood. I've included an explanation and answers to some frequently asked questions about the proposals with this message, and have even more details about ZQA and the Upper West Side on my website. I'll also note that **ZQA and MIH are just two tools of many that will be necessary to address our affordable housing crisis** and that I will continue to fight for the policies and financial commitment necessary for us to protect our rent-regulated neighbors from harassment and preserve the apartments that make up the single most important source of affordable housing we have on the Upper West Side.

But the bottom line is this: Day in and day out, Upper West Siders come into my office seeking affordable and especially senior affordable housing. While far from a panacea, both ZQA and MIH will make it easier for them to find homes, and they will do so without sacrificing our neighborhood's character. I will be voting yes on both ZQA and MIH.

Warmly,



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## Zoning for Quality and Affordability FAQ

### What is ZQA?

Zoning for Quality and Affordability is an amendment to the city's zoning text designed to facilitate the development of senior and affordable housing. It is a far-reaching and often technical amendment, but its provisions can be boiled down to two categories:

- **Changes to the zoning structures to further the creation of affordable senior housing**, including the creation of a density bonus program for permanently-affordable senior buildings, reductions to parking requirements for such buildings, and an overall modernization to keep up with new regulatory and financing programs for senior housing.
- **Improvements to the existing Voluntary Inclusionary Housing affordable housing program**, tweaking some of the zoning restrictions that have been barriers that program's success.

### How does ZQA support senior housing?

First and foremost, ZQA is an update to the zoning text's terminology and regulations for senior housing, bringing them in line with current standards of care and procedures for financing. Beyond that, ZQA creates a density bonus program to incentivize the construction of what are called Affordable Independent Residences for Seniors.

Developed by nonprofit, mission-driven organizations, housing built under this program will be permanently affordable, guaranteed to be used only for affordable senior housing by virtue of the zoning text itself.

ZQA also reforms the parking requirements attached to these facilities, eliminating or reducing the requirements in the outer boroughs where senior housing buildings are often surrounded by empty parking lots. These reforms, carefully negotiated with the Council Members from the regions affected, will better allow the direction of scarce resources toward creating more units of senior housing. (Senior housing is already exempt from parking requirements on the Upper West Side.)

### **How does ZQA improve other affordable housing programs?**

ZQA adjusts the zoning requirements governing existing Voluntary Inclusionary Housing (VIH) programs to make it more likely that developers will choose to take part in them instead of building exclusively market-rate buildings. VIH, in place in select parts of the city (including parts of the Upper West Side,) works by providing a density bonus to a developer if they agree to include at least 20% of the units as affordable.

However, while opting into VIH makes it possible to build a bigger building, it doesn't allow for a taller building under current zoning regulations. In practice, this means that it is difficult if not impossible to fit the bonus space into the design of an attractive and liveable building, which has led many developers citywide to forgo the bonus (and the affordable units) and build all market-rate buildings instead.

What ZQA does to fix this is to allow for additional height (generally 20-30') in order to better fit the bonus density granted by VIH (and the new density granted to senior facilities.) This bonus height is granted solely with the provision of affordable housing.

It is worth noting that many of the regulatory shortcomings of VIH--including the one that enabled the infamous poor door--have been remedied and that this zoning rebalance is part of a broader effort to improve the program.

### **How will ZQA affect the Upper West Side?**

In truth, only modestly. For the vast majority of the Upper West Side, including virtually all midblock buildings, there is no additional height granted by ZQA. All Landmark and Historic District protections are completely untouched by the plan. The only section of the neighborhood substantially affected by ZQA is in existing Voluntary Inclusionary Housing zones, namely the R9A contextual zone. Even there, though, the impact will be relatively minor, changing the nature of eventual development rather than spurring on new development itself. Over time, and on a citywide scale, ZQA will play a very important part in providing affordable and especially senior housing, but its direct effect on the Upper West Side will likely remain quite minimal.

## What about the R9A contextual zone that is affected?

Even in the R9A contextual zone, which runs along Broadway from 97th Street to 110th, ZQA's impact is on the margins. In order to rebalance the Voluntary Inclusionary Housing program already in place there, an additional three stories would be possible for buildings including at least 20% affordable units, increasing the maximum height from 14 to 17 stories. This will not spur a new wave of development nor will it encourage teardowns. You can read a more detailed explanation of how the R9A contextual zone is impacted at the bottom of this message or by clicking this link.

## How has ZQA been changed to address community concerns?

Throughout the public outreach process and especially since it has been before the City Council, ZQA has been significantly improved. ZQA has always addressed the challenges facing affordable and senior housing, but as initially proposed it did so with too broad a stroke, sometimes needlessly threatening neighborhood character with provisions unlikely to be important to creating affordable housing. With the help of an outpouring of community input, including the efforts of Community Board 7, those provisions not essential to the goal of affordable housing were removed. Notable Council modifications include:

- **Protection of the Sliver Law.** Initially, ZQA would have relaxed protections against the disruptive development of Sliver Buildings for affordable and senior buildings. Now, Sliver Law protections are completely unchanged.
- **Elimination of Height Increases for Market Rate Buildings in the Manhattan Core.** While small height increases to encourage attractive commercial spaces are desired in the outerboroughs, in neighborhoods like the Upper West Side they were unnecessary and unwanted. As such, they were eliminated.
- **Retaining the Distinction Between Wide and Narrow Streets.** Within the context of the height increases granted to affordable and senior development, the Administration's initial proposal would have eliminated the distinction between buildings built on wide versus narrow streets. In February, heights on narrow streets were lowered by the City Planning Commission and the "hills and valleys" effect was protected.

A more detailed list of the Council's adjustments to ZQA is available on [the Council's website](#).

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## Mandatory Inclusionary Housing

### What is MIH?

Mandatory Inclusionary Housing is an amendment to the city's zoning text that would require developers to include permanently affordable housing when building in areas that

have been rezoned to allow for greater housing development. When an area is upzoned, MIH is put in place there, requiring that going forward a certain percentage of units in all new development be dedicated to affordable housing.

### **How much affordable housing is required by MIH?**

The specific depth and breadth of the affordable units required in a given MIH zone is determined by the City Council on a neighborhood by neighborhood basis, with the Council choosing from some combination of four different options, all of which are based on calculations of the Area Median Income (AMI.) The Council decides which options are available in a given area while individual developers choose between those options. The options to choose from are:

- Option 1: 25% of units provided for families making an average of 60% of AMI, or around \$46,000 a year for a family of three. At least 10% of the units must be available to families making 40% of AMI, or around \$31,000 a year for a family of three.
- Option 2: 30% of units provided for families making an average of 80% of AMI, or around \$62,000 a year for a family of three.
- Workforce Option: 30% of units provided for families making an average of 115% of AMI, or around \$90,000 a year for a family of three. Offered in conjunction with Option 1 or 2 and not permitted in Manhattan Community Districts 1-8. Developers in zones where the Workforce Option is offered will choose between it and Option 1 or 2 (whichever is in place for that zone,) but no additional city subsidies are permitted if the Workforce Option is chosen.
- Deep Affordability Option: 20% of units provided for families making 40% of AMI, or around \$31,000 a year for a family of three. Offered in conjunction with Option 1 or 2. Developers in zones where the Deep Affordability Option is offered will choose between it and Option 1 or 2 (whichever is in place for that zone,) but no additional city subsidies are permitted unless the developer agrees to include more than 20% of the units as affordable.

### **How does MIH compare to other affordable housing programs?**

MIH has been characterized as the strongest inclusionary housing program in the country and represents a substantial step forward from existing affordable housing programs in New York, including Voluntary Inclusionary Housing. Its mandatory nature and the number of units it is expected to produce are key features that make this the case. Another key difference is that units created under MIH would be permanently affordable, guaranteed to be so by the city's zoning text.

### **Where will MIH apply? How will it affect the Upper West Side?**

MIH's greatest limitation is that it will only apply in neighborhoods that are upzoned-- those that add substantial housing capacity through an area-wide rezoning. The first two neighborhoods likely to do so and see MIH applied are East New York and East Harlem.

Given that the Upper West Side is not on any list for an upzoning (and will not be for the foreseeable future,) MIH will not directly apply here. It is possible that, in the event of a

developer filing for a Special Permit to request to build a larger building than currently permitted on the Upper West Side, MIH would be invoked to set a floor on the amount of affordable housing required, but the full community review process involved in such an action would still occur.

### **Why not require MIH citywide to include the Upper West Side?**

Legal barriers prevent citywide adoption of a Mandatory Inclusionary Housing program.

To retroactively impose an affordability requirement without providing a benefit like greater density would very likely be found by the courts to constitute a regulatory “taking” of a private actor’s property; this type of taking is prohibited. This barrier is part of why it is important to improve the Voluntary Inclusionary Housing programs already in place in parts of the city unlikely to see an upzoning.

### **How has MIH changed since it was first proposed?**

The City Council’s review of MIH resulted in substantial improvements, especially in terms of creating deeper levels of affordability and closing potential loopholes.

Consideration of MIH has also led to a more ambitious conversation around affordable housing in general, sparking reforms in the transparent tracking of affordable units, addressing safety and local hiring for construction workers, and combating the challenges of tenant harassment and displacement. Notable Council modifications include:

- **Creation of the Deeper Affordability Option.** The Council added this option, in addition to placing more stringent income diversity requirements on Option 1, in order to ensure that low-income New Yorkers are guaranteed to be included in MIH.
- **Creation of a working group to adopt a Certificate of No Harassment-like policy citywide.** Modeled on the successful Certificate of No Harassment program in place in the Clinton Special District and elsewhere in Manhattan and Brooklyn that requires a developer to show that no tenant harassment took place to facilitate a development, a working group will determine a policy to proactively prevent tenant harassment to be implemented on a citywide scale.
- **Reform of the BSA hardship process.** Although MIH needs to include a hardship waiver to address truly exceptional cases, it is important that it truly be reserved for such special circumstances. The BSA process for MIH was modified to require greater scrutiny of hardship claims and to ensure that a building exempted from MIH will not be permitted to use the upzoned density.

A more detailed list of the Council’s adjustments to MIH is available on [the Council’s website](#).

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## **ZQA & the R9A Contextual Zone**

## The Bottom Line:

- ZQA grants three stories of additional height only to buildings that provide affordable housing, from fourteen to seventeen stories.
- It does not make it any easier to develop a building to begin with.
- As such, it will have a modest impact on the neighborhood and only on this stretch of Broadway (pictured on the right) but makes it more likely that when development does happen, it will include affordable housing.

## FAQs

### What is the R9A Contextual Zone?

- The R9A Contextual Zone runs on Broadway from W. 97th Street to W. 110th Street.
- R9A allows for buildings to be built with a maximum height of 145 feet (or 14 stories) with a maximum density level--measured by FAR--of 7.52. (FAR, or Floor Area Ratio, is a measure of how big and dense a building can be measured by how much Floor Area can be built on a single lot. A building that has two stories and takes up half of its lot has the same FAR as a building that is only one story but takes up the entire lot--that is, a short and fat building can take up the same FAR as a tall and skinny one.)
- This area is also a Voluntary Inclusionary Housing (VIH) zone, meaning that a developer can build a slightly larger building if at least 20% of the units in that building are affordable, with a maximum FAR density level of 8.5.



**R9A & Voluntary Inclusionary Housing Zone**

### How does ZQA affect it?

ZQA would allow buildings built under the Voluntary Inclusionary Housing program to be three stories taller, with a maximum height of 175 feet. It does not allow for any height increases for market-rate buildings nor does it weaken protections against unwanted development.

### Why allow affordable buildings to be taller?

As it was set up, opting into Voluntary Inclusionary Housing makes it possible to build a bigger building, but it doesn't allow for a taller building. In practice, this means that it is difficult if not impossible to fit the bonus space into the design of an attractive and liveable

building. As such, most developers have chosen to forgo the bonus (and the affordable units) and build an all market-rate building instead. This is one reason why, citywide, VIH has not been very successful at attracting developers to choose to include affordable units.

This additional height could also be used by a 100% affordable senior housing building, allowing for more units of senior housing to be built on a site than the current zoning would allow.

### **Does this mean we'll have a lot of new development? Will this incentivize tear downs?**

No. ZQA does not make it any easier to develop a building nor does it incentivize tearing a building down to replace it with a taller one. Its impact is much more modest--making it more likely that, if development does occur, it is more likely to include affordable units.

What's more, additional legislation strengthening protections against tenant harassment was negotiated as part of the ZQA process. As such, the overall package is better than neutral--it will make it harder for bad actors to try to develop sites that are already home to our rent-regulated neighbors.

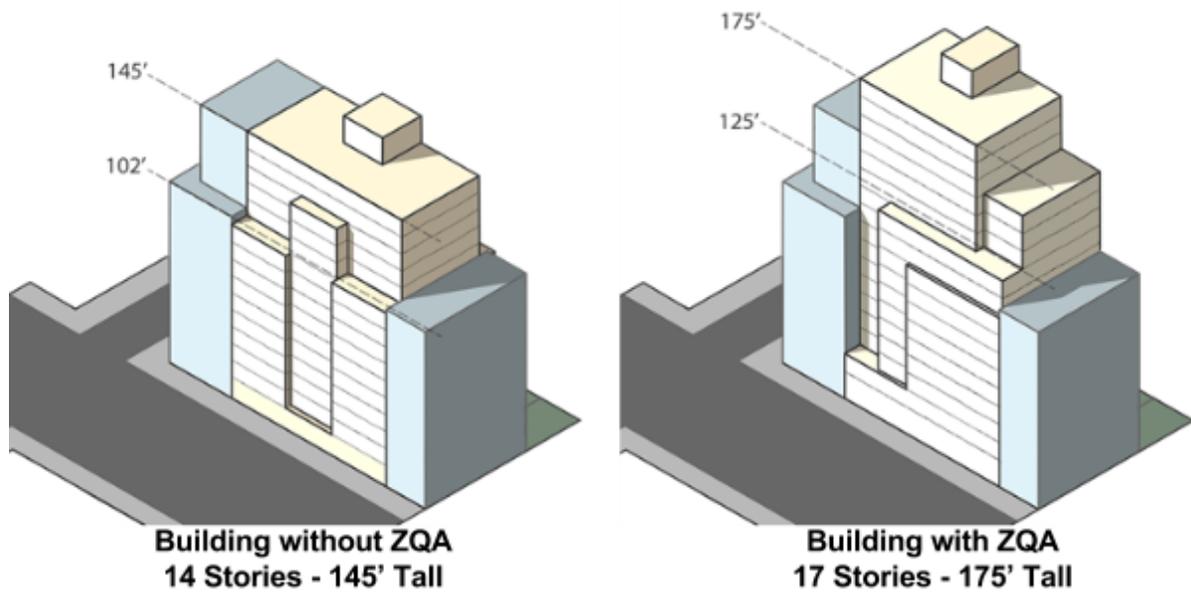
### **If its impact will be limited, why is it important?**

While there are not a lot of sites where development is likely, they do exist. Within the boundaries of CB7, the building with Rite-Aid on the southwest corner of Broadway and 110th Street is the perfect example of this. While I have no special insight into any plans for that property, it is a one story commercial building that is likely, sooner or later, to be developed into a larger building. As-of-right, this building could be demolished and replaced with a 14 story building of exclusively market-rate units. With ZQA, it is more likely that it could instead be developed into a 17 story building with 20% of those units affordable--or a 17 story building with only senior affordable housing.

It's also part of a larger rebalancing of the Voluntary Inclusionary Housing citywide, including areas where more likely development sites exist. As we attempt to deal with the city's affordability crisis, this neighborhood's VIH zone is getting the same treatment as other VIH to make it more likely to be successful in the long-term.

### **What would this look like?**

The building on the left is what can be built without Zoning for Quality and Affordability. The building on the right is the 17 story building that would include at least 20% affordable units.



### Further questions?

Contact Sean Fitzpatrick, Community Liaison for Council Member Rosenthal, at [sfitzpatrick@council.nyc.gov](mailto:sfitzpatrick@council.nyc.gov) or at 212-873-0282, extension 203.



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