

Ethnic Enclaves and the Zoning Game

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In today's economically vibrant and high-cost cities like New York, San Francisco, and Washington, D.C., housing growth and housing affordability are a function of two variables: zoning and politics. This Article focuses on both in an edge case—New York City's three fastest-growing ethnic and immigrant enclaves, where larger households, lower incomes, and greater place-dependence raise the stakes of the zoning game.

First are Hasidic Jewish communities, who employ a "Voice" strategy. By virtue of numbers, spatial dominance within their enclaves, and bloc voting patterns, the Hasidic Jews of Brooklyn have successfully advocated for rezonings and special rules that have enabled them to densify and expand their enclaves over time.

Second are Chinese communities, who employ an "Exit" strategy. When Manhattan Chinatown became too crowded and expensive, satellite Chinatowns emerged in lower-density and lower-cost, outer-borough neighborhoods with shrinking white populations and good transit connections to Chinatown.

Third are Bangladeshi, Indo-Caribbean, and other ethnically South Asian communities, who employ an "Underground" strategy. Lacking political clout or anywhere else to go in an increasingly housing-constrained city, these most recent arrivals rode the subprime mortgage market to lower density outer-borough neighborhoods. There, they resorted to unauthorized conversions and accessory dwellings that in many neighborhoods amount to nothing less than guerrilla rezonings—and that resulted in a spate of "defensive downzonings" as incumbent residents fought back.

Drawing from these three case studies, this Article identifies the formal and informal strategies for effecting land use change in high-density urban areas, and illustrates when these strategies are employed and why they meet with varying degrees of success. In doing so, this Article provides guidance for practitioners facing the daunting challenge of expanding access to housing in high-cost, supply-constrained cities.

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INTRODUCTION

In today’s economically vibrant and high-cost cities like New York, San Francisco, and Washington, D.C., housing growth happens (or not) as a function of two variables: zoning and politics. This Article focuses on both in an edge case—New York City’s fastest-growing ethnic and immigrant enclaves,

where larger households, lower incomes, and greater place-dependence raise the stakes of the zoning game.¹

In one sense, fast-growing enclaves present the basic story in its strongest form: No one in these development-constrained cities needs cheap and abundant housing more than burgeoning enclavist populations. In another sense, these enclaves are an exception: These groups frequently represent islands of pro-development sentiment in cities where neighborhood opposition has made development increasingly tough.

This Article examines housing and land use in the enclaves of three very different immigrant and ethnic groups in New York, and the formal and informal strategies they use to make room for themselves in a housing-constrained city. To an unexpected degree, it reveals the terms of the zoning game² in the most consequential precincts of today's development-constrained cities—these places may not be the richest, but their populations are growing the fastest. The groups herein range from the undisputed champions of the zoning game to those that, more than any other, find themselves on the losing end.

First are the Hasidic Jewish communities in South Williamsburg and Borough Park in Brooklyn, who employ what I call a “Voice” strategy.³ By virtue of numbers, spatial dominance within their enclaves, and bloc voting patterns, the Hasidic Jews of Brooklyn have successfully advocated for rezonings and special rules that have enabled them to densify and expand their enclaves over time.⁴

Second are the Chinese communities in Chinatown in Manhattan, Sunset Park in Brooklyn, and Flushing in Queens, who employ what I call an “Exit” strategy. When Manhattan Chinatown became too crowded and expensive, satellite Chinatowns emerged in lower-density and lower-cost, outer-borough neighborhoods with shrinking white populations and good transit connections to Chinatown.

Third are Bangladeshi, Indo-Caribbean, and other ethnically South Asian communities in neighborhoods like Richmond Hill, South Ozone Park, Jamaica Hills, and Jackson Heights in Queens, who employ what I call an “Under-

1. See generally Edward L. Glaeser, Joseph Gyourko & Raven E. Saks, *Why Have Housing Prices Gone Up?*, 95 AM. ECON. REV. 329 (2005); Roderick M. Hills, Jr. & David N. Schleicher, *Balancing the “Zoning Budget,”* 62 CASE W. RES. L. REV. 81 (2011); John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL'Y REV. 91 (2014); David N. Schleicher, *City Unplanning*, 122 YALE L.J. 1670 (2013).

2. “Zoning Game” is a reference to Richard Babcock's classic book. See RICHARD F. BABCOCK, *THE ZONING GAME: MUNICIPAL PRACTICES AND POLICES* (1966).

3. The terms “Voice” and “Exit” are borrowed very loosely from ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES* (1970).

4. In this Article, “rezonings” refer generally to changes in the zoning regulation that determine what can be built on a particular development site or development sites over a particular area. “Upzonings” refer to rezonings that increase the development capacity of an area, and “downzonings” refer to rezonings that decrease the development capacity of an area.

ground” strategy. Lacking political clout or anywhere else to go in an increasingly housing-constrained city, these most recent arrivals rode the subprime mortgage market to lower-density outer-borough neighborhoods. There, they resorted to unauthorized conversions and accessory dwellings that in many neighborhoods amount to nothing less than guerrilla rezonings—and that resulted in a spate of “defensive downzonings” as incumbent residents fought back.⁵

This Article also presents a theoretical framework of basic formal and informal strategies for effecting land use change, and illuminates when these strategies are employed and why they meet with varying degrees of success. The factors fall into two general categories.

First is the political and economic strength of the group. Does the group exert influence at the ballot box? What is their citizenship status? Are they owners or renters? Do they own multifamily buildings and develop property? Do they have strong and well-organized community-based organizations? What economic resources can the group marshal, individually and collectively?

Second is the land use and market context of the neighborhood. Where is the neighborhood located in the context of the broader city? What land use procedures and other regulations govern changes to land use in the area? What is the underlying zoning? What is the housing stock? What is the trajectory of housing prices?

This Article’s focus is not on these enclaves per se, as interesting as those stories are, but rather on what their stories illuminate about the ways in which local land use decisions happen and how people make a place for themselves in increasingly expensive and housing-constrained cities across the country.

As a growing body of economic and legal literature demonstrates, these are important questions. Resurgent cities like New York, San Francisco, Boston, Los Angeles, and Washington, D.C. are America’s most economically dynamic, where workers can become more productive, earn more, and gain greater access to economic opportunity. Economists such as Edward Glaeser and Joseph Gyourko, among others, have shown how restrictive land use regulations drive up housing costs as people drawn to these urban economic engines bid up the price of limited housing supply.⁶ Throughout America’s history, a main driver of upward mobility has been migration from low-wage areas to high-wage areas. Recent research by economists Peter Ganong and Daniel Shoag shows that this process has all but stopped; for the first time in American history, workers are moving toward low housing costs rather than high wages.⁷

5. This Article does not look closely at any black and Latino immigrant groups, in part because these groups face a unique set of complicating challenges relating to settlement patterns and neighborhood choice. John R. Logan, Wenquan Zhang & Richard D. Alba, *Immigrant Enclaves and Ethnic Communities in New York and Los Angeles*, 67 AM. SOC. REV. 299, 301 (2002).

6. Glaeser, Gyourko & Saks, *supra* note 1.

7. Peter Ganong & Daniel Shoag, *Why Has Regional Convergence in the U.S. Declined?* 3 (Harv. Kennedy Sch., Working Paper No. RWP12-028, 2012),

Economists Raj Chetty, Nathaniel Hendren, and others have limned the “micro” effects of these trends in their recent work on the geography of opportunity: They show that where an individual resides shapes his or her life prospects to a greater degree than previously understood.⁸ Economists Enrico Moretti and Chang-Tai Hsieh, on the other hand, have outlined the “macro” effects: As workers migrate to less productive areas, the exclusionary effects of restricted housing supply have cost the United States almost fifty percent of aggregate growth since the 1960s.⁹

As an older literature on exclusionary zoning attests, these patterns imprint themselves in microcosm at a local level, where a forward feedback loop of restrictive land use regulations and political opposition to development functionally excludes low-income people from wealthy suburbs and higher opportunity neighborhoods within cities. Economist William Fischel pioneered the literature on the causes and effect of zoning regulations in a suburban context, with attention to the structural political factors—that is, the dominance of the “Homevoter”—that led to restrictive land use regimes.¹⁰ Legal scholars such as David Schleicher and Rick Hills have updated this literature for an era of resurgent cities, with special attention to the procedural determinants of chronic undersupply of housing and the policy innovations that might ameliorate them.¹¹

Addressing this problem will require close attention to the ground-level institutions and politics that shape how a city grows and changes over time. This Article attempts to do just that through the lens of fast-growing immigrant and ethnic enclaves by providing a bottom-up perspective of sub-local, pro-housing land use change.¹²

Part I outlines why enclavist groups are particularly important to contemporary land use debates and examines overcrowding, a problem that spans the

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2081216 [<http://perma.cc/BB35-SWVZ>].

8. Raj Chetty et al., *Where is the Land of Opportunity?: The Geography of Intergenerational Mobility in the United States*, 129 Q.J. ECON. 1553, 1619-20 (2014).
9. Chang-Tai Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation 2* (Nat'l Bureau of Econ. Res., Working Paper 21154, 2015), <http://www.nber.org/papers/w21154> [<http://perma.cc/V8AN-8DRY>].
10. WILLIAM A. FISCHEL, *THE ECONOMICS OF ZONING LAWS* 66 (1985); *see also* WILLIAM A. FISCHEL, *THE HOMEVOTER HYPOTHESIS* (2001).
11. *See, e.g.*, Hills & Schleicher, *supra* note 1; Schleicher, *supra* note 1; Roderick M. Hills, Jr. & David N. Schleicher, *City Replanning* (Geo. Mason L. & Econ. Res. Paper Series No. 14-32, 2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477125 [<http://perma.cc/4Y7M-BS7R>].
12. In some instances, the groups examined in this Article make *group-regarding* land use decisions, for reasons as vague as feelings of ethnic solidarity or as specific as the programs of particular coordinating institutions. This is interesting in itself, as it contrasts with the (generally accurate) atomistic, property-value-regarding take on land use politics found elsewhere in the scholarship.

communities discussed in this Article and spurs the strategies they employ to make room for themselves. Part II identifies and describes the set of economic, political, legal, and social factors that shape and constrain these strategies, and forwards a schema that structures the discussion of the enclaves that follows. Part III discusses the Hasidic communities in Williamsburg and Borough Park, the “Voice” strategy, and the ongoing land use battles between the Hasidim and neighboring communities. Part IV focuses on the Chinese communities in Chinatown, Sunset Park, and Flushing, the “Exit” strategy, and ongoing satellite enclave formation in what will soon be New York City’s largest immigrant community. Part V examines ethnically South Asian communities in Queens, with a particular focus on Bangladeshis, New York City’s fastest-growing immigrant group. This Part also outlines the “Underground” strategy and the backlash, in the form of defensive downzonings, to the densification of quasi-suburban neighborhoods in Queens. Part VI concludes with a discussion of what these enclaves illustrate about how land use policy and practice change in the broader city and in other housing-constrained cities like it across the country.

I. IMMIGRATION AND OVERCROWDING IN NEW YORK CITY

Immigrant and enclavist populations in New York City are more place-dependent and grow more quickly than native-born populations. This is especially true for the three groups discussed in this Article.¹³ Both of these facts alter the terms of the zoning game for them. The production of adequate amounts of housing in particular places is especially important to immigrant groups.

Native-born English speakers can more easily move toward lower housing costs, more space, or better job opportunities in other parts of the city or country. Immigrants, on the other hand, often lack language and cultural skills and rely on co-ethnics in immigrant enclaves to help them navigate the new country and find housing, jobs, and services.¹⁴ For some immigrants, securing a liveli-

13. Many in the Hasidic Jewish population, especially the Satmar Hasidim in Williamsburg, are not immigrants, though they share several of the characteristics of many immigrant groups—linguistic isolation, high fertility rates, residence in enclaves, for example—that make them an appropriate subject for this Article.

14. While not addressing the enclave effect or the internal migration of immigrants, Professors Molloy, Smith, and Wozniak find that larger households, lower income, and foreign birth correlate with somewhat lower rates of internal migration. Raven Molloy, Christopher L. Smith & Abigail Wozniak, *Internal Migration in the United States* 34 (Nat’l Bureau Econ. Res. Working Paper No. 17307, 2011), <http://www.nber.org/papers/w17307.pdf> [<http://perma.cc/9C7N-CRV6>]. There is also a robust debate in sociology and economics about whether immigrant enclaves help or hurt new immigrants over the long term. For scholarship that says returns to human capital in ethnic and immigrant enclaves is typically higher than in the mainstream primary and secondary labor market, see, for example, ALEJANDRO PORTES & ROBERT L. BACH, *LATIN JOURNEY CUBAN AND MEXICAN*

hood will depend on living in or near an enclave. Others simply prefer the familiarity of a neighborhood of their co-ethnics.¹⁵ Whether by constraint or preference, immigrants face limits to exit that native-born populations do not.

Higher birth rates and ongoing immigration lead to faster rates of growth for many immigrant communities. Relative to the native-born New Yorkers, immigrants are more concentrated in the child-bearing ages and have higher married-couple ratios, higher fertility rates, and larger households—3.1 people per household on average as compared to 2.4 for native-born.¹⁶ Immigrants in New York City make up thirty-eight percent of the population but account for a small majority of births.¹⁷ Immigrant communities also grow due to ongoing immigration. Bangladeshis, for instance, have high fertility and large households—4.3 people per household on average¹⁸

The watershed event in the recent history of New York immigration is the passage of the Immigration and Nationality Act of 1965.¹⁹ The Act greatly increased the total number of immigrants and opened the United States for the first time to large-scale immigration from non-European countries.

In the absence of the post-1965 surge, New York City might have experienced Rust-Belt-style population implosion in the 1970s and beyond.²⁰ New

IMMIGRANTS IN THE UNITED STATES (1985). For the opposing view, that returns for immigrants to human capital are below those in mainstream labor markets, and that participation in enclave labor markets harms immigrants' long term earning potential, see, for example, George J. Borjas, *Ethnicity, Neighborhoods, and Human Capital Externalities* (Nat'l Bureau Econ. Res. Working Paper No. 4912, 1994), <http://www.nber.org/papers/w4912> [<http://perma.cc/8S7U-JHW6>].

15. Logan, Zhang, and Alba note the distinction between an immigrant enclave and ethnic community. The former is a way station on the way to assimilation for new immigrants; the latter a destination for assimilated immigrants who prefer to live in neighborhoods with co-ethnics. Logan, Zhang & Alba, *supra* note 5, at 300.
16. Eighty percent of immigrants are between the ages of 18 and 64, as opposed to fifty-eight percent of native-born. Arun Peter Lobo & Joseph J. Salvo, *The Newest New Yorkers: Characteristics of the City's Foreign-Born Population*, N.Y.C. DEP'T CITY PLAN. 95, 99 (2013) [hereinafter *Newest New Yorkers*], http://www1.nyc.gov/assets/planning/download/pdf/data-maps/nyc-population/nny2013/nny_2013.pdf [<http://perma.cc/KHT4-YCDG>].
17. *NYC's Foreign Born, 2000-2015*, N.Y.C. DEP'T CITY PLAN. (March 2017), <http://www1.nyc.gov/assets/planning/download/pdf/about/dcp-priorities/data-expertise/nyc-foreign-born-info-brief.pdf> [<http://perma.cc/DGT8-RMU4>].
18. *Newest New Yorkers*, *supra* note 16, at 99.
19. Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (codified as amended at 8 U.S.C. §1001 to §1178 (2012)).
20. To be fair, the nature of New York City's economy would have led to a post-1970s population revival not availing in the former manufacturing centers of the Midwest. New York City's economy is built around sectors like finance, insurance, and real estate that would boom in the 1980s and beyond, enabling the region to avoid the more pronounced economic troubles and population decreases in other

York City lost over 1.1 million people to out-migration during the famously bleak 1970s, with a natural increase of only about 360,000.²¹ These statistics strongly suggest that, absent immigration, the abandonment and blight associated with the South Bronx of the era would have spread to vast swaths of other boroughs as well. Instead, the city registered more modest population losses due to an influx of 786,000 immigrants.²² In the decades since, immigrants, by their numbers alone, have led a city-wide urban resurgence, moving into and revivifying neighborhoods like Sunset Park or Williamsburg that threatened a downward spiral.²³ Today, New York City has 3.2 million immigrants representing thirty-eight percent of the population, more than double the number and proportion just 40 years ago.²⁴ Both are all-time highs. The most immigrant-infused boroughs are Queens, with just over a million immigrants, and Brooklyn, with just under a million.²⁵

Immigrants continue to pour into New York, but the days when immigrants could take over territory abandoned by out-movers are largely over—it's a different story now that New York is once again a highly desirable place to live with an expanding economy and historically low crime rates. Domestic immigration has increased in the last decade, from about 80,000 people early in the 2000s to over 100,000 per year toward the end of that decade, resulting in stiffer competition and higher costs for housing.²⁶ Add to that the fact that immigrants have much lower access to public housing and other forms of subsidized housing—many are not eligible, have not been here long enough to work through waiting lists, or simply do not know how to navigate the system.²⁷

parts of the country. *See, e.g.*, Edward L. Glaeser & Giacomo A. M. Ponzetto, *Did the Death of Distance Hurt Detroit and Help New York?*, in *AGGLOMERATION ECONOMICS* 303 (Edward L. Glaeser ed., 2010).

21. *Newest New Yorkers*, *supra* note 16, at 179.

22. *Id.*

23. Increased immigration may have succeeded where Urban Renewal and a host of other government programs failed, at least in New York's case. LOUIS WINNICK, *NEW PEOPLE IN OLD NEIGHBORHOODS: THE ROLE OF NEW IMMIGRANTS IN REJUVENATING NEW YORK'S COMMUNITIES* 10-11 (1990).

24. *Newest New Yorkers*, *supra* note 16, at 2. Updated by Population Division, New York City Department of City Planning through September 29, 2017, using U.S. Census Bureau, 2015 American Community Survey, Public Use Microdata File.

25. *Id.* at 3. Updated by Population Division, New York City Department of City Planning through September 29, 2017, using U.S. Census Bureau, 2015 American Community Survey, Public Use Microdata File.

26. *Id.* at 181. Updated by Population Division, New York City Department of City Planning through September 29, 2017, using U.S. Census Bureau, 2015 American Community Survey, Public Use Microdata Sample.

27. *See, e.g.*, MAGGIE MCCARTY & ALISON SISKIN, CONG. RESEARCH SERV., *RL31753, IMMIGRATION: NONCITIZEN ELIGIBILITY FOR NEEDS-BASED HOUSING PROGRAMS* 1 (2015).

Many immigrant groups—especially those discussed in this Article—face a severe housing squeeze.

A. *Immigrants and Overcrowding*

Perhaps the most basic of the informal housing strategies available in expensive cities is overcrowding—that is, using a dwelling unit or residential building to house more people than it is intended to house. Immigrant groups in New York City face much higher rates of overcrowding than native-born New Yorkers. Citywide, 20.5% of immigrant households are “crowded”—defined as more than one person per room—and 7.6% are “severely crowded”—defined as more than 1.5 persons per room. The rates for non-immigrant households are 6.6% and 2.4%, respectively. Immigrants experience triple the rate of crowding and severe crowding.²⁸ Crowding is getting worse as housing supply lags behind population increase, as the city becomes more expensive, and as the proportion of immigrants, with their large households, rises.²⁹ Crowding and severe crowding dipped to lows of 4.3% and 1.5% in 1978 and have steadily increased since then, with a more pronounced uptick after the financial crisis, when housing production slowed and people became poorer.³⁰

About two-thirds, or 148,000, of the city’s 241,000 crowded households are immigrant households.³¹ A substantial proportion of the crowded non-immigrant households is most likely large, native-born Hasidic families in Williamsburg and Borough Park. (The city does not publish statistics on crowded Jewish households.) In Queens, the numbers were even starker—86.4%, or approximately 54,000, of Queens’s 63,000 crowded renter households were immigrants.³² The worst overcrowding occurs in the Bangladeshi and ethnically South Asian populations located predominantly in Queens. Almost 45% of Bangladeshi households are crowded.³³

Crowding is largely a function of household size. About one-quarter of four-person households are crowded; 55% of five-person households are crowded; 80% of six-person households are crowded; and a whopping 91% of households with seven or more people are crowded.³⁴ It can be difficult for large

28. Moon Wha Lee, *Housing: New York City*, N.Y.C. DEP’T HOUS. PRES. & DEV. 143 (2011), <http://www1.nyc.gov/assets/hpd/downloads/pdf/HVS-report-2011.pdf> [<http://perma.cc/3B5L-65S5>].

29. *Id.* at 496.

30. *Id.* at 502.

31. *Id.* at 491.

32. *Id.* at 55.

33. *Newest New Yorkers*, *supra* note 16, at 99.

34. Lee, *supra* note 28, at 55.

households to find appropriate accommodation—of the city’s 2.17 million rental apartments, only 16% are three-bedroom or larger.³⁵

Immigrants have larger families and are more likely to have crowded households. Immigrants are also more likely to host “hidden households”—that is, households that are doubled- or tripled-up with sub-families in a single apartment. About 62% of the 176,000 households with sub-families are headed by immigrants.³⁶ Indeed, a map of crowded households in the 2011 Housing and Vacancy Survey shows a heavy swath of hidden households through Chinatown in Manhattan, Sunset Park, and Bensonhurst in Brooklyn, and immigrant-heavy parts of Queens.³⁷

“Crowdedness” cuts across almost all non-European immigrant groups and afflicts the immigrant and ethnic enclaves discussed in this article especially acutely. It serves as a major impetus for the varied strategies these groups employ to make more room for themselves. To “uncrowd” themselves, growing populations in supply-constrained areas need to create more housing—either formally (“Voice”) or informally (“Underground”)—or move to where more housing exists (“Exit”).

II. VOICE, EXIT, UNDERGROUND

The Parts that follow schematize the strategies that crowded Hasidic, Chinese, and Bangladeshi enclaves use to make room for their expanding populations in New York City. These strategies range from formal to informal, from centrally orchestrated to the product of innumerable independent decisions. These divergent responses emerge from a background of opportunities and constraints that affect these groups in very different ways.

This Part examines these opportunities and constraints in a systematic way—as a set of factors that define the possibilities for these enclaves and for other sub-local groups seeking to influence land use policy and practice in the places they live. It’s useful to put these factors under two broad headings: The first pertains to the political, economic, and demographic characteristics of the group itself; and the second pertains to the land use and market context of the neighborhood and broader city. Another way to think of the split is between factors internal to the group and factors external to the group.

This Part introduces a set of factors that, first, provide an analytical framework for strategies employed by the three enclaves to be explored in Parts III, IV, and V; and, second, have a broader bearing on bottom-up efforts by other groups to change land use policy and practice in New York City and elsewhere.

35. *Id.* at 302.

36. *Id.* at 151.

37. *Id.* at 487.

A. *Political and Economic Characteristics*

Implied in the Introduction is a spectrum of strategies, from formal and licit to informal and illicit: “Voice” adapts the law to the needs of the group through established political processes; “Exit” adapts the group within the demands of the law; “Underground” simply conflicts with the law. A further implication is that formal and licit strategies are generally preferable to informal and illicit strategies of last resort that carry with them various risks and uncertainties.

The ability of a group to pursue changes to land use policy through formal channels depends on its ability to exert political and economic power. The first set of factors represent a list of “ingredients” for political power in a land use context.

1. Political Factors

Population. This is the most basic ingredient—larger numbers, all else equal, translate into greater power. Population is not the most direct proxy for power at the ballot box. But many aspects of the formal land use process in New York City and elsewhere, such as public meetings, do not hinge on the right to vote so much as the ability to turn up.

Citizenship. In most cities, only citizens have the right to vote for elected representatives or in various referenda that structure land use procedure or determine land use outcomes. This limitation can put immigrant groups, particularly recently arrived immigrant groups, at a significant disadvantage in the zoning game.³⁸

Voter Participation. In big cities, voter participation for local elections is notoriously low, especially when local elections are held separately from federal elections, as in New York City, and particularly in primary elections, which tend to be decisive in cities that lack partisan competition.³⁹ In New York City,

38. Note that there have been periodic attempts in New York City to extend the right to vote in municipal elections to lawful immigrants. See, most recently, Introductory Bill 410, a proposed local law sponsored by over 30 Councilmembers in 2010. The City Council held hearings on the bill but it expired without a vote at the end of that Council session. See *A Local Law to Amend the New York City Charter, in Relation to Allowing Immigrants Lawfully Present in New York City to Vote in Municipal Elections*, N.Y.C. COUNCIL (2010), <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=803591&GUID=3652CB45-9436-4D4F-ADE3-E17CE8A8AF28> [<http://perma.cc/97MK-UTAW>].

39. Most major US cities lack partisan competition. See David Schleicher, *Why Is There No Partisan Competition in City Council Elections? The Role of Election Law*, 23 J.L. & POL’Y 419 (2007).

groups that send even a few hundred voters to sub-local primaries can affect electoral outcomes and expect responsive representatives.⁴⁰

Issue Alignment. There is no guarantee that members of ethnic and immigrant groups hold homogeneous views on housing and land use issues. Alignment can amplify the power of a group to act through formal and informal channels; disagreement can dampen that power. This factor is a less significant consideration for affinity groups premised on issue alignment, like preservationist organizations or, to a lesser extent, neighborhood associations, which tend to lean anti-development.⁴¹

Territorial Dominance. Land use politics is perhaps the most place-based politics of all. Most big cities, New York among them, include a formal sub-local component in land use procedure, such as neighborhood advisory boards and a decisive role for the sub-locally elected Councilperson.⁴² Groups that predominate within a particular geography have a greater ability to realize their preferred land use outcomes, whether through formal or informal channels, than groups interspersed with others that might disagree.

Community-Based Organizations. Effective Community-Based Organizations (CBOs) gather and focus political power in a way that cuts across the factors above. The communities they serve may be ethnic, religious, geographic, or

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40. For instance, in the most recent Democratic Primary in Council District 1 in New York City, voter turnout was approximately 17.7% (12,196 voters out of 68,972) and the election was decided by approximately 200 votes (5,363 for Margaret Chin and 5,141 for Christopher Marte). See *Council District Summary Report As of 4/1/2017*, N.Y.C. Bd. ELECTIONS 1 (2017), http://vote.nyc.ny.us/downloads/pdf/documents/boe/EnrollmentTotals/2017/CityCouncil_EnrollmentTotals_4_4_2017.pdf [<http://perma.cc/96MR-4WW7>]; *Statement and Return Report for Certification: Primary Election 09/12/2017 Democratic Member of the City Council 1st Council District*, N.Y.C. Bd. ELECTIONS 3 (2017), http://vote.nyc.ny.us/downloads/pdf/election_results/2017/20170912Primary%20Election/01102200001New%20York%20Democratic%20Member%20of%20the%20City%20Council%201st%20Council%20District%20Recap.pdf [<http://perma.cc/2PKF-2VP7>].
41. For a classic work on the political dynamic effects of concentrated and homogeneous versus diffuse and heterogeneous interests, see generally MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (1965).
42. See N.Y.C. CHARTER §197-c (2018). The Uniform Land Use Review Procedure (ULURP), as New York City's land use review procedure is known, includes formal (if advisory) review of land use actions by affected Community Boards before advisory review by the Borough President and votes by the City Planning Commission and City Council. Though not formalized, the City Council typically defers to the member of the affected district when determining how to vote on an action. For more on how this informal system of aldermanic privilege tends to embed an anti-development bias in land use procedure, see Schleicher, *supra* note 1.

any combination of these.⁴³ They can augment the power of groups that “score high” on the factors above; for groups that “score low,” they represent perhaps a second-best way to influence political outcomes. Most of these organizations have a general portfolio. Those with significant housing, development, and land use capacity can be important players in land use debates.

2. Economic Factors

Wealth and Income. This factor is self-explanatory. High-income groups will be less constrained by high and rising housing costs than low-income groups—not only in terms of securing adequate housing through the licit market, but also in their ability to influence the direction of land use policy through established political channels.

Tenure. Ownership is synonymous with control, and groups with higher rates of ownership can exert greater control over the built environment and neighborhood change in the areas where they live, especially in one- and two-family districts around the city.⁴⁴ Owners tend to be more politically efficacious than renters, all else equal, amplifying the ability of high-ownership groups to affect the direction of land use policy. Groups with high ownership rates are more insulated from the adverse effects of a high and rising market—indeed, they benefit from it.⁴⁵

Multifamily Ownership. Some ethnic and immigrant groups have a significant multifamily-owner class that rents to other members of the group. Multifamily owners enjoy an enhanced version of the benefits of ownership described immediately above; renters may also benefit if owners act in group-regarding ways. In New York City, multifamily owners can file applications for variances, zoning changes, and other discretionary actions.⁴⁶

Development Capacity. Some ethnic and immigrant groups have a significant developer class that can directly drive changes in land use regulation and can ensure that the economic benefits of new development redound primarily to members of the group. In many cities, including New York, developer applications are a primary vehicle for small-scale changes to zoning that accumulate in neighborhoods over time. Groups may also be more disposed to support—or

43. William H. Simon, *The Community Economic Development Movement*, 2002 WIS. L. REV. 377, 379.

44. FISCHER, THE HOMEVOTER HYPOTHESIS, *supra* note 10.

45. William M. Rohe, Shannon Van Zandt & George McCarthy, *The Social Benefits and Costs of Homeownership: A Critical Assessment of the Research* (Joint Ctr. for Hous. Studies of Harv. Univ., Working Paper LIHO-01.12, 2001), <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/liho01-12.pdf> [<http://perma.cc/54QN-B2K9>].

46. See, e.g., Nick Tabor, *How Has Chinatown Stayed Chinatown?*, N.Y. MAG. (Sept. 24, 2015, 8:00 AM), <http://nymag.com/daily/intelligencer/2015/09/how-has-chinatown-stayed-chinatown.html> [<http://perma.cc/2DEQ-5GWR>].

at least not oppose—development and zoning changes when developers and applicants for zoning changes are members of the group.⁴⁷

B. Land Use and Market Context

Groups at all levels of political and economic efficacy can and do play an active role in shaping their land use fate, though that fate is shaped in turn by external factors—most significantly the land use, market, and built contexts in which these groups operate. This Section enumerates these basic external factors that create and constrain opportunities for these groups.

Land Use Procedure. In a land use context, the form political action takes, and often its chances for ultimate success, is deeply shaped by land use procedure.⁴⁸ Cities vary significantly in the degree to which land use decisionmaking occurs at a citywide or sub-local level. Sub-local decisionmaking is associated with lower levels of development overall, but also gives sub-local groups greater opportunity to influence land use policy in the places they live—including, this Article argues, in a pro-development direction.⁴⁹ Land use procedure also determines how easy or difficult it is to change land use regulation in response to existing needs. Different actions may involve one step or many, may be relatively straightforward or require the participation of expensive experts. Complex or technical processes, as in New York City, can present significant barriers to entry for all but the savviest developers.⁵⁰

Zoning. In many high-cost cities, the ability to build more housing in the absence of land use changes—perhaps the simplest strategy for groups seeking more room—is constrained by zoning regulations that limit the bulk of new buildings.⁵¹ The ethnic enclave strategies outlined in this Article in part represent responses to New York City’s regulatory limits, even if it has unused zoned capacity elsewhere.

Location. The location of a group within the larger city also matters to outcomes. As will be seen in the discussion below, a desirable location close to a central business district or natural amenities may bring with it pressures and

47. See, e.g., Stephen Jacob Smith, *Weapons of Mass Construction: Satmars’ Secret to Keeping Housing Prices Low*, N.Y. OBSERVER (Mar. 26, 2013, 6:48 PM), <http://observer.com/2013/03/weapons-of-mass-construction-satmars-secret-to-keeping-housing-prices-low/> [<http://perma.cc/U6RR-KG5H>].

48. Schleicher, *supra* note 1.

49. In New York as in many other cities, most changes to land use regulation hinge on the support of the sub-local Councilperson and include input from a sub-local advisory board. N.Y.C. CHARTER §197-c (2018).

50. For an extensive discussion of how complexity serves as a development-suppressing barrier to entry, see Roderick M. Hills, Jr. & David N. Schleicher, *Planning an Affordable City*, 101 IOWA L. REV. 91 (2015).

51. Glaeser, Gyourko & Saks, *supra* note 1, at 329-33.

constraints not faced by groups in less contested locations.⁵² The status of adjacent neighborhoods shapes whether enclaves have room to expand. Proximity to transit infrastructure influences where new enclaves might grow while maintaining ties to the city center. An out-of-the-way location may provide more freedom for informal strategies.⁵³

Housing Stock. The typology of existing housing stock is a significant factor in whether the housing can be subdivided (either legally or illegally) to create additional density, or whether a site can be redeveloped with a larger building. Additional bedrooms can be carved out of apartments in multifamily buildings—a New York City tradition—but one- and two-family homes provide greater flexibility to create whole new units.⁵⁴ Where zoning permits, it's also more feasible to knock down one- and two-family homes (as opposed to multifamily buildings that include tenants with various legal protections) to create a larger building.⁵⁵

Housing Cost Trajectory. High and rising regional, local, and sub-local housing costs constrain everyone's housing options in high-cost cities. All else equal, lower costs mean more options to expand in a given area, to move to another location, or to choose between formal or informal strategies in order to accommodate a growing population.⁵⁶

Rent Regulations. Big cities vary in the stringency of their rent regulations. In New York City, rent regulations offer protection to certain classes of tenants, but also make denser redevelopment of covered buildings more difficult, constraining housing markets.⁵⁷ Rent regulations also affect land use politics. Pro-

52. Veronica Guerrieri, David A. Hartley & Erik Hurst, *Endogenous Gentrification and Housing-Price Dynamics 2* (Fed. Reserve Bank of Cleveland, Working Paper No. 10-08R, 2012), <http://papers.ssrn.com/abstract=1657176> [<http://perma.cc/C8SE-Q9TG>].

53. See, e.g., Mayara Guimaraes, *City Line Has Become a Bangladeshi Enclave*, N.Y. DAILY NEWS (Sept. 15, 2013, 6:17 PM), <http://www.nydailynews.com/new-york/brooklyn/city-line-bangladeshi-enclave-article-1.1456813> [<http://perma.cc/W334-XGAB>].

54. See, e.g., Michelle Higgins, *Making More Space in a One-Bedroom Apartment*, N.Y. TIMES (July 24, 2015), <http://www.nytimes.com/2015/07/26/realestate/making-more-space-in-a-one-bedroom-apartment.html> [<http://perma.cc/R7FP-6RF7>].

55. Some groups also create housing distinctive in style and construction that serves as a claim of sorts to certain territory and may help to anchor groups to certain places over time and keep out non-members. See, e.g., Kirk Semple, *Questions of Size and Taste for Queens Houses*, N.Y. TIMES (July 5, 2008), <http://www.nytimes.com/2008/07/05/nyregion/05forest.html> [<http://perma.cc/7WFM-CMQE>].

56. Ganong & Shoag, *supra* note 7.

57. Because landlords cannot remove rent-regulated tenants at will, the City's environmental review procedures generally assume that buildings with rent-regulated units will not be redeveloped, even when they are significantly smaller than the current zoning would allow. *City Environmental Quality Review Technical Manual*, N.Y.C. MAYOR'S OFF. ENVTL. COORDINATION 5-7 to 5-9 (Mar. 2014),

tected tenants, whose rents are fixed by the regulations, may be unconcerned about the effect on prices of ongoing housing shortages, and activists may focus political energy on more stringent rent regulation rather than addressing underlying land use or housing supply issues. In this way, rent regulations can influence both the views of group members and the strategies available for making more room for their populations.⁵⁸

* * *

To varying degrees, and in their presence or absence, all of the above factors are at play in the following discussion of ethnic enclaves. These factors describe opportunities and constraints that affect Hasidic, Chinese, and Bangladeshi groups differently and guide each toward a different strategy for making room for their expanding populations.

The Parts below begin with a brief account of each enclave's formation, followed by explicit reference to the factors described above and how they have shaped and constrained each group's engagement with the zoning game through previous decades up to the present day. Attention to these factors offers a view from below of the daunting challenges supply-constrained cities face in creating more housing and potentially promising ways to address these obstacles.

III. HASIDIC ENCLAVES AND THE "VOICE" STRATEGY

The Hasidic enclaves in Williamsburg and Borough Park use what I call a "Voice" strategy to make room for their expanding communities in their Brooklyn enclaves. In a city where neighborhood associations and housing advocates lobby constantly for downzonings, special zoning districts, historic districts, and other protections against new development, these groups are very nearly alone in lobbying elected representatives and city officials for increased development capacity, rezonings, and special rules in the zoning resolution that have enabled them to densify and expand their enclaves over time.

A. *The Satmar of Williamsburg*

The Yiddish-speaking Satmar enclave in South Williamsburg has its origins in the years immediately following World War II when the Grand Rebbe of the Satmar, Rabbi Joel Teitelbaum, who miraculously survived the Holocaust, moved to Brooklyn with a few Hasidic families from Satu Mare, their old village in what is now Romania.⁵⁹ Many of the community's remnant followed the

http://www1.nyc.gov/assets/oec/technical-manual/2014_ceqr_technical_manual_rev_04_27_2016.pdf [<http://perma.cc/HG6G-BYX6>].

58. See Schleicher, *supra* note 1, at 1730.

59. ISRAEL RUBIN, *SATMAR: TWO GENERATIONS OF AN URBAN ISLAND* 47 (1997).

Rabbi to Brooklyn in subsequent years. The sect attracted some new adherents, but the enclave comprised just a few hundred people into the 1950s.⁶⁰ Since then, the enclave population has expanded dramatically due to the extraordinary fecundity of its residents. Fertility rates are among the highest in the city. Between 2002 and 2011, the enclave's population grew by 41% through natural increase.⁶¹

In 2011, the enclave had approximately 75,000 members in a 70-block area and an average household size of 4 people.⁶² It is among the youngest communities in New York City. In 2000, fully half of the community was 18 or under, and another 34% were under 40. Only 3% were over 65.⁶³ Eighty-five percent of adults are married.⁶⁴ The Satmar enclave started as a community of immigrants, but its youth and rate of growth mean that today the enclave has among the lowest percentage of foreign-born members in the city.⁶⁵ There is a smattering of Hungarian and Romanian immigrants left from the post-WWII period, and a couple hundred Israelis.⁶⁶

The community is also very poor. Seventy-eight percent have family incomes below \$50,000 per year and 55% have incomes below 150% of the poverty line. Kiryas Joel, a satellite enclave founded upstate in the 1970s to relieve some of the population pressure in Williamsburg, was, as of 2011, the youngest and poorest municipality of more than 10,000 people in the country, with a median age of 13 and a median family income of \$18,000. Seventy percent of families live below the poverty line.⁶⁷ The Satmar also have smaller outposts in

60. *Id.*

61. Pearl Beck et al., *Jewish Community Study of New York: 2011 Geographic Profile*, UJA-FEDERATION N.Y. 28 (2013), http://www.bjpa.org/content/upload/bjpa/c__c/JCSNY-2011-Geographic-Profile-Report-Rev-10-13.pdf [<http://perma.cc/GSF2-NN87>].

62. *Id.* at 122. The 4.0 average household size is probably an underestimate because it includes much smaller non-Hasidic Jewish households elsewhere in the community district. Heilman estimates a household size more in line with the Satmar enclave in Kiryas Joel upstate, which has an average household size of 6.6. SAMUEL HEILMAN, *SLIDING TO THE RIGHT: THE CONTEST FOR THE FUTURE OF AMERICAN JEWISH ORTHODOXY* 224 (2006).

63. *Id.* at 223-25.

64. *Id.*

65. Maxwell Austensen et al., *State of New York City's Housing and Neighborhoods in 2016*, N.Y.U. FURMAN CTR. HOUSING & URB. POL'Y 54 (2016), http://furmancenter.org/files/sotc/SOC_2016_Full.pdf [<http://perma.cc/8BTN-PN7H>].

66. The connection between the enclave and Israel are weaker than one might expect. A constitutive belief of the Satmar sect is that a Jewish state should only be established by the Messiah and so they hold Israel to be theologically illegitimate. RUBIN, *supra* note 59, at 66.

67. Sam Roberts, *A Village with the Numbers, Not the Image, of the Poorest Place*, N.Y. TIMES (Apr. 20, 2011), <http://www.nytimes.com/2011/04/21/nyregion/kiryas-joel->

Willow Brook and Bloomingburg, New York, and Toms River, Jackson Township, and Lakewood, New Jersey.⁶⁸

B. The Hasidim of Borough Park

Orthodox Jews began moving to Borough Park during the Great Depression and were followed by Yiddish-speaking European Hasidim in the post-WWII period. In-movers also arrived from Williamsburg and Crown Heights, a Hasidic “white flight” as the black and Hispanic populations in those neighborhoods increased in the 1950s and 1960s.⁶⁹ As Borough Park grew steadily more Hasidic, non-Hasidic Orthodox Jews migrated to the adjacent Midwood and Flatbush neighborhoods, where they maintain a strong presence today.⁷⁰ Borough Park, or “Boro Park,” as it is known to locals, serves as the headquarters for a number of Hasidic sects—Bobov, Belzer, Ger, Munkatz, among others—which are named after their villages of origin. It might be more accurate to call Borough Park a series of overlapping Hasidic enclaves, or, as one scholar calls it, a “Jewish melting pot.”⁷¹

Borough Park is the largest Hasidic enclave outside of Israel. It numbers 131,000 and has an average household size of 4.2 people, among the largest in the city. The enclave’s population grew 71% from 2002 to 2011 and the Borough Park community district has become progressively more Jewish—78% in 2011, up from 51% Jewish in 2002.⁷² (The Williamsburg community district, by contrast, which contains a sizeable Latino population as well as hordes of young and hip “artisten,” as the Satmar call them, is only 36% Jewish.)⁷³ Borough Park had more births than any other community district in New York City, and Maimonides, its hospital, had more births than any other hospital in New York State—8000, or about 22 births per day.

a-village-with-the-numbers-not-the-image-of-the-poorest-place.html [http://perma.cc/U7AA-AZ84] (noting that some observers question whether income figures for these Hasidic communities are accurate given the networks of Hasidic charities and unusual degree of mutual financial support within the community).

68. See, e.g., Joseph Berger, *Uneasy Welcome as Ultra-Orthodox Jews Extend Beyond New York*, N.Y. TIMES (Aug. 2, 2017), <http://www.nytimes.com/2017/08/02/nyregion/ultra-orthodox-jews-hasidim-new-jersey.html> [http://perma.cc/HA88-4W7E].

69. EGOM MAYER, FROM SUBURB TO SHTETL: THE JEWS OF BORO PARK 33 (1979).

70. Beck et al., *supra* note 61, at 104.

71. MAYER, *supra* note 69. Mayer estimates that Boro Park was home to some 20 Hasidic dynasties at the time of his book’s publication—1979. This number has likely increased in the years since.

72. Beck et al., *supra* note 61, at 112.

73. *Id.* at 120.

The Hasidic communities of Borough Park and Williamsburg are demographically similar. Forty-nine percent of Borough Park Jews are 18 years or younger, and an additional 30% are under 40.⁷⁴ Sixty-eight percent of households have incomes of under \$50,000 and 44% have incomes below 150% of the federal poverty guideline.⁷⁵ Borough Park has more foreign-born Hasidim than Williamsburg, from places like Russia, Ukraine, Romania, and Israel, but the percentage of foreign-born in each enclave is well below the city average.⁷⁶

C. *The “Voice” Strategy*

Both Borough Park and Satmar Williamsburg are among the most densely populated areas in the outer boroughs. Borough Park has the highest percentage of rent burdened tenants—that is, tenants spending more than thirty percent of their income on housing costs—in the entire city.⁷⁷ (It is likely that Satmar Williamsburg has a similarly high rent burden, but the city does not keep statistics at that level of resolution.) As successive generations in these enclaves have four, five, or more children, they are desperate for more housing.⁷⁸ Due to religious constraints, housing must be in or near the enclave. Hasidim typically need to be within walking distance of their synagogue in order to avoid driving or paying for transportation on the Sabbath. It is also exceedingly difficult to be a *frum*, or observant, Hasid apart from the highly specialized goods, services, and institutions—like *mikvehs*, or ritual baths—available in the community.⁷⁹ In addition to these religious needs, there are further constraints that keep Hasidim in the enclave: many Hasidim are Yiddish-speakers, and their culture emphasizes the importance of a full life of living in community. Growing families cannot simply up and move to the suburbs.⁸⁰

Faced with these requirements, the Hasidic enclaves in Williamsburg and Borough Park have separately, and largely successfully, used their political and electoral might to lobby their elected representatives and city officials for variances, rezonings, land transfers, and particular development projects that have enabled them to densify and expand the bounds of their enclaves. I call this the “Voice” strategy, and it is largely conducted through the formal and public

74. *Id.* at 112.

75. *Id.* at 113.

76. Austensen et al., *supra* note 65, at 54, 65.

77. *Id.* at 65.

78. Smith, *supra* note 47.

79. As enclaves like Williamsburg and Borough Park have built out their religious infrastructure, it has become less demanding, in many ways, to be a fully *frum* Hasidic Jew, perhaps contributing in a feedback loop to the “Haredization” of Orthodox Jewry in the last 50 years described generally by HEILMAN, *supra* note 62.

80. See generally HEILMAN, *supra* note 62.

channels by which zoning, land use, and development decisions are made in New York City.

The “Voice” strategy is effective in Hasidic enclaves for several reasons. First, the Hasidim’s sheer **numbers**—large and growing—constitutes the basic ingredient of political power. Second, the high rates of **voting** within the enclaves strengthen their political influence. Unlike the other groups examined in this Article, a substantial majority of Hasidic adults in Williamsburg and Borough Park are native-born and eligible to vote, and the various *rebbe*s, as the head rabbis of Hasidic sects are known, encourage voter turnout as a way to amplify the political power of their sects.⁸¹ Third, the guidance of the grand *rebbe*s can result in **strategic bloc-voting** patterns, which further amplifies the enclaves’ voting clout. “No one can deliver votes like a *rebbe* can” has been a pearl of Brooklyn political wisdom for decades.⁸² It is not uncommon for low-turnout primaries for Congress or general elections for City Council or State Senate to turn on the Hasidic vote.⁸³ The enclaves, consequently, have famously responsive representatives such as Councilman Stephen Levin in Williamsburg and State Assemblyman Dov Hikind in Borough Park.⁸⁴

81. See also Sarah Wheaton, *The Biggest Rival for a Congresswoman from Brooklyn Isn’t Even on the Ballot*, N.Y. TIMES (June 21, 2012), <http://www.nytimes.com/2012/06/21/nyregion/congresswoman-nydia-m-velazquezs-biggest-foe-isnt-on-the-ballot.html> [<http://perma.cc/NHE2-VNDH>] (discussing influence of Satmar Hasidic vote in bid for New York’s Seventh Congressional District).

82. Joseph Berger, *Out of Enclaves, a Pressure To Accommodate Traditions*, N.Y. TIMES (Aug. 21, 2013), <http://www.nytimes.com/2013/08/22/nyregion/hasidic-jews-turn-up-pressure-on-city-to-accommodate-their-traditions.html> [<http://perma.cc/NMN2-GKL3>]; see also RUBIN, *supra* note 59, at 208 (“Where else could one count today in this kind of voting block? All a candidate needs to do is make a credible commitment to support within reason a given group’s interests, and the leader will issue an order to his followers to vote for that person, an order that will in most cases be observed 100%.”). The *rebbe*s’ influence may have weakened since the 2006 death of Moshe Teitelbaum, former Grand Rebbe of the Satmar Hasidim. A succession battle between two of his sons has fractured the vote among Hasidic Jews in New York City. See Joseph Berger, *Divisions in Satmar Sect Complicate Politics of Brooklyn Hasidim*, N.Y. TIMES (July 6, 2012), <http://www.nytimes.com/2012/07/06/nyregion/satmar-rift-complicates-politics-of-brooklyn-hasidim.html> [<http://perma.cc/6DE4-JW95>].

83. Wheaton, *supra* note 81.

84. Berger, *supra* note 82. A note on Aldermanic privilege: In land use decisionmaking, City Councilmembers typically defer to the member in whose district a project is proposed. (They expect the same deference in return.) The responsiveness of the Satmar representative thereby translates into the responsiveness of the entire City Council when it comes to land-use policy within the enclave. Anecdotally, greater dominance within their Council district typically enables the Orthodox Jews of Borough Park to elect one of their own; owing to greater heterogeneity, this has not been the case within the Council district encompassing the Satmar enclave.

Fourth, the Hasidic community members have reached near total **territorial dominance** within the enclaves. This makes a strategy of variances and upzonings both more possible and more desirable. A major obstacle to development in New York City is sub-local political opposition, also known as “NIMBYism” or “Not in My Backyard,” driven by people who fear how changes to the neighborhood may affect them or their property values. While these enclaves have faced stiff opposition from non-Hasidim as they expand into other neighborhoods, a phenomenon addressed below, within the enclave there historically has been little in the way of external opposition to new development plans. Territorial dominance also helps to ensure that the benefits of any new development will redound to the community, minimizing the potential for internal opposition. When new housing is built in the enclave, there is little to no chance that it will bring in some “undesirable element” or otherwise be occupied by people from outside the community. Expansion of the enclave, both demographically and geographically, makes the community more powerful.⁸⁵

Fifth, almost all development in the community is undertaken by a significant Hasidic **developer and owner class**, which means that new development is both for and by the Hasidim.⁸⁶ This control is important; outsiders who attempt to develop within the enclave usually face opposition and Hasidim who sell to outsiders risk ostracism.⁸⁷ Sixth, **coordinating institutions** in the community, particularly the United Jewish Organizations of Williamsburg, have

But the enclaves also feature factional disputes, such as the succession battle between the followers of sons of Satmar Grand Rebbe Moshe Teitelbaum, who died in 2006, or the ongoing enmity between Assemblyman Hikind and Borough Park Councilman David Greenfield, currently chairperson of the Land Use Committee. These factions reflexively oppose each other and may have the tendency to diminish the political power of the Hasidic enclaves. See Ross Barkan, *The Tower Broker: Council's New Land Use Chair Set To Become Force in City Politics*, POLITICKER (Jan. 29, 2014, 1:33 PM), <http://politicker.com/2014/01/the-tower-broker-city-councils-new-land-use-chair-set-to-become-force-in-city-politics/> [<http://perma.cc/49TF-3AAR>]; see also Berger, *supra* note 82.

85. Here is the essence of the “group-regarding” land use decisionmaking that should be examined more fully in a separate paper.
86. See Mark Maurer, *Learning and Earning: Hasidic Brooklyn's Real Estate Machers*, REAL DEAL (Aug. 22, 2016, 7:00 AM), <http://therealdeal.com/2016/08/22/learning-and-earning-hasidic-brooklyns-real-estate-machers/> [<http://perma.cc/C7FV-L4V3>].
87. The Hasidim in Williamsburg are particularly vigilant about protecting the housing market from outsiders—members who sell or rent to non-Satmar have been shunned from the community. HEILMAN, *supra* note 62, at 257. According to Eric Kober, Former Director of Housing, Economic, and Infrastructure Planning at the New York City Department of City Planning, Hasidic developers use lucrative development outside the enclave to subsidize below-market housing for fellow Hasidim within the enclave—a private version of affordable housing. Interview with Eric Kober, Former Dir. of Hous., Econ. & Infrastructure Planning, N.Y.C. Dep't City Planning, in N.Y.C. (Sept. 17, 2015).

cultivated and effectively wielded the political power of the community to push a strategy of expansion and densification. Strong leadership and coordinating institutions also support **issue alignment** among those in the community in support of new development. Unlike the Chinese and Bangladeshi communities discussed below, Hasidic population growth comes largely through natural increase rather than new immigration, which may help the community avoid some of the divides between long-time residents and new immigrants and among immigrants from different regions.

Finally, and perhaps most importantly, for most of these enclaves' existence, their **locations** have provided room to densify and expand. Post-World War II, Williamsburg and Borough Park were differently situated from Chinatown, which was dense and surrounded by valuable, already-developed real estate.⁸⁸ They were instead surrounded by lower-density housing and industrial zones whose use receded in intensity as manufacturing jobs left the city. From the 1950s to the 1980s, Brooklyn's and Williamsburg's populations shrank as the Satmar's expanded. These communities have successfully opted to grow in place in large part because there has been room to grow. As vacant land becomes scarcer and real estate becomes more expensive around Borough Park and especially Williamsburg, the Hasidic enclave may increasingly shift to an "Exit" strategy as we've seen in Chinatown over the last few decades.⁸⁹

D. From Variances to Rezonings

Williamsburg and Borough Park have followed a similar pattern. Both communities sought variances as their populations bumped up against the limits of their current development capacity. In Borough Park, this process began in the late 1970s and '80s; Williamsburg followed a decade or so later.⁹⁰ As their populations expanded beyond what variances could accommodate, both communities sought larger-scale rezonings that would enable them to develop more housing as-of-right. Borough Park secured a major upzoning in 1992 and another in 2005.⁹¹ Satmar Williamsburg obtained rezonings in 2001 and 2008 that enabled it to expand.⁹² These rezonings are examined more closely below.

88. See *infra* Part IV.

89. Worth more attention is the Satmar community's attempt to "exit" Williamsburg for rural New Jersey in the early 1960s, a plan that was blocked by an exclusionary local planning board after it got wind that a community of Jews wanted to move nearby. See Milton Honig, *Jews Ask Jersey Court's Aid in Fight on Tract*, N.Y. TIMES (Sept. 25, 1963), <http://www.nytimes.com/1963/09/25/archives/jews-ask-jersey-courts-aid-in-fight-on-tract-brooklyn-sect-seeks.html> [<http://perma.cc/UW5D-PHEY>]. For a discussion of the "Exit" strategy, see *infra* Part IV.

90. Alan S. Oser, *Housing Surge Alters Borough Park*, N.Y. TIMES (May 21, 1982), <http://www.nytimes.com/1982/05/21/nyregion/housing-surge-alters-borough-park.html> [<http://perma.cc/FW3R-NRR2>].

91. Lisa L. Colangelo, *Mike Woos Borough Park with New Housing*, N.Y. DAILY NEWS (Apr. 15, 2005), <http://www.nydailynews.com/archives/boroughs/mike-woos->

1. Borough Park

In 1982, the *New York Times* called Borough Park, a far-flung neighborhood in an outer borough, “one of the most ambitious centers of real estate activity in the city.”⁹³ Hasidim were buying the neighborhood’s wood frame houses, tearing them down, and obtaining variances to build large, brick, two- and three-family houses with huge interiors and special features for Orthodox families—including, for example, two sinks, two refrigerators, and big kitchens to aid in kosher food preparation, and balconies for Sukkot, a Jewish holiday when many families dine outside.⁹⁴ This process continued variance by variance through the early 1980s, as the community’s growing numbers and political influence grew.

In 1983, a coalition of groups representing Hasidic Borough Park successfully pushed for special modifications to the neighborhood’s lower and medium density zoning regulations.⁹⁵ The special regulations increased the allowable floor area of one-, two-, and three-family homes from 1.65 times the lot size to 1.8 times the lot size,⁹⁶ increased maximum lot coverage, relaxed parking re-

boro-park-new-housing-article-1.566303 [<http://perma.cc/H5HA-96W5>]; Deborah Sontag, *Orthodox Neighborhood Reshapes Itself*, N.Y. TIMES (Jan. 7, 1998), <http://www.nytimes.com/1998/01/07/nyregion/orthodox-neighborhood-reshapes-itself.html> [<http://perma.cc/353G-AF4A>].

92. City Planning Comm’n, *In the Matter of an Application Submitted by Thomas Klein LLC Pursuant to Sections 197c and 201 of the New York City Charter for an Amendment of the Zoning Map, Section No. 13b* (C 060377 ZMK), N.Y.C. DEP’T CITY PLAN. (Feb. 13, 2008), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/060377.pdf> [<http://perma.cc/8ETU-7BY2>]; Smith, *supra* note 47.
93. Oser, *supra* note 90.
94. The housing boom in Borough Park followed a decade of tremendous expansion of Hasidic religious institutions. The number of yeshivas and shuls multiplied over the course of the 1970s as more Hasidim moved to Borough Park. MAYER, *supra* note 69, at 7.
95. City Planning Comm’n, *Amendment of the Zoning Resolution Pursuant to Section 200 of the New York City Charter creating a new Section 23-145 (Optional Provisions for Certain R5 and R6 Districts in Brooklyn) for 1-Family, 2-Family, and 3-Family Residences* (N 820451 ZRK), N.Y.C. DEP’T CITY PLAN. (June 6, 1983), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/820451.pdf> [<http://perma.cc/J2EM-PE3F>]. One of the main groups pushing for special modifications was the Council on Jewish Organizations, which closed in the late 1990s in the aftermath of a bribery scandal involving the deputy director and Assemblyman Dov Hikind. Lawrence Cohler-Esses, *COJO Official Gets Two Years*, JEWISH WK. (June 11, 1999, 12:00 AM), http://www.thejewishweek.com/features/cojo_official_gets_2_years [<http://perma.cc/GUW7-YK8X>].
96. Since 1961, New York City has regulated the bulk of buildings using “floor area ratio” or FAR, which relates the allowable floor area of a building to the size of the lot it sits on. FAR equals the square footage of the building divided by the square

quirements, and relaxed other bulk regulations to enable remarkably stout and bulky three-story houses.⁹⁷ In approving the text amendment, the City Planning Commission laid out its planning rationale:

The need for additional housing in the past ten years has resulted in the demolition of detached frame homes and their replacement with two and three family semi-attached and attached homes. Since the late 1960's Boro Park has continued to attract large families, thereby increasing the need for large residential units.

During the past three years, many owners/developers filed applications with the Board of Standards and Appeals for variances in order to permit construction of large 3-story 3-family houses in excess of the bulk allowed by the present R5 and R6 regulations.

The Boro Park neighborhood contains an unique concentration of housing types occupied by large family sizes. The housing needs of these families are very different from the rest of the City. In most cases these families require exterior balconies and extra floor area to create additional bedrooms for the children.⁹⁸

The City Planning Commission report notes that there were no speakers in opposition—an indication of broad-based support for the upzoning that is difficult to imagine in almost any other neighborhood in New York City.⁹⁹

In 1991, the Boro Park Builder's Association pushed to extend the new rules to corner lots, which were not included in the 1983 text amendment.¹⁰⁰ A 1992 rezoning further reclassified a swath of formerly industrial land, enabling the construction of subsidized housing and nursing homes.¹⁰¹ In 1993, an amendment relaxed balcony regulations to allow a wider range of outdoor spaces necessary for the festival of Sukkot.¹⁰² And amendments in 1998 and

footage of the lot. See N.Y.C. DEP'T OF CITY PLANNING, ZONING HANDBOOK 148 (2011).

97. See City Planning Comm'n, *Zoning Resolution*, N.Y.C. DEP'T CITY PLAN. § 23-16(d) (Mar. 22, 2016), <http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/allarticles.pdf> [<http://perma.cc/BSH5-YCAQ>].

98. *Amendment of the Zoning Resolution*, *supra* note 95, at 2.

99. *Id.*

100. City Planning Comm'n, *In the Matter of an Application Submitted by the Borough Park Builders Association, Pursuant to Section 201 of the New York City Charter, for Amendments of the Zoning Resolution of the City of New York, Relating to Section 23-146* (N 890781 ZRK), N.Y.C. DEP'T CITY PLAN. (May 15, 1991), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/890781.pdf> [<http://perma.cc/89WX-WH98>].

101. Jim Dwyer, *Sinking Like a Ton of Bricks*, NEWSDAY (May 29, 1992).

102. City Planning Comm'n, *In the Matter of an Application Submitted by the Department of City Planning, Pursuant to Section 200 of the New York City Charter, for*

2000 established a special permit to enable larger houses and to allow houses in Borough Park to project ten feet into the required rear yard.¹⁰³

These provisions helped to spark a new rash of teardowns and a boom in building activity. Houses expanded in all directions, horrifying some design professionals but making room for growing families.¹⁰⁴ In the decades since, houses enabled by these provisions have come to define the unique built character of Borough Park. The city issued more building permits in Borough Park in the 1990s than in any other residential neighborhood in the city.¹⁰⁵

In 2005, in the midst of a spate of community-initiated downzonings in neighborhoods across outer Brooklyn and Queens, Mayor Bloomberg announced another *upzoning* in Borough Park along a former railroad right-of-way. “This is a community where the population is growing more than three times faster than the supply of housing,” Bloomberg said at a Borough Park ceremony.¹⁰⁶ The upzoned areas were to be developed with 80 units of infill housing.¹⁰⁷

While there is nothing unusual about neighborhoods demanding, and in many cases receiving, special treatment in the zoning resolution, two factors make Hasidic influence on the zoning resolution unique. First, unlike almost every other neighborhood mobilized around land use, such as Greenwich Village, Borough Park asked for *more*, not less, development. Second, these neighborhood actions embed a distinct ethnic and enclavist influence into the zoning resolution that enables building typologies particular to the group.¹⁰⁸ Hasidim,

Amendment of the Zoning Resolution of the City of New York Relating to Sections 12-10, 23-131, 23-132, 23-133, 23-146, 24-175 and 24-176 (N 930073 ZRY), N.Y.C. DEP'T CITY PLAN. (Aug. 4, 1993), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/930073.pdf> [<http://perma.cc/WB9W-WF6N>].

103. City Planning Comm'n, *In the Matter of an Application Submitted by the South Brooklyn Community Organization Pursuant to Section 201 of the New York City Charter, for an Amendment to the Zoning Resolution of the City of New York, Relating to Section 23-146 and Section 73-622* (N 000286 ZRK), N.Y.C. DEP'T CITY PLAN. (Oct. 18, 2000), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/000286.pdf> [<http://perma.cc/5BHY-C4F5>].

104. Oser, *supra* note 90.

105. Sontag, *supra* note 91.

106. Colangelo, *supra* note 91.

107. *Id.*

108. While beyond the scope of this Article, this is also true of the special R4 regulations incorporated into the Special Ocean Parkway District and the R2X zoning classification in Homecrest implemented at the behest of Orthodox and Syrian Jewish enclaves in southern Brooklyn. Like Borough Park's special regulations, these provisions enabled construction of massive houses on comparatively small lots. See City Planning Comm'n, *Zoning Resolution*, N.Y.C. DEP'T CITY PLAN. § 113 (Mar. 22, 2016), <http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/allarticles.pdf> [<http://perma.cc/BSH5-YCAQ>].

as the rare enclave population with voting power, can use politics to translate preferences into law.

The legacy of the 1980s and 1990s is that Borough Park has some of the newest housing stock in the city.¹⁰⁹ Zoning regulations enable the enclave to replace former industrial lots, bowling alleys, and any other structures with larger housing and sites of Hasidic worship, education, and goods and services.¹¹⁰ Unlike in Williamsburg, conflict seems limited to displaced business owners, the rare developer from outside the community who attempts to build in Borough Park, or tension with merely Orthodox Jews in adjacent neighborhoods.¹¹¹ The prospects for future densification and expansion are unclear. Borough Park continues to expand southward below 60th Street, but to the west it abuts Sunset Park, another expanding enclave addressed in Part IV. If it can't expand indefinitely, the neighborhood may have to endure another round of teardowns to replace existing structures with larger multifamily buildings, as in Williamsburg. As Councilman Greenfield says of Borough Park, "Every square inch is being utilized here."¹¹² The only place to go is up. Failing expansion and densification, the enclave will be forced to shift to the type of "Exit" strategy employed by Chinese immigrants when they established new enclaves in Sunset Park and Flushing in response to crowding and skyrocketing rents in Manhattan Chinatown.

2. Williamsburg

While the Williamsburg enclave is smaller and slower-growing than the Borough Park enclave—74,500 versus 131,00—Satmar Williamsburg sits on more intensely contested ground, particularly since the explosion of the Williamsburg real estate market over the past decade. Williamsburg has had the most or nearly the most units permitted and certificates of occupancy issued of any New York community district for over a decade.¹¹³ It is unclear what pro-

109. Sontag, *supra* note 91.

110. Liz Robbins, *Bowlers in Brooklyn Enjoy a Haven While It's Still Around*, N.Y. TIMES (Apr. 22, 2011), <http://www.nytimes.com/2011/04/23/nyregion/at-maple-lanes-longtime-bowlers-prepare-for-loss.html> [<http://perma.cc/562H-N7DY>].

111. See, e.g., Jake Mooney, *On an Unloved Lot, A New Source of Friction*, N.Y. TIMES (Nov. 25, 2007), <http://www.nytimes.com/2007/11/25/nyregion/thecity/25fing.html> [<http://perma.cc/VQ2R-TLLQ>].

112. Gregory Beyer, *Borough Park, Brooklyn*, N.Y. TIMES (Oct. 8, 2010), <http://www.nytimes.com/2010/10/10/realestate/10living.html> [<http://perma.cc/U2FE-ETJT>].

113. Austensen et al., *supra* note 65, at 54. This is a big change. After the construction of the Brooklyn-Queens Expressway, which split the neighborhood, Williamsburg was abandoned by all but its poorest inhabitants. Of the Hasidic Jewish community, only the Satmar—said to be the *ne plus ultra* of the ultra-Orthodox—remained.

portion of these new units are due to development along the 2005-upzoned Waterfront,¹¹⁴ upland development in the “hip” parts of the neighborhood, and the ongoing densification and expansion of the Satmar enclave.

The growth of Satmar Williamsburg has engendered conflicts with its neighbors, especially the Puerto Rican and Dominican neighbors to the north, since at least the 1970s. Hasidic community groups like UJO, led by the indefatigably pro-development Rabbi David Niederman, and Puerto Rican and Dominican community groups like *Los Sures* and *El Puente*, have fought pitched battles over territory, development rights, and public housing placements for decades.¹¹⁵ In 1978, suits by Latino community organizations forced the New York City Housing Authority into a consent decree that upped the number of Hispanics in public housing developments in and around Satmar Williamsburg.¹¹⁶

Throughout the 1990s, a much smaller but rapidly expanding population of Satmars increased the housing supply through as-of-right infill development and variances that increased the permissible bulk of housing or allowed for housing development on land zoned for manufacturing. In one day in November 1997, for instance, the Board of Standards and Appeals approved variances for four Satmar housing developments on industrial land.¹¹⁷ Shortly thereafter, Satmar developers obtained further permission to convert the old Isratech fac-

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114. See City Planning Comm'n, *In the Matter of an Application Submitted by the Department of City Planning pursuant to Section 201 of the New York City Charter, for an Amendment of the Zoning Resolution of the City of New York, Relating to Article II, Chapter 3 and Article VI, Chapter 2; Article XII, Chapter 3; and the elimination of Article IX, Chapter 7 and Article X, Chapter 8* (N 050110(A) ZRK), N.Y.C. DEP'T CITY PLAN. (Mar. 14, 2005), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/050110a.pdf> [<http://perma.cc/JY8A-FY2K>].
115. NICOLE MARWELL, *BARGAINING FOR BROOKLYN: COMMUNITY ORGANIZATIONS IN THE ENTREPRENEURIAL CITY* 33-94 (2007); Kareem Fahim, *Old Feuds Resurface in a Brooklyn Rezoning Fight*, N.Y. TIMES (Aug. 4, 2009), <http://www.nytimes.com/2009/08/05/nyregion/05broadway.html> [<http://perma.cc/PU5Z-356C>].
116. David Gonzalez, *A Storm in Williamsburg as Two Ethnic Groups Clash*, N.Y. TIMES (Nov. 17, 1990), <http://www.nytimes.com/1990/11/17/nyregion/a-storm-in-williamsburg-as-two-ethnic-groups-clash.html> [<http://perma.cc/UE6L-4ECX>]. In contrast to Borough Park, which has no public housing, Williamsburg has thousands of units. *State of New York City's Housing and Neighborhoods*, N.Y.U. FURMAN CTR. HOUSING & URB. POL'Y 74, 85 (2012), <http://furmancenter.org/files/sotc/SOC2012.pdf> [<http://perma.cc/4W3W-27R4>]. The Satmar initially opposed public housing in Williamsburg, but were won over by promises of reserved slots in the new buildings. When the buildings opened, the developments ranged from 60 to 75% Hasidic. MARWELL, *supra* note 115.
117. Graham Rayman & Dan Morrison, *Builders Probed / Poor Safety, but Good Connections*, NEWSDAY (Jan. 15, 2000).

tory into housing.¹¹⁸ Projects like this are emblematic of the Satmar's 1990s expansion.

At the same time, both the community and the city understood that such piecemeal efforts would not meet the community's need for housing for very long. In 1995, at the annual Satmar banquet, attended by over 10,000 men, Mayor Giuliani announced that the city was forming a Williamsburg Housing Task Force to find solutions for the looming housing crunch. "We want you to remain in Williamsburg. We want you to grow in Williamsburg," Giuliani said.¹¹⁹ The task force's main objectives were to remedy the area's scarcity of residential zoning and help to ease the housing-related tensions between the Hasidic and Hispanic communities in the neighborhood.¹²⁰

In 1997, the task force helped community groups negotiate Broadway as a loose line of demarcation between the rapidly expanding Satmar enclave and the informal territory of the shrinking Latino communities to the north. The task force also paved the way for the rezoning of several industrial tracts adjacent to the Satmar enclave in the predominantly African-American neighborhoods of Bedford-Stuyvesant and Clinton Hill.¹²¹ Both of these moves diverted the Satmar expansion to industrial and residential areas to the south and east, leading to conflicts over housing and land with African-Americans communities there.¹²²

The 2001 rezoning comprised mostly industrial lots on the border between South Williamsburg, predominantly Hasidic and Hispanic, and Bedford-Stuyvesant and Clinton Hill. Satmar developers wasted no time raising six- and seven-story buildings with three- to seven-bedroom apartments, kosher kitchens, and balconies for Sukkot, a Jewish holiday when many families dine outside.¹²³ The characteristically Hasidic apartments effectively claimed new territory for the Satmar. "Ten years ago there were no Jews living here," said Moishe, a construction manager interviewed for an account of the Satmar expansion pub-

118. Bob Liff, *Hasidim Plan for Housing Raises Sparks Among Blacks*, N.Y. DAILY NEWS (Oct. 29, 1998).

119. Michael Cooper, *Mayor Forms Panel to Seek New Housing*, N.Y. TIMES (Dec. 17, 1995), <http://www.nytimes.com/1995/12/17/nyregion/neighborhood-report-williamsburg-mayor-forms-panel-to-seek-new-housing.html> [<http://perma.cc/X58Y-2HK9>]. Like many New York City politicians, Giuliani understood that Hasidic support could translate into many votes on Election Day.

120. *Id.*

121. Liff, *supra* note 118.

122. *Id.*

123. Andy Newman, *In a Brooklyn Boom, A Patchwork of Housing Fills in the Bare Spots*, N.Y. TIMES (Feb. 15, 2004), <http://www.nytimes.com/2004/02/15/nyregion/in-a-brooklyn-boom-a-patchwork-of-housing-fills-in-the-bare-spots.html> [<http://perma.cc/KDB2-JW6V>].

lished in the Jewish Daily Forward. “Then they changed the zoning. Now it is going heavy.”¹²⁴

A similar dynamic appeared to be in play in 2006, when the city rezoned an industrial area known as the Broadway Triangle for residential use at the behest of the Satmar and gave UJO the right to develop affordable housing there.¹²⁵ The decision reignited conflict with Hispanic and black community groups, a coalition of which, the Broadway Triangle Coalition, sued to block the plan on fair housing grounds, claiming that the planned large apartments with kosher kitchens and no elevators discriminated against blacks and Hispanics.¹²⁶ A judge halted the affordable housing component of the development plans, which remain in limbo, though Hasidic-friendly market-rate housing proceeded with construction.¹²⁷

Given the enclave’s ever-expanding numbers and the responsiveness of their elected officials, their opponents are increasingly resorting to the courts rather than the political process to stem Satmar development. The Satmar, generally, support development, densification, and expansion because it benefits their community and they possess, by all accounts, an unusually robust conception of community.¹²⁸ Similar to residents of Borough Park, however, Samtar tend to object to outside developers who seek to build structures for non-Hasidim. Such was the case with the Gretsich building, a former musical instrument factory converted to luxury lofts by Orthodox, but non-Hasidic, brothers. The Satmar staged a several-months’ picket line outside the building to protest the incursion of the “artisten” from north of Broadway into the Hasidic enclave.¹²⁹ They also shunned the Satmar owner who sold the building to someone outside the community.¹³⁰ As housing costs soar in North Williamsburg, the Satmar can expect more developments of this type. There is limited industrial and cheap real estate to the south and east of the current enclave, and many parts of the enclave are developed to maximum Hasidic density—that is, the largest buildings that would not require an elevator ride on the Sabbath. It is

124. JTA, *Ultra-Orthodox Jews Spread into Once-Black Brooklyn Neighborhoods*, FORWARD (Feb. 16, 2013), <http://forward.com/news/171367/ultra-orthodox-jews-spread-into-once-black-brookly/> [<http://perma.cc/8WJG-C6HK>].

125. Fahim, *supra* note 115.

126. *Id.*

127. *Broadway Triangle Cmty. Coal. v. Bloomberg*, 941 N.Y.S. 2d 831, 835 (2011); *see also* Smith, *supra* note 47.

128. *See generally* RUBIN, *supra* note 59.

129. Tara Bahrapour, ‘*Plague of Artists’ a Battle Cry for Brooklyn Hasidim*, N.Y. TIMES (Feb. 17, 2004), <http://www.nytimes.com/2004/02/17/nyregion/plague-of-artists-a-battle-cry-for-brooklyn-hasidim.html> [<http://perma.cc/35XB-3J3R>] (noting that one sign translated from Yiddish stated, “Please remove from upon us this plague of artists”); *see also* HEILMAN, *supra* note 62.

130. Bahrapour, *supra* note 129.

likely that the Satmar will have to rely on other places, like Kiryas Joel, Monsey, Lakewood, New Jersey, and a nascent enclave in Bayswater, Queens, if they seek to expand.

IV. CHINESE ENCLAVES AND THE “EXIT STRATEGY”

Chinese immigrants use what I call an “Exit” strategy to make room for their growing population in New York City. Manhattan Chinatown remains the focal point of the community, but rising housing costs and overcrowding in the speculative real estate markets of 1980s Manhattan led to the founding of satellite Chinatowns in cheaper, less densely populated neighborhoods like Flushing, Queens, and Sunset Park, Brooklyn. As the population of foreign-born Chinese has increased, newer enclaves have emerged in Elmhurst, Queens, and Bensonhurst, Brooklyn.¹³¹ There’s even a nascent Chinese enclave in East Harlem.¹³²

There were approximately 383,000 foreign-born Chinese in New York City in 2015, an increase of 46% from 2000, as compared with New York City’s approximately 6% population increase over the same period. Eighty-five percent of foreign-born Chinese are from the mainland, with the balance from Hong Kong and Taiwan.¹³³ Chinese may soon overtake Dominicans as the largest foreign-born population in New York City. While there were 436,000 Dominican residents in 2015, the growth rate since 2000 was only 18%—less than half the rate of increase for the Chinese population.¹³⁴ Foreign-born Chinese have larger than average household size, 3.2 versus 2.4 for native-born residents, and much higher than average rates of overcrowding. While 16.1% of foreign-born Chinese households are overcrowded, only 5.3% of native-born households are overcrowded.¹³⁵

A. Manhattan Chinatown

Manhattan Chinatown emerged in the 1860s as a predominantly single male community of Chinese migrants from the Gold Rush in California. The census of 1860 counts 120 Chinese in an area bounded by Mott, Park, and

131. *Newest New Yorkers*, *supra* note 16, at 69.

132. J. David Goodman, *Chinese Moving to East Harlem in a Quiet Shift from Downtown*, N.Y. TIMES (Feb. 24, 2013), <http://www.nytimes.com/2013/02/25/nyregion/chinese-moving-to-east-harlem-some-from-chinatown.html> [http://perma.cc/8WV6-6X9W].

133. *Newest New Yorkers*, *supra* note 16, at 69. Updated by Population Division, New York City Department of City Planning through September 29, 2017, U.S. Census Bureau, 2015 American Community Survey, Public Use Microdata Sample.

134. *Id.* at 2.

135. *Id.* at 99. Updated by Population Division, New York City Department of City Planning through September 29, 2017, using U.S. Census Bureau, 2015 American Community Survey, Public Use Microdata Sample.

Doyer streets in lower Manhattan. The Chinese Exclusion Act of 1882 accelerated migration from the West Coast, increasing the population by a few thousand men, mostly from the Pearl River Delta region of Southern China.¹³⁶ When the Exclusion Act was lifted in 1943, there were several thousand Chinese in Chinatown, with roughly six times as many men as women.¹³⁷ Chinatown was a place where poor Chinese immigrants who did not speak English could stay in informal, overcrowded immigrant dormitories and find jobs in restaurants, printing presses, and garment factories.¹³⁸

Chinatown began expanding to its present-day size following the passage in 1965 of the Immigration and Nationalities Act. Between 1965 and 1990, the Chinese population of New York City tripled.¹³⁹ European immigration decreased, Asian immigration increased, and Chinatown devoured Little Italy over the next couple decades. (Only a street of restaurants catering to tourists remains of Little Italy; Chinatown surrounds it on all sides.)¹⁴⁰ But the expansion of Chinatown ran into the booming Manhattan real estate market of the 1980s, as well as the resurgence of downtown as a desirable place to live after the crippling fiscal crises and spiking crime rates of the 1970s. Chinatown was not 1980s Williamsburg, surrounded by dilapidated, low-density housing stock and shuttered factories. Rather, Chinatown grew in the midst of some of the most valuable real estate on the planet, and those prices bled into an enclave that had traditionally served some of the city's poorest new arrivals.

Over the past few decades, Chinatown has experienced among the highest price appreciation in the City, which has had baleful consequences for both housing affordability and the once-robust garment industry.¹⁴¹ Overcrowding is endemic, with stories of 20 people in a 200 square foot room, sleeping in shifts, or basements illegally sub-divided to house dozens of families.¹⁴² Chinatown

136. MIN ZHOU, CHINATOWN: THE SOCIOECONOMIC POTENTIAL OF AN URBAN ENCLAVE 22 (1992).

137. Min Zhou & John R. Logan, *Returns on Human Capital in Ethnic Enclaves: New York City's Chinatown*, 54 AMER. SOC. REV. 809, 816 (1989).

138. PETER KWONG, THE NEW CHINATOWN 49-56 (1996).

139. *Id.* at 23-24.

140. Notably, what's left of Little Italy is largely the result of a Special District in the Zoning Resolution created in 1977 at the behest of incumbent property owners in order to keep Chinatown at bay. City Planning Comm'n, *Amendment of the Zoning Resolution Pursuant to Section 20 of the New York City Charter Relating to Article X, Chapter 8 Concerning the Establishment of the Special Little Italy District* (N 760061 ZRM), N.Y.C. DEP'T CITY PLAN. (Jan. 3, 1977), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/760061.pdf>[<http://perma.cc/6PVW-QCYC>].

141. Austensen et al., *supra* note 65, at 76.

142. KWONG, *supra* note 138, at 180. This paper discusses unauthorized housing accommodations primarily through the lens of Bangladeshi and ethnically South

currently has the biggest difference in new rents for in-movers, which at an average of \$1713 are the ninth highest in the city, and rents for existing residents, which at \$895 is among the cheapest in the city.¹⁴³ Some residents refer to the market trajectory over the last few decades as “frying the real estate in a wok.”¹⁴⁴ This marked price differential has created conditions ripe for exit.

B. The “Exit” Strategy

In the 1980s, rising rents and the ongoing influx of new residents made Chinatown increasingly less hospitable to current residents and new arrivals. There was simply no room. In a 1986 article in the *New York Times*, a Chinatown real estate and apartment broker said, “I have a list of scores of potential clients who are looking for rentals and condominiums but I simply can’t help them. The reality is that there are no apartments and there haven’t been any available in Chinatown for years.”¹⁴⁵ Rent control and rent stabilization, which includes anti-displacement measures like mandatory lease renewals under most conditions, have helped Chinatown retain a stronger presence in Lower Manhattan than might otherwise be the case. But Chinatown’s anti-displacement provisions have also made it very difficult to redevelop its tenements and mid-rise housing at higher densities to add units in the neighborhood for the growing Chinese community.¹⁴⁶ Commercial rents had also tripled in eight years, affecting the viability of the garment factories, printing presses, and other industries that drove employment in Chinatown.¹⁴⁷

Many Chinatown residents and Chinese immigrants began to seek out more hospitable parts of the city. “A lot of Chinese are moving to the outer boroughs because there is not enough room here, and the housing that might be available has become enormously expensive,” explained Margaret Chin in 1986.¹⁴⁸ Then president of Asian-Americans for Equality, a community organization in Chinatown, Chin became Chinatown’s first Asian-American coun-

Asian communities in Queens, but the practice is also rampant in Chinatown, albeit in a different form owing to different housing typologies.

143. *Id.*

144. *Id.*

145. Richard D. Lyons, *Satellite Chinatowns Burgeon Throughout New York*, N.Y. TIMES (Sept. 14, 1986), <http://www.nytimes.com/1986/09/14/realestate/satellite-chinatowns-burgeon-throughout-new-york.html> [<http://perma.cc/NZH7-KTAH>].

146. Interview with Frank Ruchala, City Planner, N.Y.C. Dep’t City Planning, in N.Y.C. (Sept. 15, 2015).

147. *Id.*

148. *Id.*

cilperson in 2009, a surprisingly late date that speaks to the enclave's somewhat limited political heft.¹⁴⁹

In the 1980s, poorer Chinese began to move down the N, R, and D subway lines to Sunset Park, Brooklyn, a neighborhood that had begun to spiral downward after the decline of waterfront employment and abandonment by Scandinavian immigrants and Italians the generation before.¹⁵⁰ The housing was cheap, much of the commercial property was abandoned, and Manhattan Chinatown was less than a half-hour's subway ride away for those who commuted to work, shop, or visit friends and family there. Relatively wealthier Chinese migrated out to Flushing, Queens, at the very last stop of 7 Train, dubbed the "International Express" or "Orient Express" in light of the many immigrant communities in Queens that it serves.¹⁵¹ The migration patterns also had an ethnic and linguistic component, with newer, poorer, and largely undocumented immigrants from Fujian province ("Downtown Chinese") heading to Sunset Park, and Mandarin-speakers from the mainland and Taiwanese ("Uptown Chinese") heading to Flushing.¹⁵² While it had and continues to have many sub-enclaves, Manhattan Chinatown remained in the 1980s and 1990s a primarily Cantonese-speaking enclave dominated by southern Chinese.¹⁵³

The pace of Chinese immigration has not slowed at all, and Chinese immigrants continue to found satellite enclaves in an ever-growing number of locations around the city. "The patterns for non-English-speaking Chinese are very systematic and follow a specific logic," said Peter Kwong, a professor of Asian-American studies at Hunter College, in a *New York Times* article from 2013. "Are there trains? Are there others up there who speak Chinese? And cost."¹⁵⁴

Why did the Chinese employ an "Exit" strategy and disperse to other, cheaper neighborhood to found satellite Chinatowns? Why not exercise their "Voice," like the Hasidim, in an attempt to densify and expand their existing enclave to accommodate current residents and newcomers? Several factors explain Chinese immigrants' approach.

First, Chinatown's location makes expansion difficult. At the time of Chinatown's founding, in the 1860s, the Lower East Side of Manhattan was a hodge-podge of poor immigrants from around the world. Much of upper Manhattan and the outer boroughs, which were not yet part of New York City, was

149. See Margaret S. Chin, N.Y.C. COUNCIL, <http://council.nyc.gov/d1/html/members/home.shtml> [<http://perma.cc/6VZQ-ZC3Y>].

150. Malcolm Gladwell, *Rebirth in New York; Neighborhoods Growing Again in the City*, WASH. POST (Sept. 18, 1993).

151. *Id.*

152. For further discussion of the Downtown/Uptown distinction, see KWONG, *supra* note 138, at 58-60.

153. Merle English, *Brooklyn Enclave Is the New Chinatown: As It Grows, Neighborhood Confronting Its Problems*, NEWSDAY (Aug. 1, 1993).

154. Goodman, *supra* note 132.

verdant farmland or outright wilderness. More than a century later, the enclave that began in the 1860s is in the midst of immensely valuable real estate. Its use as an enclave for poor immigrants is a holdover from a previous era rather than something with a present-day economic logic, and Chinatown simply lacks the economic power to expand greatly in that location. If, like the Bangladeshis, the first wave of Chinese immigration had occurred in the 1980s, then the Chinese, too, would have founded their first enclaves in far-off Queens or Brooklyn. Immigrants go where they can afford to go and where there is space. As it happened, there is now simply very little room for expansion; the densification that occurred in the 1980s typically accommodated very different populations: luxury buildings for rich, typically white, in-movers seeking to capitalize on Chinatown's excellent location.¹⁵⁵

Second, Chinatown lacked the **political power** of the Hasidic enclaves. Most foreign-born Chinese are not citizens and do not have the ability to vote. In the 1990s, when Chinatown was at or near peak population of around 100,000 Chinese, it had fewer than 10,000 voters.¹⁵⁶ While the city council members for Hasidic Brooklyn are almost obsequious in their solicitude,¹⁵⁷ Chinatown has until recently had representatives like Kathryn Freed who are openly hostile to the area's "dirty and smelly" streets and whose mission seemed to be to contain Chinatown on behalf of her constituents in SoHo and Tribeca.¹⁵⁸ "In a way, I don't blame Council member Freed for some of her positions," said M.B. Lee, a Chinatown business leader in a *New York Times* article from the mid-1990s. "She knows we don't have a lot of votes."¹⁵⁹ Despite New York City's large Chinese population and geographic concentration in Chinatown and other enclaves, the first Chinese-American city council member wasn't elected until 2001: John Liu, representing Flushing.¹⁶⁰

Third, and related, is the fact that Chinatown in the 1980s and 1990s **lacked strong central leadership**. Unlike, for example, the Satmar Hasidim of previous decades, Chinese immigrants in Chinatown are not a monolithic body guided by a grand *rebbe*. Rather, Chinatown is composed of immigrants from every

155. Bethany Y. Li, *Chinatown Then and Now: Gentrification in Boston, New York, and Philadelphia*, ASIAN AM. LEGAL DEF. & EDUC. FUND 6 (2013), <http://aaldef.org/Chinatown%20Then%20and%20Now%20AALDEF.pdf> [<http://perma.cc/WU35-8CMM>].

156. Andrew Jacobs, *The War of Nerves Downtown*, N.Y. TIMES (July 14, 1996), <http://www.nytimes.com/1996/07/14/nyregion/the-war-of-nerves-downtown.html> [<http://perma.cc/SZ2L-2CEF>].

157. See *supra* Part III.

158. See Jacobs, *supra* note 156. It is important to note that City Council District that includes Manhattan Chinatown also encompasses other neighborhoods, like Tribeca, SoHo, and the Financial District, with very different demographics.

159. *Id.*

160. See ABOUT JOHN C. LIU (2016), <http://web.archive.org/web/20161118081911/http://liunewyork.com/about/> [<http://perma.cc/743S-HALQ>].

part of Mainland China, Hong Kongese, Taiwanese, as well as ethnically Chinese immigrants from a host of other countries around the globe. Many speak different languages or different dialects of languages and have different traditions that present coordination problems.¹⁶¹

This is in addition to the pitched ideological and interest-based battles between Chinatown community groups for political power that result in a low level of **issue alignment**. Chinatown had been traditionally run, more or less, by the Chinese Consolidated Benefit Association (CCBA), an assembly of about 60 family organizations founded in 1883. To this day, the CCBA represents old-line Chinatown real estate and development interests. Through a complicated and hard-to-unravel corporate structure, the group collectively maintains ownership over sixty multifamily, mixed-use, and commercial buildings in and around the heart of old Chinatown.¹⁶²

Although CCBA interests break in favor of upzonings that would increase the value of their property and enable denser redevelopment, the dominance of the CCBA was challenged beginning in the late 1960s by the influx of new and different Chinese immigrant groups after the Immigration and Nationalities Act of 1965 and by the rise of **community-based organizations** seeded with federal dollars during the Great Society era.¹⁶³ These groups' positions on land use run the gamut. Some, like Chinese-American Planning Council (CPC), advocate for upzonings in Chinatown *and* for relocation of parts of the Chinese community to satellites in Sunset Park, Flushing, and other relatively cheap neighborhoods in New York City. Asian-Americans for Equality (AAFE) has supported similar strategies as a way to create needed housing for Chinatown's cramped population, and has developed a significant amount of affordable and senior housing that has enabled a lower-income population to remain in Chinatown even as housing costs rise.¹⁶⁴

Other groups, like Asian-American Legal Defense and Education Fund (AALDEF) and Chinese Staff and Workers Association (CSWA), use a conventional left-wing frame into land use and development issues, opposing upzonings and proposing downzonings as a tactic to prevent luxury development and to attempt to preserve the neighborhood.¹⁶⁵ These groups also maintain a strong focus on shielding tenants from harassment and advocating for stronger **rent regulations**, which protect tenants but prevent denser redevelopment that could help Chinatown accommodate more people.

161. See Kwong, *supra* note 138, at 41.

162. Nick Tabor, *How Has Chinatown Stayed Chinatown?*, N.Y. MAG. (Sept. 24, 2015), <http://nymag.com/daily/intelligencer/2015/09/how-has-chinatown-stayed-chinatown.html> [<http://perma.cc/J3L5-Y9FR>].

163. See Kwong, *supra* note 138, at 7.

164. Christine Haughney, *High-Rises Are at Heart of Manhattan Zoning Battle*, N.Y. TIMES (Nov. 15, 2008), <http://www.nytimes.com/2008/11/15/nyregion/15zoning.html> [<http://perma.cc/9VY3-C6M5>].

165. Mangin, *supra* note 1, at 108-109.

Though Chinatown faces limits on its ability to expand, it deserves credit for continuing to exist as an enclave for a significant low-income population despite its central location. All of the above groups have contributed to this distinctive feature of Chinatown: the CCBA and other Chinese real estate interests that have maintained ownership and control of property and have refused to sell; groups like AAFE that have developed affordable and senior housing; and groups like CSWA and AALDEF that militantly protect the rights of existing tenants under existing rent regulation laws.

C. *Sunset Park, Brooklyn*

Rumor has it that the origins of the Sunset Park enclave can be traced to the opening of a single Chinese grocery store on Eighth Avenue in the mid-1980s.¹⁶⁶ David Chen, the former executive director of the Chinese-American Planning Council, says that the garment industry, fleeing high commercial rents in Chinatown, was the first to move to Sunset Park. Restaurants and grocery stores emerged to feed the garment industry workers, which in turn led to residential in-movers in a self-reinforcing cycle.¹⁶⁷ Sunset Park was cheap and relatively safe. It was convenient to Manhattan Chinatown on multiple subway lines, local and express. And it had a large stock of under-utilized commercial and residential properties.

The Chinese population grew quickly, as did the Hispanic populations in the western half of Sunset Park, stabilizing the neighborhood after a long period of decline. In late-1960s New York, neighborhood after neighborhood was abandoned or subject to dramatic racial transition as whites fled for Staten Island, the farthest reaches of Queens and Brooklyn, or the suburbs. “White flight” also occurred in Sunset Park as Scandinavian and Italian immigrants left in greater numbers than those who moved in. Sunset Park’s population declined from a peak of over 100,000 in the post-WWII period to 86,000 in the 1970s.¹⁶⁸ A survey in that period counted 200 abandoned one-, two-, and three-family homes and 40 abandoned apartment buildings.¹⁶⁹ Vacant storefronts lined Eighth Avenue, the main commercial corridor for eastern Sunset Park, well into 1980s. During this period, however, the Chinese population in Sunset Park grew incredibly fast. While Sunset Park was only mentioned in passing in a 1986 article about New York’s Chinese enclaves, within a decade it had an esti-

166. Albor Ruiz, *A Fresh Look at Chinese Immigration*, N.Y. DAILY NEWS (Sept. 9, 1999), <http://www.nydailynews.com/archives/boroughs/fresh-chinese-immig-story-article-1.844536> [<http://perma.cc/HWS3-YZ3B>]; see also generally TARRY HUM, *MAKING A GLOBAL IMMIGRANT NEIGHBORHOOD: BROOKLYN’S SUNSET PARK* (2014).

167. Interview with David Chen, Former Exec. Dir., Chinese-American Planning Council (Aug. 6, 2014).

168. Gladwell, *supra* note 150.

169. *Id.*

mated population of 70,000 Chinese and was neck-and-neck with Flushing as New York's second largest Chinatown.¹⁷⁰

The documented foreign-born Chinese population has increased from 20,000 in 2000 to about 34,000 today, a 71% increase.¹⁷¹ Today, however, Sunset Park is threatened by some of the same problems that squeezed Manhattan Chinatown in the 1980s. Sunset Park has had the third fastest housing-price appreciation since 2000, an increase in sales prices of 163% for two- to four-family buildings.¹⁷² It has a crowding rate of 30.1%, and its severe crowding rate is the second highest in the city, after Jackson Heights, Queens, one of the most immigrant-dense part of New York City.¹⁷³ Unlike Manhattan Chinatown, Sunset Park has opportunity to grow and has taken advantage of it. Rising prices and increasing crowding have led Chinese to expand farther and farther into adjacent neighborhoods like Dyker Heights, Borough Park, Bath Beach, and especially Bensonhurst, which now has more documented foreign-born Chinese than any other neighborhood in New York City.¹⁷⁴ As the commercial infrastructure matures, Bensonhurst is poised to become the next center in New York City's polycentric Chinatown network.

D. Flushing, Queens

The beginnings of the Flushing enclave date to the 1970s. The "Uptown Chinese," relatively wealthy Taiwanese immigrants, wanted a place apart from the predominantly low-income and less educated Chinese immigrant community in Lower Manhattan and established an outpost in predominantly white outer Queens.¹⁷⁵ In the 1980s, Flushing also became the destination of choice for relatively well-off Mandarin-speaking newcomers over Cantonese-speaking Chinatown. While Flushing is well-served by the 7 train, it takes a subway transfer to get to Chinatown, thus attenuating Flushing's connection to Chinatown, at least compared to the easier access between Chinatown and Sunset Park. Flushing's relative wealth and distance give it something of the feel of a suburb relative to Chinatown's city. Unlike Sunset Park, Flushing is also home to a number of other Asian immigrant groups, including one of New York's largest

170. English, *supra* note 153.

171. *Newest New Yorkers*, *supra* note 16, at 68. Updated by Population Division, New York City Department of City Planning through September 29, 2017, U.S. Census Bureau, 2015 American Community Survey, Public Use Microdata Sample.

172. Austensen et al., *supra* note 65, at 80.

173. Here, "crowding rate" refers to more than one person per room; "severe crowding rate" is when there are more than 1.5 persons per room. *Id.* at 80, 114. Note: These rates also include Mexican and Dominican households in western Sunset Park, and these groups also have high rates of crowding. *Id.*

174. *Newest New Yorkers*, *supra* note 16, at 69.

175. See KWONG, *supra* note 138, at 54, 60-62.

agglomerations of Koreans (although many Koreans have moved to the actual suburbs).¹⁷⁶

Flushing has a much lower poverty rate and crowding rate than Sunset Park.¹⁷⁷ However, housing prices are rising at comparable rates: sales prices have appreciated about eighty percent since 2000, and Flushing ranks high in housing appreciation in community districts with predominantly single-family housing.¹⁷⁸ Median rents are in the top third of all community districts, despite its distance from the city's core.¹⁷⁹ New condos in the area are flirting with the \$1,000 per square foot threshold, a rarity for a neighborhood so far from the real estate ferment of Manhattan.¹⁸⁰ Median rent burden is the fourth highest in the city, a reminder that Flushing has the fourth-highest proportion of foreign-born in the city.¹⁸¹

The Flushing enclave historically has more political clout than the enclaves in Manhattan or Sunset Park because Chinese accounted for a larger percentage of their Council District. In 2001 Flushing became the first district to elect an Asian-America council member: John Liu, who went on to hold citywide office as comptroller during the Bloomberg administration. Liu was replaced by Peter Koo, one of only five Republicans in the 51-member City Council until he switched to the Democratic Party amidst Republican in-fighting in 2012.¹⁸²

The Flushing enclave continues to grow rapidly. The most recent census listed 37,200 foreign-born Chinese residents in Flushing, more than double the 17,300 there in 2000. This population is both expanding in place and helping to facilitate an additional "Exit" enclave of 17,500 in Elmhurst, Queens.¹⁸³

E. Land Use

The "Exit" strategy is premised on voting with one's feet rather than exerting power through the political process. As such, the rezonings in and around Chinese enclaves in recent decades have reflected the preferences of the community to a lesser extent than, say, those in "Voice" communities described above.

176. *Newest New Yorkers*, *supra* note 16, at 214-15, 218-19.

177. Austensen, et al., *supra* note 65, at 60, 76, 94.

178. *Id.* at 94.

179. *Id.*

180. C.J. Hughes, *A Robust Reception After a Rocky Start*, N.Y. TIMES (Feb. 6, 2015), <http://www.nytimes.com/2015/02/08/realestate/more-condos-in-flushing-queens-at-sky-view-parc.html> [<http://perma.cc/D6CH-6XD6>].

181. Austensen et al., *supra* note 65, at 94.

182. Colin Campbell, *Democrats Huzzah Koo Party Change*, OBSERVER (Jan. 23, 2012), <http://observer.com/2012/01/democrats-huzzah-koo-party-switch-2/> [<http://perma.cc/CQK3-DVW4>].

183. *Newest New Yorkers*, *supra* note 16, at 216.

As with many other rezonings during the administration of Mayor Bloomberg, a City-initiated 2008 rezoning of parts of the East Village and Lower East Side was intended to balance preservation of the classic tenement-style built form in some areas with increased housing production and redevelopment in others. The rezoning included upzonings of areas between Delancey and Houston streets on the Lower East Side but also protective downzonings and contextual rezonings¹⁸⁴ of residential areas on the Lower East Side or in the East Village.¹⁸⁵ The rezoning did not include Chinatown proper, but did cover an increasingly Chinese eight-block area between Grand and Delancey east of Chrystie Street.¹⁸⁶

Some Chinatown-based affordable housing organizations, like AALDEF and Chinese Staff and Workers' Association, opposed the rezoning on the grounds that the upzoning would encourage more intense luxury development on Chinatown's doorstep, thus increasing the pressures that have squeezed Chinatown since the 1980s.¹⁸⁷ They also argued that the downzonings in areas just outside Chinatown would increase development pressure on adjacent, unprotected areas in Chinatown, leading to a "wall" of unwanted luxury residential buildings."¹⁸⁸ Other groups, like Asian Americans for Equality, saw the rezoning as an opportunity to create both more affordable housing and market rate housing, potentially relieving some of the pressure in the area.

184. "Upzonings" increase development capacity in a neighborhood; "downzonings" decrease development capacity in a neighborhood; "contextual rezonings" use bulk regulations to limit new construction to forms that fit with a neighborhood's existing built character. In practice, it can often make it more difficult to build or more difficult to fit the maximum allowable square footage on a given lot, limiting development.

185. City Planning Comm'n, *In the Matter of an Application Submitted by the Department of City Planning Pursuant to Sections 197-c and 201 of the New York City Charter and Proposed for Modification Pursuant to Section 2-06(c)(1) of the Uniform Land Use Review Procedure, for an Amendment of the Zoning Map, Section No. 12c (C 080397(A) ZMM)*, N.Y.C. DEP'T CITY PLAN. (Oct. 7, 2008), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/080397a.pdf> [<http://perma.cc/KZA3-6WW5>].

186. Haughney, *supra* note 164.

187. See, e.g., *Proposal for a Chinatown/Lower East Side Special Zoning District*, COALITION TO PROTECT CHINATOWN & LOWER EAST SIDE (Oct. 25, 2010), http://www.hunter.cuny.edu/ccpd/repository/files/rezoning-proposal-10_25_10final-draft.pdf [<http://perma.cc/9473-7HZB>] ("In 2008, the Department of City Planning rezoned . . . part of the East Village/Lower East Side This rezoning unfairly burdened the Houston and Delancey Street corridors with denser zoning than the wealthier areas of the East Village to the north. Consequently the area south of Houston Street where low-income communities of color live and work has become targeted for luxury development.").

188. City Planning Comm'n, *supra* note 185, at 28.

Regardless, the impetus for the rezonings did not come from within Chinatown and there was no “Chinatown consensus” on its desirability or effects. Nor is it obvious with nine years’ hindsight how the rezoning may be impacting the evolution of Chinatown or its satellites relative to the development that would have happened in the absence of the rezoning. The area was experiencing significant demand before the rezoning, owing to its central location and other factors, and would have seen significant development regardless. The rezoning merely added capacity in some places, reduced it in others, and altered building form.¹⁸⁹

Rezoning activity in the outer boroughs, particularly Flushing, has consisted primarily of defensive contextual rezonings meant to prevent new development and preserve neighborhood character. These types of rezoning were very common in Queens during the Bloomberg administration, and they will be addressed in more depth in the next section on South Asian enclaves in Queens.¹⁹⁰ The booming market in the 2000s led to teardowns and development in relatively low-density parts of the outer boroughs, leading to calls for a spate of rezonings limiting development.¹⁹¹ East Flushing was downzoned in 2005 and North Flushing was downzoned in 2009.¹⁹²

189. *Id.*

190. *See infra* Section V.C.

191. For instance, the East Flushing Rezoning was initiated at the behest of the East Flushing Civic Association in response to “out-of-character development.” City Planning Comm’n, *In the Matter of an application Submitted by the Department of City Planning Pursuant to Sections 197-c and 201 of the New York City Charter for an Amendment of the Zoning Map, Section Nos. 10c and 10d* (C 050277 ZMQ), N.Y.C. DEP’T CITY PLAN. 4 (July 11, 2005), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/050277.pdf> [http://perma.cc/3R3C-WGQF]. The North Flushing rezoning was initiated at the behest of the North Flushing Civic Association, the Broadway-Flushing Homeowners Association, and the Auburndale Homeowners Association in order to “curb[] overdevelopment.” City Planning Comm’n, *In the Matter of an application Submitted by the Department of City Planning Pursuant to Sections 197-c and 201 of the New York City Charter for an Amendment of the Zoning Map, Section Nos. 7d, 10a and 10c* (C 090281 ZMQ), N.Y.C. DEP’T CITY PLAN. 21 (Apr. 1, 2009), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/090281.pdf> [http://perma.cc/U9N9-6FNB].

192. *See East Flushing Rezoning—Approved*, N.Y.C. DEP’T CITY PLAN. (July 27, 2005), http://www1.nyc.gov/assets/planning/download/pdf/plans/east-flushing/east_flushing.pdf [http://perma.cc/TSJ2-LMZT]; *North Flushing Rezoning—Approved*, N.Y.C. DEP’T CITY PLAN. (Apr. 22, 2009), http://www1.nyc.gov/assets/planning/download/pdf/plans/north-flushing/north_flushing.pdf [http://perma.cc/GUD3-QWCH].

In Sunset Park, the contextual rezoning approved in 2009 occurred in response to the as-of-right development of large apartment buildings.¹⁹³ The rezoning generally allowed for larger development along the avenues but newly limited the bulk of development in strictly residential areas along the streets.¹⁹⁴ It also included incentive-based inclusionary zoning that would enable developers to build larger buildings in exchange for setting aside a portion of their buildings as affordable housing. Developer take-up of the inclusionary incentives has not been as enthusiastic as it was on the Williamsburg waterfront, but that may change with the recent extension to Sunset Park of property tax breaks for buildings that include affordable housing, a strong financial incentive to participate in the inclusionary housing program.¹⁹⁵

V. BANGLADESHI ENCLAVES AND THE “UNDERGROUND” STRATEGY

The Bangladeshi and other ethnically South Asian enclaves in various neighborhoods in Queens use what this Article calls an “Underground” strategy to make room for their growing populations. These enclaves lack the numbers, the territorial dominance, and the political power of the Hasidic and Chinese enclaves. Bangladeshis are relatively late arriving to a city experiencing an intensifying housing crunch. During the time Chinese immigrants were forming satellite enclaves in outer Brooklyn and Queens, the Bangladeshis were just beginning to immigrate to the United States.¹⁹⁶ The Bangladeshis, too, ended up primarily in the farther reaches of Brooklyn and especially Queens. Even as their numbers doubled and doubled and doubled again, there was no question of expanding or densifying their relatively small enclaves through some exercise of economic or political muscle, as in the Hasidic enclaves. Instead, Bangladeshis and other ethnically South Asian groups in Queens have relied largely on unauthorized conversions, basement apartments, and accessory dwellings to absorb rapidly growing populations. In many neighborhoods, these conversions

193. See Tarry Hum, *Planning in Neighborhoods with Multiple Publics: Opportunities and Challenges for Community-Based Nonprofit Organizations*, 29 J. PLAN. EDUC. & RES. 461, 471-72 (2010).

194. City Planning Comm'n, *In the Matter of an application Submitted by the Department of City Planning Pursuant to Sections 197-c and 201 of the New York City Charter for an Amendment of the Zoning Map, Section Nos. 16b, 16d, 22a & 22c* (C 090387 ZMK), N.Y.C. DEP'T CITY PLAN. (Aug. 5, 2009), <http://www1.nyc.gov/assets/planning/download/pdf/about/cpc/090387.pdf> [<http://perma.cc/M7ZC-CU7Z>].

195. See Charles V. Bagli, *Affordable Housing Program Gives City Tax Break to Developers*, N.Y. TIMES (Apr. 10, 2017), <http://www.nytimes.com/2017/04/10/nyregion/affordable-housing-city-tax-break-developers.html> [<http://perma.cc/E5MP-NKS4>].

196. *Newest New Yorkers*, *supra* note 16, at 6-3 (“The diversity visa program enabled immigrants from Bangladesh to establish a beachhead in New York in the 1980s.”).

have become the new norm and have resulted in what amounts to *guerilla rezoning*. Incumbent residents have fought back with land use law, filing many thousands of complaints and working with city officials and their elected representatives to instigate a wave of defensive downzonings and contextual rezonings across Queens.

A. *Bangladeshi Immigration*

Bangladeshis did not start arriving in New York City in substantial numbers until the late 1980s. Between 1990 and 2000, the population nearly quintupled, increasing by 393%.¹⁹⁷ This increase was due both to increasing diversity and family reunification visas for Bangladeshis and to high birthrates. Although Bangladeshis exhibit high male-to-female ratios common to recently arriving immigrant groups, they have high marriage rates and a large percentage of men and women in childbearing age. Bangladeshi immigrants are also a young population, with a median age of 35, well below those of most other immigrant groups and the native-born population.¹⁹⁸ In the last three censuses, 1990, 2000, and 2010, Bangladeshis have leapt from the 42nd most populous immigrant group, to the 17th most populous, to the 10th. Because of their high rates of growth—90% since 2000, making them the fastest-growing immigration group in New York City—Bangladeshis have overtaken the shrinking Russian population and the moderately growing Indian population for a spot on the top ten list. There are currently about 74,000 Bangladeshis in New York City to Russians' and Indians' approximately 75,000.¹⁹⁹ Bangladeshis have among the highest average household size in New York—4.2, exceeded only by Mexicans' 4.6—and also the highest rates of crowding—nearly 40% of households are overcrowded.²⁰⁰

The most common neighborhoods for Bangladeshis are Jackson Heights, Elmhurst, Briarwood-Jamaica Hills, and Richmond Hill in Queens; there is also a community in Kensington, Brooklyn, and a growing presence in City Line,

197. Nina Bernstein, *Record Immigration Is Changing the Face of New York's Neighborhoods*, N.Y. TIMES (Jan. 24, 2005), <http://www.nytimes.com/2005/01/24/nyregion/record-immigration-is-changing-the-face-of-new-yorks-neighborhoods.html> [<http://perma.cc/PM83-U9KZ>].

198. *Newest New Yorkers*, *supra* note 16, at 96. Updated by Population Division, New York City Department of City Planning through September 29, 2017, using U.S. Census Bureau, 2015 American Community Survey, Public Use Microdata Sample.

199. *Id.* at 113. Updated by Population Division, New York City Department of City Planning through September 29, 2017, using U.S. Census Bureau, 2010 and 2015 American Community Survey Public Use Microdata Sample, and U.S. Census Bureau, 1990 and 2000 Censuses.

200. *Id.* at 99. Updated by Population Division, New York City Department of City Planning through September 29, 2017, U.S. Census Bureau, 2015 American Community Survey, Public Use Microdata Sample.

Brooklyn, just across the border from Ozone Park, Queens.²⁰¹ Small enclaves tend to grow when Bangladeshi mosques are established. “When I came here in 1990, there were very few Bangladeshi families here,” said Dilafroz Ahmed, a Bangladeshi woman who lives with her family in Jamaica Hills. “I wanted a convenient neighborhood with good schools. Now many people are moving here because of the mosque.”²⁰²

There is significant spatial overlap in Queens with other ethnically South Asian populations, including Indians and Indo-Caribbeans from countries like Guyana, Trinidad, and Tobago, where ethnic South Asians are the plurality. Guyanese, for instance, are the fifth most populous immigrant group in New York City with about 136,400 people. While ethnically African Guyanese tend to settle in Afro-Caribbean sections of Brooklyn, ethnically South Asian Guyanese cluster heavily in Richmond Hill and South Ozone Park; 33,400 live in an enclave in those adjacent neighborhoods.²⁰³ Much of this Part’s discussion of unauthorized conversions and defensive rezonings applies to these other ethnically South Asian populations, as well as Queens’s sizeable Latino populations, who employ similar strategies to make room for newcomers and expanding families. Unauthorized conversions are a widespread strategy among poor and overcrowded immigrant populations; this Article does not mean to imply that only Bangladeshis use it.

B. *The “Underground” Strategy*

In Bangladeshi communities and elsewhere, widespread conversions of one- and two-family homes into two- and three-family homes have altered whole neighborhoods, resulting in guerrilla rezonings in areas where housing was not otherwise available. Between 1990 and 2000, New York City gained about 114,000 dwellings that are reflected in census numbers but not in the official number of certificates of occupancy the city granted for new construction

201. *Id.* at 219. Updated by Population Division, New York City Department of City Planning through September 29, 2017, using U.S. Census Bureau, 2011-2015 American Community Survey, Summary File. In an amazing story that deserves much more attention in a future Article, the Bangladeshis of Astoria—8000 of them—migrated almost wholesale to Detroit in the late 1990s and early 2000s. See Sarah Kershaw, *Queens to Detroit—A Bangladeshi Passage*, N.Y. TIMES (Mar. 8, 2001), <http://www.nytimes.com/2001/03/08/nyregion/queens-to-detroit-a-bangladeshi-passage.html> [<http://perma.cc/E787-XLCK>].

202. Diana Dhaman, *If You’re Thinking of Living In/Jamaica Hills; Tranquil Haven for Many Ethnic Groups*, N.Y. TIMES (June 8, 2003), <http://www.nytimes.com/2003/06/08/realestate/if-you-re-thinking-living-jamaica-hills-tranquil-haven-for-many-ethnic-groups.html> [<http://perma.cc/LC49-BQZL>]; Guimaraes, *supra* note 53.

203. *Newest New Yorkers*, *supra* note 16, at 212. Updated by Population Division, New York City Department of City Planning through September 29, 2017, using U.S. Census Bureau, 2011-2015 American Community Survey, Summary and Public Use Microdata Files.

and renovation.²⁰⁴ Many of these dwellings are basement apartments, attic apartments, garage apartments, unlicensed single-room occupancy conversions, and the like. In the 2000 census, thirteen community districts in Queens suspiciously showed increases in the number of units in structures built *before* 1990. In some neighborhoods, there were more of these “new” old units than newly constructed units.²⁰⁵ According to estimates by the Pratt Center for Community Development, the Citizens Housing and Planning Council, and Chhaya Community Development Corporation, unauthorized dwellings accounted for half of the housing stock added in New York City in the 1990s. In total, these dwellings represent four percent of housing in the City, with 300,000 to 400,000 occupants.²⁰⁶

The highest rates of unauthorized conversions are in Queens, which experienced a surge of conversions in the 1990s. Since that time, an estimated three quarters of Queens housing growth is illegal. According to a survey by Pratt Center and Chhaya, the top neighborhoods for unauthorized dwellings are all in Queens: Jamaica, Richmond Hill, and South Ozone Park, among others; Jackson Heights, Elmhurst, South Ozone Park, and Richmond Hill received the most complaints of unauthorized dwellings from neighbors.²⁰⁷ These are all neighborhoods with high concentrations of ethnically South Asian populations such as Bangladeshis, Indo-Guyanese, and Indians.

Independent surveys indicate that as many as thirty to forty percent of homes in some of these neighborhoods have unauthorized basement apartments—one- and two-family homes have become what locals call “illegal threes.” The unauthorized units are typically a third cheaper than a comparable market-rate unit, and they are an important source of income for the owners, who usually live in the “authorized” portion of the structure.²⁰⁸ Many of the owners are immigrants who wouldn’t be able to afford the house without the rental income. During the run-up to the subprime mortgage crisis, it was easier for a large, multigenerational Bangladeshi family to buy a house in outer Queens with a no documentation, or “no-doc,” loan than it was for that family

204. Robert Neuwirth, *New York's Housing Underground: A Refuge and a Resource*, PRATT CTR. FOR ECON. DEV. & CHHAYA COMMUNITY DEV. CORP. 2 (Mar. 2008), http://www.prattcenter.net/sites/default/files/housing_underground_0.pdf [<http://perma.cc/G5B3-J2PP>].

205. *Id.*

206. *Illegal Dwelling Units: A Potential Source of Affordable Housing in New York City*, CHHAYA COMMUNITY DEV. CORP. & CITIZENS HOUSING & PLAN. COUNCIL (Aug. 14, 2008), <http://chhayacdc.org/wp-content/uploads/2008/10/Illegal-Dwelling-Units-A-Potential-Source-of-Affordable-Housing-in-New-York-City.pdf> [<http://perma.cc/K9GZ-24PH>] [hereinafter CHHAYA].

207. Neuwirth, *supra* note 204, 6.

208. CHHAYA, *supra* note 206.

to find an appropriately large apartment on the rental market.²⁰⁹ This dynamic also helped to push the Bangladeshi community away from denser neighborhoods where rentals predominate to areas with one- and two-family homes. Surveys indicate that income from unauthorized accessory dwellings is capitalized into the sale price of homes in these neighborhoods, even if the conversions haven't happened yet.²¹⁰

Many of the units raise health and safety concerns. For example, the units are not in fire-proof buildings and many lack multiple means of egress. Some opponents of the illegal dwellings question whether housing advocates and city agencies look the other way: a crackdown on unauthorized dwellings could displace hundreds of thousands of predominantly low-income immigrants in a city with high housing costs and low vacancy rates. It would also lead to an increase in foreclosures among immigrant homeowners who depend on rental income. The inaccessibility of market-rate rental housing causes many of these people to resort to unauthorized housing in the first place. It would likely be a mess.

Why have Bangladeshis and other ethnically South Asian populations in Queens relied on the "Underground" strategy? First, a major enabling factor is the **nature of the housing stock** in the borough where they live. About 36% of the land area in Queens is zoned for one- and two-family houses, and only 11% is zoned for multifamily units.²¹¹ Neighborhoods in Queens were among the first in New York City to be designed for the automobile. Many have garages and separate entrances in the rear that make unauthorized conversion simpler. The low density and comparative spaciousness of dwellings in Queens makes them ripe for conversion in a way that is difficult to imagine in multifamily structures, where residents frequently add walls to create additional bedrooms but cannot easily create entirely new units with separate kitchens and bathrooms.

Second, and relatedly, the Bangladeshis within these enclaves typically own their homes rather than renting. (One could also view this as an attribute of the housing stock in question.) They may not exert control over whole areas of the city as the territorially dominant Hasidic enclaves do, but **ownership** gives them greater control over their dwellings than a typical renter would have. Various types of regulations, including land use regulations, control what happens within buildings, but these are typically much more difficult to enforce than regulations dealing with aspects of development, such as overall bulk, on full public display.

209. Interview with Seema Agnani, Former Exec. Dir., Chhaya Cmty. Dev. Corp. (Feb. 21, 2014).

210. Martha Galvez & Frank Braconi, *New York's Underground Housing*, 9 URBAN PROSPECT 1, 1-4 (June/July 2003), http://chpcny.org/wp-content/uploads/2011/02/UP_Underground_Housing1.pdf [<http://perma.cc/A3NW-8TWV>].

211. CHHAYA, *supra* note 206, at 5.

Third, with the possible exception of Indo-Guyanese in small parts of Richmond Hill and South Ozone Park, no ethnically South Asian populations exert **territorial dominance** over swaths of land in the way that Hasidic or Chinese enclaves do. Their numbers are smaller, and the populations are more dispersed owing to their relatively late arrival to a growing city. In the context of a districted land use process, this factor tends to diminish the political power of the Bangladeshis, the Indians, and the Indo-Guyanese in a way that limits their ability to use a “Voice” strategy to accommodate their growing populations.

Fourth, the fact that Bangladeshi immigrant populations are **relatively poor and relatively recent arrivals** further limits the locations where they can live and the strategies they can employ to make room. Unlike the Chinese or much of the Hasidic population, Bangladeshis tend to reside in farther out neighborhoods in the outer boroughs. While Bangladeshis can and do make use of something like an “Exit” strategy in order to establish footholds in new neighborhoods, these new neighborhoods are lateral moves from farther out neighborhoods in outer boroughs to other similarly situated neighborhoods, like City Line, Brooklyn. They are not retreats from dense, high-cost neighborhoods to less expensive neighborhoods with much more space, as was the case with Chinese migration in the 1980s.

Fifth, compounding the obstacles to residential mobility above, many Bangladeshis and other ethnically South Asian people **do not have citizenship and cannot vote**; they have relatively weak representation in the City Council and other layers of government. Like many immigrant groups, these populations rely on **community-based organizations** like Chhaya and the Bangladeshi-American Community Development and Youth Services Corporation to press their interests where elected representatives will not. Chhaya in particular has worked hard to build the South Asian Task Force (SATF), a coalition of diverse groups serving South Asians in Queens; DRUM (Desis Rising Up and Moving); Adhikaar, a Nepali women’s organization; the Indo-Caribbean Alliance; and South Asian Youth Action (SAYA), among others. This coalition of community-based organizations works to amplify the political power of the South Asian immigrant community both inside and outside the electoral process.²¹² The organizations count the election of Daniel Dromm over Helen Sears, a councilmember who had been unresponsive to the South Asian community, as a victory that arose partially out of SATF’s voter registration and get-out-the-vote drives and its candidate forums held in the district. Chhaya has also indicated plans to engage with land use and development concerns; Chhaya recently hired a planner and will advocate for increased density in the neighborhoods where its constituency lives.²¹³ Community-based organizations are careful to note, however, that as in Chinatown, not all groups are in agreement about increased

212. Interview with Seema Agnani, *supra* note 209.

213. *Id.*

density, which may complicate efforts to create more housing for the burgeoning South Asian population in Queens.²¹⁴

Nevertheless, Bangladeshis and other ethnically South Asian immigrants in Queens are tied to their communities and need to be in the city in order to acclimate to a new country. Unable to employ an “Exit” or a “Voice” strategy to make room for their burgeoning populations, these groups have done what they must in the places they are. Necessity is the bottom line.

C. *Neighborhood Backlash*

Some Bangladeshi immigrants in Queens have faced neighborhood backlash. This backlash stemmed, in part, from the increase in unauthorized conversions, which in turn limited the capacity of neighborhood city services to address their burgeoning, but unrecorded, constituencies.

Neighborhoods in which thirty to forty percent of houses have been illegally subdivided will experience a dramatic increase in population. These neighborhoods also tend to have unit-level crowding problems, exacerbating the issue. Official statistics may not reflect this increase.²¹⁵ As a result, and in part due to the tax revenue lost from “off-the-book” units, city services, from garbage pickup to public schools, may not be able to accommodate these shadow populations. In Queens in the mid-1990s, enrollment in public schools in neighborhoods with widespread conversions began to exceed 100% capacity. School officials brought in trailers to accommodate the overflow.²¹⁶

Beginning in the 1990s and into the 2000s, complaints about illegal conversions began to skyrocket, although some of the increase may have stemmed from the 2002 implementation of New York City’s 311 System, a citywide hotline that made it much easier to report complaints. Many of the affected neighborhoods were largely older, white, and populated with people who liked the low-density suburban feel of their corner of Queens.²¹⁷ Unlike many in the Bangladeshi community, incumbent owners can vote and do so in large numbers. Motivated by the perceived threats to their neighborhood and home values, the incumbent residents of these neighborhoods increasingly urged their elected representatives and city officials to do something to “preserve the character of the neighborhood.”²¹⁸

214. *Id.*

215. See Neuwirth, *supra* note 204, at 3.

216. Dick Sheridan, *Trailer Classroom Vote Tonight*, N.Y. DAILY NEWS (July 24, 1997), <http://www.nydailynews.com/archives/boroughs/trailer-classroom-vote-tonight-article-1.780678> [<http://perma.cc/BU65-AQ6G>].

217. See Neuwirth, *supra* note 204, at 4.

218. Jennifer Steinhauer, *City Plans to Rezone Overdeveloped Neighborhoods in Queens*, N.Y. TIMES (June 16, 2004), <http://www.nytimes.com/2004/06/16/nyregion/city-plans-to-rezone-overdeveloped-neighborhoods-in-queens.html> [<http://perma.cc/AC6K-RLGB>].

Elected officials responded, and thus incumbent residents pursued a successful “Voice” strategy of their own. The result in the 2000s was a wave of defensive downzonings or historic district designations in neighborhoods with growing immigrant populations in Queens, precisely the areas that needed more licit development to accommodate population growth. Defensive downzonings are typically initiated by communities that do not want development, increases in population, or other changes that they believe threaten the character of the neighborhood or their property values.

In 2004, for example, Mayor Bloomberg visited Queens to announce plans to downzone or contextually rezone more than a dozen Queens neighborhoods.²¹⁹ The neighborhoods on his list included Jamaica, Jamaica Hill, Richmond Hill, Woodside, and Flushing, and were expanded in later years to include Ozone Park, Elmhurst, Astoria, and more sections of Richmond Hill, Flushing, and Jamaica.²²⁰ “Overdevelopment changes the character, overdevelopment changes the traditional appearance of neighborhoods,” Mayor Bloomberg said in a 2004 *New York Times* article.²²¹ In a *Newsday* article on the same event, Amanda Burden, then the director of the Department of City Planning, said “make no mistake—this city needs housing, but we need to make sure that this new housing does not undermine the qualities that make our neighborhoods attractive and desirable.”²²² Over the next ten years, the balance of the Bloomberg administration, the city conducted over forty rezonings in parts of Queens, an overwhelming majority of which were defensive downzonings. Almost all had the same rationale: “The proposed rezoning aims to preserve the established character of [neighborhood] and to ensure that future residential development will reinforce the existing development patterns.”²²³

These defensive downzonings do little to address unauthorized conversions—they were illegal before the rezonings and they’re illegal after—and they complicate the efforts to create more housing for immigrant populations. That’s most likely the point. Defensive downzonings are by their nature exclusionary—they aim to keep newcomers out in order to preserve the neighborhood as it is.

There are some exceptions to the general pattern of defensive downzonings in the face of guerrilla rezonings. Recently Rafael Espinal, a member of the New York City Council who represents parts of City Line, Brownsville, and East New York, has advocated for a study and possible pilot program to legalize illegal

219. *Id.*

220. *Id.*; see also *Queens*, N.Y.C. DEP’T CITY PLAN., <http://www1.nyc.gov/site/planning/plans/queens.page> [<http://perma.cc/SZ4K-CF6S>] [hereinafter *Queens Land Use*] (last visited Mar. 25, 2018)

221. Steinhauer, *supra* note 218.

222. Mike Saul, *Beep Ready for a Rezone; Joins Mike in Preservation Push*, DAILY NEWS (June 16, 2004).

223. See, e.g., *Queens Land Use*, *supra* note 220.

basement apartments in some of the immigrant-heavy areas of his district.²²⁴ When immigrants come to dominate areas that formerly had large incumbent populations, the politics of illegal conversions shifts.

The Bangladeshi and ethnically South Asian populations of Queens present a notable contrast to other groups this Article addresses. In Hasidic enclaves, the community lobbied for changes to land use law so that the community could create more housing for their growing population. They faced opposition from other communities in the area—for example, in Williamsburg, most notably the Hispanic population to the north and the African-American communities to the southeast. Still, the enclaves were able to use their political heft to get the laws passed and expand and densify their communities. The Bangladeshi and ethnically South Asian populations in Queens are much more politically vulnerable. Instead of using land use law to fulfill community objectives, they face a backlash from incumbent residents who are using *their* political heft to make their neighborhoods less hospitable to new immigrants. Whether this will change settlement patterns in these communities is yet to be seen, though we have already seen some migration by Bangladeshis from Queens to poorer, more dangerous neighborhoods like City Line in Brooklyn, where a new mosque is attracting residents.²²⁵

VI. TOWARDS MORE HOUSING THROUGH FORMAL CHANNELS

This Article aimed to reveal the formal and informal ways in which immigrant groups facing different opportunities and constraints shape land use and development policy and practice in a particular set of neighborhoods in New York City. While the stories of these ethnic enclaves are interesting in themselves, a bottom-up perspective is also more broadly relevant to groups playing the zoning game. The experiences of the Hasidic Jewish, Chinese, and South Asian communities also complement and ground narratives of limited housing production in New York City and other supply-constrained, high-housing-cost cities across the country.

For housing policy practitioners and elected officials in today's supply-constrained cities, the spectrum of formal and informal strategies outlined in this Article suggest a perhaps obvious but nonetheless crucial lesson: growing populations, and by extension, growing cities, will expand whether or not planning and land use regulation accommodate this change. Refusing to accommodate growth will not prevent a city's communities from expanding; rather, restrictive land use measures will instead result in rising housing costs, crowded housing, overburdened infrastructure, increased homelessness, and other perils

224. Erin Durkin, *City Council Advances East New York Affordable Housing Plan*, N.Y. DAILY NEWS (Apr. 14, 2016), <http://www.nydailynews.com/new-york/brooklyn/city-council-advances-east-new-york-affordable-housing-plan-article-1.2601295> [<http://perma.cc/DXW8-BTBB>].

225. See Guimaraes, *supra* note 53.

of unplanned growth. This is a reality that should explicitly frame policy discussions and political debates over growth.

Exclusionary zoning has been successful in individual suburbs because fragmented municipal governance offers a range of substitutes for individual suburbs.²²⁶ As the experience of the Chinese and Bangladeshi and, to an extent, Hasidic enclaves demonstrate, large cities aren't substitutable in the same way, especially for more place-dependent populations. In major population centers, growth is driven by a range of regional economic factors, many of which are beyond the influence of local policymakers.²²⁷ "If you don't build it, they won't come" may be the wish of opponents to growth, but it flies in the face of the more complicated reality described in this Article.

To be fair, many housing policy practitioners in local government understand this, and there is growing consensus about the broad outlines of the obstacles to accommodating growth—a tangled set of regulatory and political problems that exist in reciprocal relationship to each other.²²⁸ Devising policies to address the problem is trickier. The "Voice," "Exit," and "Underground" strategies discussed above point in directions that will be useful to policy makers and future researchers.

First, the problem of anti-development politics is the most daunting obstacle to lower-cost housing that high-cost regions, such as Chinatown, face. Figuring out how to assuage opposition, rather than attempting to overpower it, is perhaps a promising way forward. As this Article has suggested, groups become less opposed to development the more they see themselves as the beneficiaries of it. For immigrant and ethnic populations, those benefits may simply be a more robust community, with greater numbers, greater access to preferred goods and services, and more political and economic power. For native-born populations, benefits may take the shape of neighborhood bargains, such as better transit, tax breaks, or some other inducement in exchange for increasing housing capacity in the neighborhood.²²⁹

As legal scholars such as David Schleicher and Rick Hills have suggested, reforms to land use procedure may offer a way out of the Olsonian conundrum whereby concentrated neighborhood interests in preventing development trump the more diffuse citywide interests in increased development, leading to

226. See *S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel II)*, 456 A.2d 390 (N.J. 1983); *S. Burlington Cnty. NAACP v. Twp. of Mount Laurel (Mount Laurel I)*, 336 A.2d. 713 (N.J. 1975).

227. Local economic conditions are largely a function of global, national, and regional economic conditions that local government can't do much about. See Richard Schragger, *Rethinking the Theory and Practice of Local Economic Development*, 77 CHI. L. REV. 331, 338-39 (2010).

228. Zoning regulations are often restrictive because restrictive regulations are politically popular. Conversely, accommodating population growth by zoning for more housing is generally politically unpopular. Mangin, *supra* note 1, at 113.

229. See, e.g., Schleicher, *supra* note 1, at 1725-32; Mangin, *supra* note 1, 117-19.

the systematic undersupply of housing.²³⁰ When rezoning decisions occur at the neighborhood level, neighborhoods tend to function like exclusionary suburbs, blocking development and pushing it onto other neighborhoods (which in turn also try to block development). Engaging in citywide actions to accommodate more housing on the margin, as New York City recently did with its Zoning for Quality and Affordability Initiative, involves all neighborhoods in the discussion, facilitating a bargaining dynamic among a full range of interests rather than predictable and outcome-determinative opposition by a single neighborhood.²³¹

Nevertheless, this Article challenges the notion that neighborhoods are always and everywhere reflexively opposed to new development in their neighborhoods. As the experiences of Chinese, Hasidic, Chinese, and Bangladeshi enclaves suggest, a surprising number of neighborhoods, including many ethnic and immigrant groups, are a likely base of support for larger and more dense buildings, new infill development, or upzonings to accommodate their expanding populations. The issue is that pro-development groups in these neighborhoods often lack the political and economic power to enact favorable changes through formal channels, especially in light of more politically and economically advantaged groups that do not agree.

In New York City, for instance, historic preservation groups like Greenwich Village Society for Historic Preservation and the Historic Districts Council are well organized, well-funded, good at organizing and communicating, command support in many of the city's tonier precincts, and mobilize voters in low-turnout sub-local elections. In other words, they score high in the factors this Article identifies with success in the zoning game. On a smaller scale, the same is true of many homeowner and neighborhood associations that spearheaded the wave of outer borough downzonings in the 2000s. Unless pro-development groups can similarly strike fear into the hearts of elected officials, land use politics in most neighborhoods will remain stuck in a slow-growth equilibrium. (Add to that status quo bias: it is almost always easier to stop something than to make something happen.)

230. Hills & Schleicher, *supra* note 1, at 92.

231. For more information, see *Zoning for Quality and Affordability*, N.Y.C. DEP'T CITY PLAN., <http://www1.nyc.gov/site/planning/plans/zqa/zoning-for-quality-and-affordability.page> [<http://perma.cc/T5JM-U9G5>] (last visited Mar. 25, 2018). An anecdote about the public review for Zoning for Quality and Affordability illustrates this dynamic: Public review for a citywide action proceeds from the neighborhood level, to the borough level, and then to the citywide level at the City Planning Commission and City Council. Neighborhoods overwhelmingly opposed the measure during neighborhood review; it wasn't until citywide review that the affordable housing developers, housing policy experts, and others came out to support the measure. If this had been a series of neighborhood actions, it's unlikely that these supporters would have turned out at all—they are citywide groups that don't have time to speak at dozens of individual hearings.

To that end, this Article suggests that land use politics may change as foreign-born populations succeed native-born populations in many parts of the city. Anecdotal evidence suggests that neighborhoods shift from an emphasis on enforcement to an emphasis on legalization of illegal basement apartments as neighborhoods tip to majority-immigrant and elect councilmembers more responsive to their interests. Compare, for instance, the campaign against illegal apartments in Bensonhurst, a historically Italian-American neighborhood where Chinese from neighboring Sunset Park are engaging in the “Underground” conversion of one- and two-family homes, to the campaign for legalization led by Councilmember Espinal in largely immigrant neighborhoods elsewhere in Brooklyn. Will more neighborhoods be more open to development as they become increasingly foreign-born? This Article suggests that, in at least some cases, they will, and that, as a result, Councilmember Espinal’s campaign is more likely to succeed.

In a similar vein, allowing non-citizens to vote in municipal elections could have far-reaching consequences for land use politics in New York and other cities with concentrations of non-citizens. The Chinese and Bangladeshi enclaves described in this Article could take a significant step toward more formal strategies if they had greater capacity to elect and influence city councilmembers. Would the defensive downzonings described above have been as widespread if immigrant residents of those neighborhoods had more say in their implementation? The New York City Council has flirted with this reform in the past but has yet to cross the threshold.²³²

Second, this Article identifies the types of communities and organizations that can push a progressive pro-development line and begin to re-align the politics that have suppressed development in high-cost regions over recent decades. Immigrant- and ethnic-based Community Development Corporations (CDCs) and other community-based organizations can make particularly good partners for policymakers, city officials, and others seeking to expand housing production in cities where that is difficult. Many of these groups are uniquely positioned to understand the housing needs of their communities, while also possessing the political credibility and clout to win support for expanding development in the community.

Immigrant-led CDCs and CBOs may also play a role in converting progressive housing advocacy organizations to the pro-housing side.²³³ The anti-gentrification campaigns of these groups tend to focus on preventing market-rate development in low-income neighborhoods. While this position seeks to

232. See *supra* note 38 and accompanying text.

233. Immigrant-led CDCs and CBOs will likely have more credibility with traditional housing advocacy organizations than the burgeoning YIMBY (“Yes In My Backyard”) movement, which traditional housing advocacy organizations view with considerable skepticism. See, e.g., Alana Samuels, *From ‘Not in My Backyard’ to ‘Yes in My Backyard’*, ATLANTIC (July 5, 2017), <http://www.theatlantic.com/business/archive/2017/07/yimby-groups-pro-development/532437/> [http://perma.cc/U7DA-A7DX].

protect existing communities from increased housing costs, it also exacerbates housing undersupply and puts upward pressure on prices for existing stock.²³⁴ If these formidable groups advocated instead for citywide increases in housing production, it could reorient housing politics toward explicitly pro-housing policies that would reduce pressure on housing costs generally and low-income neighborhoods in particular. Hasidic groups like the UJO have been successful on this front; Chinese groups like AAFE and Chinese-American Planning Council and South Asian groups like CHHAYA CDC have played an increasingly pro-housing role in land use debates in recent years. Ideally, groups like this would have a broader influence on the housing advocacy community, leading them to advocate not only for more affordable housing but also for more housing generally. Both prongs are necessary to reduce pressure on the low-income communities these groups support.

At the same time, this Article indicates that pro-development neighborhoods will likely remain the exception for the foreseeable future. The Article identifies only one group—the Hasidim—that has consistently succeeded in densifying and expanding its enclaves through formal channels. This group demonstrates extraordinary solidarity and territorial dominance, high citizenship and voting rates, a relentless focus on housing, and developers who can ensure that the gains from new development benefit the community. If that’s what it takes to press a successful pro-development politics, immigrant groups will be hard-put to replicate their achievements. It would probably be easier for more established immigrant families to decamp to the suburbs.

This Article provides a perspective on group-regarding land use decisions that contrast with the (generally accurate) atomistic, property-value-regarding take on land use politics found elsewhere in land use scholarship. The “Voice,” “Exit,” and “Underground” strategies indicate that future land use scholarship would benefit from increased focus on the role of ethnicity and groups in land use development. But this Article’s descriptive points also highlight key questions that housing policy practitioners, particularly pro-development advocates, should address: How do these groups arise and come to share a perspective on development in their communities? How do they coordinate? Or do these processes arise organically? What strategies can they use to make room for themselves and put their imprint on our ever-changing cities?

Finally, this Article demonstrates that informality often flourishes where formal channels fail. Policy makers, elected officials, planners, and residents must understand that they can’t regulate people out of existence. This basic fact cannot be overemphasized. People need to live somewhere. Certain ethnic and immigrant groups are particularly place-dependent. Regulatory frameworks should strive to accommodate demographic realities. If supply-constrained cities refuse to upzone and otherwise adjust to greater density, they can expect guerilla rezonings and the attendant difficulties that come with unplanned growth.

234. Mangin, *supra* note 1, at 115.