

ETHNIC ENCLAVES AND THE ZONING GAME

Introduction

In today’s economically vibrant and high-cost cities like New York, San Francisco, and Washington, DC, housing growth happens (or not) as a function of two variables: zoning and politics. This paper 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 tougher and tougher.

This paper examines housing and land use in the enclaves of three very different immigrant and ethnic groups in New York and the varied 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

¹ See, generally, David Schleicher, *City Unplanning* 122 YALE L. J. 1670 (2013); Edward Glaeser, Joseph Gyourko, and Raven Saks, *Why Have Housing Prices Gone Up?*, 95(2) AMER. ECON. REV. 329 (2005); David Schleicher and Roderick Hills, *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).

² “Zoning Game” is a reference to the classic: RICHARD BABCOCK, *THE ZONING GAME: MUNICIPAL PRACTICES AND POLICES* (1966).

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. 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 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 “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 resident fought back.⁴

This paper provides a theoretical framework that aims to illuminate why these groups employ the strategies they do in the zoning game and why the strategies meet with varying degrees of success. The factors fall into three general categories: First is the land use and market context of the neighborhood. Where is the neighborhood located? What is the underlying zoning? What is the housing stock? What is the trajectory of housing prices there?

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

⁴ Note: This paper does not look closely at any black and Latino immigrant groups. This is partly because black and Latino groups face a unique set of complicating challenges relating to settlement patterns and neighborhood choice. John R. Logan, Wenquan Zhang and Richard D. Alba *Immigrant Enclaves and Ethnic Communities in New York and Los Angeles* 67(2) *Amer. Soc. Rev.* 299, 301 (2002).

Second is the political and economic strength of the group. Does the group exert influence at the ballot box? Do they have strong and well-organized community-based organizations? What economic resources can the group marshal, individually and collectively?

Third are cultural and historical factors. How do the values of the group affect housing and location decisions? How cohesive or heterogeneous are these groups? When did the group start to arrive in New York City in large numbers?

If one looks with these general categories in mind, the groups serve as a lens into the zoning game in the broader city. The paper's primary focus is not in these communities per se, but rather in what their stories might illuminate about how low-income populations can make a place for themselves in New York City and other increasingly expensive and housing-constrained cities across the country.

This is an important question. Cities like New York, San Francisco, Boston, Los Angeles, and Washington, DC, are America's most economically dynamic, where workers can become more productive, earn more, and gain greater access to economic opportunity.⁵ Throughout America's history, a main driver of upward mobility has been migration from low-wage areas to high-wage areas. Recent research 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.⁶ High housing costs exclude many low-income people from whole regions of the country, and the causes are the same as they are in exclusionary suburbs – a tangle of restrictive land use regulations and political opposition to development.⁷ Addressing this problem will require close attention to the ground-level institutions and sub-local politics that shape how a city grows and changes over time. This paper

⁵ Chetty, Raj, Nathaniel Hendren, Patrick Kline, and Emmanuel Saez. *Where is the Land of Opportunity: The Geography of Intergenerational Mobility in the United States* (2014).

⁶ Peter Ganong and Daniel Shoag, *Why Has Regional Convergence in the US Stopped?* SSRN SCHOLARLY PAPER (2012) available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2081216;

⁷ WILLIAM A. FISCHEL, *THE ECONOMICS OF ZONING LAWS* 66 (1985); David Schleicher, *City Unplanning* 123 *YALE L. J.* 1670 (2013); Albert Saiz, *The Geographic Determinants to Housing Supply*, 125(3) *QUARTERLY J. OF ECON.* 1253, 1255 (2010).

attempts to do just that through the lens of fast-growing immigrant and ethnic enclaves.⁸

Part I outlines why enclavist groups are particularly important to contemporary land use debates and takes a look at overcrowding, a problem that spans the communities discussed in this paper and serves as a spur to the strategies they employ to make room for themselves. Part II 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 III discusses 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 IV discusses ethnically South Asian communities in Queens, with a particular focus on Bangladeshis, New York City’s fastest growing immigrant group. This section also discusses the “Underground” strategy and the backlash, in the form of defensive downzonings, to the densification of quasi-suburban neighborhoods in Queens. Part V concludes.

Part I: Brief Overview of Immigration 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 paper.⁹ 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

⁸ In some instances, the groups examined in this paper 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.

⁹ Note: Many in the Hasidic Jewish population, especially the Satmar Hasidim in Williamsburg, are not immigrants, though they share several of the characteristics of immigrant groups – linguistic isolation, high fertility rates, residence in enclaves, for example – that make them an appropriate subject for this paper.

them navigate the new country and find housing, jobs, and services.¹⁰ For some immigrants, securing a livelihood will depend on living in or near an enclave. Others simply prefer the familiarity of a neighborhood of their co-ethnics.¹¹ Whether by constraint or preference, immigrants face limits to exit that native-born populations do not.

Higher rates of natural increase and ongoing immigration lead to faster rates of growth for 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 on average as compared to 2.4 for native-born.¹² Immigrants in New York City make up 37 percent of the population but account for a small majority of births.¹³ Immigrant communities also grow due to ongoing immigration. Bangladeshis, for instance, have high fertility and large households – 4.3, on average – and their numbers are augmented by high numbers of new immigrants with diversity or family reunification visas.¹⁴

The watershed event in the recent history of New York immigration is the passage of the Immigration and Naturalization Act of

¹⁰ There is 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, e.g.,* EDUARDO PORTES, *LATIN JOURNEY CUBAN AND MEXICAN 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, e.g.,* George Borjas *Ethnicity, Neighborhoods, and Human Capital Externalities* NBER WORKING PAPER, available online at <http://www.nber.org/papers/w4912>.

¹¹ Logan, Zhang, and Alba note the distinction between an immigrant enclave and ethnic community. The former is 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, and Alba, *supra* note 2.

¹² Seventy-nine percent of immigrants are between the ages of 18 and 64, as opposed to 56% of native-born. NEW YORK CITY DEPARTMENT OF CITY PLANNING, *THE NEWEST NEW YORKERS: CHARACTERISTICS OF THE CITY'S FOREIGN-BORN POPULATION* 99 (2013).

¹³ *Ibid.* at 2.

¹⁴ Under current U.S. law, a majority of immigrant visas are allocated for family reunification, meaning that each immigrant has the potential to bring others from his or her family in subsequent years.

1965.¹⁵ 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.¹⁶ New York City lost over 1.1 million people to out-migration during the famously bleak 1970s, with a natural increase of only about 360,000.¹⁷ In isolation, those statistics virtually ensure that 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 a modest net population gain due to an influx of 786,000 immigrants.¹⁸ 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.¹⁹ (Increased immigration may have succeeded where Urban Renewal and a host of other government programs failed, at least in New York's case.) Today New York City has 3.1 million immigrants representing 37 percent of the population, more than double the number and proportion just 40 years ago.²⁰ 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.²¹

Immigrants continue to pour into New York, but the days when immigrants could take over territory abandoned by out-movers are

¹⁵ Pub.L. 89–236, 79 Stat. 911, enacted June 30, 1968.

¹⁶ 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 80s and beyond, enabling the region to avoid the more pronounced economic troubles and population decreases in other 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*, Glaeser. 2010.

¹⁷ NEWEST NEW YORKERS, *supra* note 6, at 179.

¹⁸ *Id.*

¹⁹ LOUIS WINNICK, *NEW PEOPLE IN OLD NEIGHBORHOODS: THE ROLE OF IMMIGRANTS IN REJUVENATING NEW YORK'S COMMUNITIES* (1990)

²⁰ NEWEST NEW YORKERS, *supra* note 6, at 2.

²¹ *Ibid.* at 3.

largely over – it’s a different story now that New York is once again a highly desirable place to live with an expanding economy. Domestic immigration has increased in the last decade, meaning stiffer competition and higher costs for housing.²² Add to that the fact that immigrants have much lower access to public housing and other forms of subsidized housing – many are not eligible, haven’t been here long enough to work through waiting lists, or simply don’t know how to navigate the system. Many immigrant groups – especially those discussed in this paper – face a severe housing squeeze.

A. Immigrants and Overcrowding

Immigrant groups in New York City face much higher rates of overcrowding than native-born New Yorkers. Citywide, 20.5 percent of immigrant households are “crowded” – defined as more than one person per room – and 7.6 percent were “severely crowded” – defined as more than 1.5 persons per room. The rates for non-immigrant households were 6.6 percent and 2.4 percent, respectively. Immigrants have triple the rate of crowding and severe crowding.²³ Crowding is getting worse as housing supply lags behind population increase, as the city gets more expensive, and as the proportion of immigrants, with their large households, rises. Crowding and severe crowding dipped to lows of 4.3 percent and 1.5 percent in 1978 and have steadily increased since then, with a more pronounced uptick after the financial crisis, when housing production slowed and people got poorer.²⁴

About two-thirds, or 148,000, of the city’s 241,000 crowded households are immigrant households.²⁵ A substantial portion 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 percent, or approximately 54,000, of Queens’s 63,000 crowded renter households were immigrants.²⁶ The

²² *Ibid.* at 181.

²³ Moon Wha Lee, *Housing: New York City 2011* (“New York Housing and Vacancy Survey”) New York City Department of Housing Preservation and Development 143 (2011)

²⁴ *Ibid.* at 496.

²⁵ *Ibid.* at 491.

²⁶ *Id.*

worst overcrowding is seen in the Bangladeshi and ethnically South Asian populations located predominantly in Queens. Almost 45 percent of Bangladeshi households are crowded.²⁷

Crowding is largely a function of household size. About one-quarter of four-person households is crowded; 55 percent of five-person households are crowded; 80 percent of six-person households are crowded; and a whopping 91 percent of households with seven or more people are crowded.²⁸ It can be difficult for large households to find appropriate accommodation – of the city’s 2.1 million rental apartments, only 14 percent are three-bedroom and only two percent are four-bedroom or larger.²⁹

Immigrants have larger families and they are also more likely host “hidden households” – that is, households that are doubled- or tripled-up with sub-families in a single apartment. A map of hidden 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. About 62 percent of the 176,000 households with sub-families are headed by immigrants.³⁰

“Crowdedness” cuts across almost all non-European immigrant groups and afflicts the immigrant and ethnic enclaves discussed in this paper especially acutely. It serves as a major impetus for the varied strategies these groups employ to make more room for themselves.

Part II: 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, 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

²⁷ NEWEST NEW YORKERS, *supra* note 6, at 99.

²⁸ Lee, *supra* note 15, at 55.

²⁹ TBD

³⁰ Lee, *supra* note 15, at 487.

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.³¹ Many of the community's remnant followed the Rabbi to Brooklyn in subsequent years, and the sect attracted some new adherents, but the enclave comprised just a few hundred people into the 1950s.³² The enclave has expanded geometrically since then owing 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.³³

Today, the enclave has approximately 75,000 members in a 70-block area and an average household size of 4 people.³⁴ It is among the youngest communities in New York City. Fully half of the community is 18 or under, and another 34 percent are under 40. Only three percent are over 65.³⁵ Eighty-five percent of adults are married.³⁶ The Satmar enclave started as a community of immigrants, but its extreme youth and extreme growth mean that today the enclave has among the lowest percentage of foreign-born in the city.³⁷ There is a smattering of

³¹ Israel Rubin, *Satmar: Two Generations of an Urban Island* (1997).

³² *Ibid.* at TBD.

³³ Pearl Beck, et al. *Jewish Community Survey 2011: Geographic Profile* UJA-Federation of New York 28 (2013)

³⁴ *Ibid.* 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.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Vicki Been, et al., *State of New York City's Housing and Neighborhoods* Furman Center for Housing and Urban Policy 74 (2012).

Hungarian and Romanian immigrants left from the post-WWII period, and a couple hundred Israelis.³⁸

The community is also very poor. Seventy-eight percent have family incomes below \$50,000 per year and 55 percent have incomes below 150 percent of the poverty line. Kiryas Joel, a satellite enclave started upstate in the 1970s to relieve some of the population pressure in Williamsburg, is the youngest and poorest place in the country, with a median age of 13 and a median family income of \$18,000. Seventy percent of families are below the poverty line.³⁹ The Satmar also have smaller outposts in Monsey, New York, and Bayswater, Queens. While I associate the Satmar Hasidim with their predominant “Voice” strategy, they and other burgeoning groups most certainly employ a mix of strategies to make room for themselves.

B. *The Hasidim of Borough Park*

Orthodox Jews began moving to the neighborhood during the Depression and were followed by Yiddish-speaking European Hasidim in the post-WWII period. In-movers came also from Williamsburg and Crown Heights, a Hasidic “white flight” as the black and Hispanic populations in those neighborhoods increased in the 1950s and ‘60s.⁴⁰ As Borough Park grew steadily more Hasidic, Orthodox Jews migrated to the adjacent Midwood and Flatbush neighborhoods, where they maintain a strong presence today.⁴¹ Borough Park, or “Boro Park,” as it’s known to locals, serves as the headquarters for a number of Hasidic sects – Bobov, Belzer, Ger, Munkatz, among others – which are named after their village of origin. It might be more accurate to call Borough Park a

³⁸ 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 23, at 66.

³⁹ Sam Roberts, “A Village With the Numbers, Not the Image, of the Poorest Place” *New York Times* April 20, 2011. Some question whether income figures for these Hasidic communities are accurate and note the networks of Hasidic charities and unusual degree of mutual financial support within the community.

⁴⁰ Egom Mayer, *From Suburb to Shtetl: The Jews of Boro Park* (1979) The Bobover Rebbe built a yeshiva and shul and relocated wholesale 4000 of his followers from Williamsburg to Borough Park during this period, a phenomenon which deserves more attention in a future draft. See Mayer.

⁴¹ Beck, *supra* note 25, at 104.

series of overlapping Hasidic enclaves, or, as one scholar calls it, a “Jewish melting pot.”⁴²

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 percent from 2002 to 2011 and the Borough Park community district has gotten progressively more Jewish – 78 percent, up from 51 percent Jewish in 2002.⁴³ (The Williamsburg community district, which contains a sizeable Latino population as well as hordes of young and hip “artisten,” as the Satmar call them, is only 36 percent Jewish.)⁴⁴ Borough Park had the 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.

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 percent are under 40.⁴⁵ Sixty-eight percent of households have incomes of under \$50,000 and 44 percent have incomes below 150 percent of the federal poverty guideline.⁴⁶ Despite its poverty, Borough Park has among the very lowest crime rates in the city.⁴⁷ 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.⁴⁸

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 rent burden in the entire city.⁴⁹ (It’s likely that Satmar

⁴² Mayer, *supra* note 38. Mayer estimates that Boro Park was home to some 20 Hasidic dynasties at the time of his book’s publication – 1979.

⁴³ Beck, *supra* note 25, at 112.

⁴⁴ *Ibid.* at 120.

⁴⁵ *Ibid.* at 112.

⁴⁶ *Ibid.* at 113. Again, some question

⁴⁷ Been, et al., *supra* note 29, at 85.

⁴⁸ *Ibid.* at 74 and 85.

⁴⁹ *Ibid.* at 85.

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. It 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.⁵⁰ Most are Yiddish-speakers, and the culture emphasizes the importance to a full life of living in community. Growing families cannot simply up and move to the suburbs.

Faced with these requirements, the Hasidic enclaves in Williamsburg and Borough Park have separately and largely successfully lobbied their elected representatives and city officials for variances, rezonings, and city land transfers that have enabled them to densify and expand the bounds of their enclaves. I call this the “Voice” strategy.

This strategy can work in Hasidic enclaves for a few reasons. First are the Hasidim’s sheer numbers – large and growing – the basic ingredient of political power. Second are the high rates of voting within the enclaves. Unlike the other groups examined in this paper, a strong majority of Hasidic adults in Williamsburg and Borough Park are native-born and eligible to vote, and the various rebbes encourage voter turnout as a way to amplify the political power of their sects.⁵¹ Third, the guidance of the grand rebbes can result in bloc-voting patterns, which further amplify the voting clout of the enclaves. “No one can deliver votes like the rebbe can” has been a pearl of Brooklyn political wisdom for decades.⁵² It is not uncommon for low-turnout primaries for Congress

⁵⁰ An interesting side story – 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 forward feedback loop to the “Haredization” of Orthodox Jewry in the last 50 years described by Heilman in *Sliding to the Right*.

⁵¹ Sarah Wheaton, “The Biggest Rival for a Congresswoman From Brooklyn Isn’t Even on the Ballot” *New York Times*, June 21, 2012.

⁵² Joseph Berger, “Out of Enclaves, a Pressure to Accommodate Traditions” *New York Times*, August 21, 2103. This may be changing since the 2006 death of Moshe Teitelbaum, Joel Teitelbaum’s nephew and his successor as Grand Rebbe of the Satmar Hasidim. A succession battle between two of his sons has fractured the vote. Joseph Berger “Divisions in Satmar Sect Complicate Politics of Brooklyn Hasidim” *New York*

or general elections for City Council or State Senate to turn on the Hasidic vote.⁵³ The enclaves, consequently, have famously responsive representatives such as Councilman Stephen Levin in Williamsburg and State Assemblyman Dov Hikind in Borough Park.⁵⁴ But the enclaves also feature factional disputes and infighting, 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.⁵⁵ These factions reflexively oppose each other and may have the tendency to diminish the political power of the Hasidic enclaves.

Fourth is the near-total territorial dominance of community members 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, driven by people who fear how changes to the neighborhood may affect them or their property values.⁵⁶ While these enclaves have faced stiff opposition from non-Hasidim as they expand into other neighborhoods – a phenomenon addressed below – within the enclave there has historically 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

Times, July 6, 2012. Also Rubin, *supra* note x, 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%.”

⁵³ Wheaton, *supra* note 40.

⁵⁴ Berger, *supra* note 41. A note on Aldermanic privilege: In land use decision-making, 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.

⁵⁵ Ross Barkan, “The Tower Broker: Council’s New Land Use Chair Set to Become Force in City Politics” *Politicker*, January 29, 2014 (available online at <http://politicker.com/2014/01/the-tower-broker-city-councils-new-land-use-chair-set-to-become-force-in-city-politics/>).

⁵⁶ NIMBY stand for “Not In My Back Yard”.

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.⁵⁷ Fifth, almost all development in the community is done by a significant Hasidic developer class, which means that new development is both for and by the Hasidim. This control is important – outsiders who attempt to develop within the enclave usually face opposition and Hasidim who sell to outsiders face ostracism.⁵⁸ (Some 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.)⁵⁹ Sixth, coordinating institutions in the community, particularly the United Jewish Organizations of Williamsburg, have cultivated and effectively wielded the political power of the community to push a strategy of expansion and densification.

Finally, and simply, for most of these enclaves’ existence there has been room to densify and expand. Post-WWII Williamsburg and Borough Park were not Chinatown, dense and surrounded by valuable, already-developed real estate. 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 ‘80s, Brooklyn’s and Williamsburg’s populations were shrinking as the Satmar’s was expanding. These communities have successfully opted to grow in place in large part because there has been room to grow. As vacant land gets scarcer and real estate gets more expensive around Borough Park and especially Williamsburg, Hasidic enclave may increasingly shift to an “Exit” strategy as we’ve seen in Chinatown over the last few decades.⁶⁰

⁵⁷ Here is the essence of the “group-regarding” land use decision-making that should be examined more fully in a separate paper.

⁵⁸ Note: 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, 257.

⁵⁹ Private conversation with head of Housing, Economic, and Infrastructure Planning, New York City Department of City Planning.

⁶⁰ 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 they got wind that a community of Jews wanted to move nearby. See old NYT article. A future draft should also document the rise of Lakewood,

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 started in the late 1970s and ‘80s; Williamsburg was a decade or so behind.⁶¹ 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 got a major upzoning in 1992 and another in 2005.⁶² Satmar Williamsburg got rezonings in 2001 and 2008 that enabled it to expand.⁶³ We’ll look at these more closely below.

i. *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.”⁶⁴ Hasidim were buying the neighborhood’s wood frame houses, tearing them down, and getting variances to build large, brick, two- and three-family houses with huge interiors and special features for Orthodox families – two sinks and refrigerators for kosher food preparation, balconies for Sukkot, big eat-in kitchens.⁶⁵ This process continued variance by variance through the early 1980s, when the community’s growing numbers and political influence

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.⁶⁶ The special regulations

NJ, a 25,000-strong Hasidic enclave built around Beth Midrash Govoha Yeshiva where many young Boro Parkers spend a few post-marriage years studying Torah.

⁶¹ Alan Oser, “Housing Surge Alter Borough Park” *New York Times*, May 21, 1982.

⁶² Deborah Sontag, “Orthodox Neighborhood Reshapes Itself” *New York Times*, January 7, 1998; Lisa Colangelo, “Mike Woos Borough Park with New Housing” *Daily News*, April 15, 2005.

⁶³ Stephen Jacob Smith, “Weapons of Mass Construction: Satmars’ Secret to Keeping Housing Prices Low” *New York Observer*, March 26, 2013.

⁶⁴ Oser, *supra* note 46.

⁶⁵ The housing boom in Borough Park followed a decade of tremendous expansion of Hasidic religious institutions – Mayer notes that number of yeshivas and shuls multiplied over the course of the 1970s as more Hasidim moved to Borough Park

⁶⁶ One of the main groups was the Council on Jewish Organizations, which would close in the late 1990’s in the aftermath of a bribery scandal involving the deputy

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,⁶⁷ increased maximum lot coverage, relaxing parking requirements, and relaxed other bulk regulations to enable remarkably stout and bulky three-story houses.⁶⁸ 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.⁶⁹

In 1991, the Boro Park Builder's Association pushed to extend the rules to corner lots, which were not included in the 1983 text

director and Assemblyman Dov Hikind. See CPC Report and Cohler-Esses "COJO Official Gets Two Years" The Jewish Week, June 11, 1999, available online at: http://www.thejewishweek.com/features/cojo_official_gets_2_years.

⁶⁷ Since 1961, New York City regulates 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 footage of the lot.

⁶⁸ See New York City Zoning Resolution 23-146.

⁶⁹ CPC Report (N 820451 ZRK) June 16, 1983 (Cal. No. 189).

amendment.⁷⁰ The 1992 rezoning reclassified a swath of formerly industrial land, enabling the construction of subsidized housing and nursing homes.⁷¹ In 1993, an amendment relaxed balcony regulations to allow a wider range of outdoor spaces necessary for the festival of Sukkot.⁷² Amendments in 1998 and 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.⁷³

These provisions helped to spark a new rash of teardowns and a boom in building activity. Houses expanded in all directions, distorting building envelopes and horrifying design professionals, but making room for growing families.⁷⁴ 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.⁷⁵

In the 2005, in the midst of a decade when Mayor Bloomberg announced a spate of community-initiated downzonings to great acclaim in neighborhoods across outer Brooklyn and Queens, Bloomberg announced another *upzoning* in Borough Park, along the Culver El. "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.⁷⁶ The upzoned areas were to be developed with 80 units of infill housing.⁷⁷

While there is nothing unusual about neighborhoods demanding and in many cases getting special treatment in the zoning resolution – zoning is, after all, a political process – two factors make Hasidic influence on the zoning resolution unique. First: Unlike almost every other neighborhood mobilized around land use – Greenwich Village, say – these neighborhoods are asking for more, not less, development. Where others are NIMBYs, the Hasidim are YIMBYs. Second: These

⁷⁰ CPC Report (N 890781 ZRK) May 15, 1991 (Cal. No. 22).

⁷¹ Jim Dwyer, "Sinking Like a Ton of Bricks" *Newsday*, May 29, 1992.

⁷² CPC Report (N 930073 ZRY) August 4, 1993 (Cal. No. 31).

⁷³ CPC Report (N 000286 ZRK) October 18, 2000. (Cal. No. 19).

⁷⁴ Oser, *supra* note 46.

⁷⁵ Sontag, *supra* note 47.

⁷⁶ Colangelo, *supra* note 47.

⁷⁷ *Id.*

neighborhood actions embed a distinct ethnic and enclavist flavor into the zoning resolution that enables building typologies particular to the group.⁷⁸ Hasidim, as the rare enclave population with voting power, can use politics to translate preferences into law.

The legacy of the 1980s and '90s is that Borough Park has some of the newest housing stock in the city.⁷⁹ It continues to eat up former industrial lots, bowling alleys, and any other structures not related to housing or Hasidic worship, Hasidic education, or Hasidic goods and services.⁸⁰ 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.⁸¹ 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. If it can't expand indefinitely, perhaps the neighborhood will 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." The only place to go is up. Failing expansion and densification, the enclave will have 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.

ii. *Williamsburg*

While the Williamsburg enclave is smaller and slower-growing than the Borough Park enclave – 74,500 versus 131,000 – Satmar Williamsburg sits on more intensely contested ground – especially since the explosion of the North Williamsburg real estate market over the past

⁷⁸ While beyond the scope of this paper, 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.

⁷⁹ Sontag, *supra* note 47.

⁸⁰ Liz Robbins, "In Brooklyn, Bowlers Enjoy A Haven While It's Still Around" *New York Times*, April 23, 2011.

⁸¹ Jake Mooney, "On an Unloved Lot, A New Source of Friction" *New York Times*, November 25, 2007.

decade. (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.) 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.⁸² It is unclear how much of that can be attributed to development along the 2005-upzoned Waterfront, how much to upland development in the “hip” parts of the neighborhood, and how much to 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 United Jewish Organizations (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.⁸³ In 1978, suits by Latino community organizations forced the New York City Housing Authority (NYCHA) into a consent decree that upped the number of Hispanics in public housing developments in and around Satmar Williamsburg.⁸⁴ (In contrast to Borough Park, which has no public housing, Williamsburg has thousands and thousands of units.)⁸⁵

Throughout the 1990s, a much smaller but rapidly expanding population of Satmars increased the supply of housing through as-of-right infill development and variances that increased the permissible bulk of housing or allowed for housing development on land zoned for

⁸² Been, et al., *supra* note 29, at 74.

⁸³ Nicole Marwell, *Bargaining for Brooklyn: Community Organizations in the Entrepreneurial City* (2007); Kareem Fahim, “Old Feuds Resurface in a Brooklyn Rezoning Fight” *New York Times*, August 5, 2009.

⁸⁴ David Gonzalez, “A Storm in Williamsburg as Two Ethnic Groups Clash” *New York Times*, November 17, 1990.

⁸⁵ Been, et al., *supra* note 29, at 74. 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 percent Hasidic. Marwell.

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.⁸⁶ Shortly thereafter Satmar developers got further permission to convert the old Isratech Factory into housing. Projects like this were emblematic of the Satmar's 1990s expansion.

At the same time, both the community and the city understood that such piecemeal efforts would not sate 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.⁸⁷ The main objectives of the task force 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.⁸⁸

In 1997, the task force helped community groups negotiate a loose line of demarcation – Broadway – 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 black neighborhoods of Bedford-Stuyvesant and Clinton Hill.⁸⁹ Both of these moves diverted the Satmar expansion to industrial and residential areas to the south and east, leading to increasing conflicts with African-Americans communities there.⁹⁰

The 2001 rezoning comprised mostly industrial lots on the border between South Williamsburg, predominantly Hasidic and Hispanic, and Bedford-Stuyvesant and Clinton Hill, historically black neighborhoods. Satmar developers wasted no time raising a solid wall of six- and seven-story buildings with three- to seven-bedroom apartments, kosher

⁸⁶ Graham Rayman and Dan Morrison, "Builders Probed / Poor safety, but good connections" *Newsday* January 15, 2000.

⁸⁷ Bob Liff, "Hasidim Plan for Housing Raises Sparks Among Blacks" *Daily News*, October 29th, 1998.

⁸⁸ Michael Cooper, "Mayor Forms Panel to Seek New Housing" *New York Times*, December 17, 1995.

⁸⁹ Liff, *supra* note 64.

⁹⁰ *Id.*

kitchens, and balconies for Sukkot.⁹¹ 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 published in the Jewish Daily Forward. “Then they changed the zoning. Now it is going heavy.”⁹²

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.⁹³ The decision has 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.⁹⁴ A judge halted the affordable component of the development plans, which remain in limbo, though Hasidic-friendly market-rate housing is going up fast.⁹⁵

Given the enclave’s ever-expanding numbers and the responsiveness of their elected officials, their opponents must increasingly resort to the courts rather than the political process to stem the Satmar tide. The Satmar, generally, support development, densification, and expansion because it benefits the community and they possess, by all accounts, an unusually robust conception of community. The exception is when a developer from outside the community attempts to build for non-Hasidim. Such was the case with the Gretsck 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.⁹⁶ (And they shunned the

⁹¹ Andy Newman, “In a Brooklyn Boom, A Patchwork of Housing Fills In the Bare Spots” *New York Times*, February 15, 2004.

⁹² JTA, “Ultra-Orthodox Jews Spread Into Once-Black Brooklyn Neighborhoods” *Forward*, February 16, 2013.

⁹³ Fahim, *supra* note 60.

⁹⁴ *Id.*

⁹⁵ Smith, *Supra* note 48.

⁹⁶ Tara Bahrapour, “Plague of Artists' a Battle Cry for Brooklyn Hasidim” *New York Times* February 17, 2004. “Please remove from upon us this plague of artists” read one sign translated from the Yiddish by Samuel Heilman. See Sliding to the Right.

Satmar owner who sold the building to someone outside the community.) 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 Orthodox density – buildings don't have elevators because it's forbidden to ride in them on Sabbath. It is likely that the Satmar will have to rely on other places – like Kiryas Joel, Monsey, and a nascent enclave in Bayswater, Queens, if they are to expand.

Part III: 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.⁹⁷ There's even a nascent Chinese enclave in East Harlem.⁹⁸

There were approximately 350,000 foreign-born Chinese in New York City in 2012, an increase of 34 percent from 2000. Eighty-three percent of foreign-born Chinese are from the Mainland, with the balance from Hong Kong and Taiwan.⁹⁹ Chinese will soon overtake Dominicans – with 382,000 people but a measly three-percent growth rate since 2000 – as the largest foreign-born population in New York City.¹⁰⁰ 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

⁹⁷ NEWEST NEW YORKERS, *supra* note 6, at 68.

⁹⁸ J. David Goodman, “Chinese Moving to East Harlem In a Quiet Shift From Downtown” *New York Times*, February 25, 2013.

⁹⁹ NEWEST NEW YORKERS, *supra* note 6, at 69.

¹⁰⁰ *Ibid.* at 2.

overcrowding – 17.6 percent of households versus 5.0 percent for native-born.¹⁰¹

A. *Manhattan Chinatown*

Manhattan Chinatown emerged in the 1860s as a bachelors' 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 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.¹⁰² When the Exclusion Act was lifted in 1943, there were several thousand Chinese in Chinatown, with roughly six times as many men as women.¹⁰³ Chinatown was a place where poor Chinese with no English could get beds in informal, overcrowded immigrant dormitories and jobs in restaurants, printing presses, and garment factories.

Chinatown began its expansion to present-day size after the Immigration and Naturalization Act was passed in 1965.¹⁰⁴ Between 1965 and 1990, the Chinese population of New York City tripled.¹⁰⁵ 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.) But the expansion of Chinatown ran into the booming Manhattan real estate market of the 1980s and 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 was in the midst of some of the most valuable real estate on the planet, and those prices were bleeding into an enclave that had traditionally served some of the city's poorest new arrivals.

¹⁰¹ *Ibid.* at 99.

¹⁰² MIN ZHOU, CHINATOWN 22 (1992)

¹⁰³ Min Zhou and John R. Logan, *Returns on Human Capital in Ethnic Enclaves: New York City's Chinatown*, 54(5) *Amer. Soc. Rev.* 809, 816 (1989).

¹⁰⁴ *Id.*

¹⁰⁵ See PETER KWONG, THE NEW CHINATOWN (1996).

Over the last few decades, Chinatown has experienced the highest price appreciation in the City, which has had baleful consequences for both housing affordability and the once-robust garment industry.¹⁰⁶ Overcrowding has been endemic – with stories of 20 people in a 200 square foot room, sleeping in shifts, or basements illegally subdivided to house dozens of families.¹⁰⁷ Chinatown 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 who have managed to stay, which at \$895 is among the cheapest in the city.¹⁰⁸ Some residents refer to the market trajectory over the last few decades as “frying the real estate in a wok.”¹⁰⁹

B. *The “Exit” Strategy*

Rising rents and the ongoing influx of new residents made Chinatown less and less hospitable for current residents and new arrivals in the 1980s. 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.”¹¹⁰ Rent control and rent stabilization, which includes anti-displacement measures like mandatory lease renewals under most conditions, have helped Chinatown to retain a stronger presence in Lower Manhattan than might otherwise be the case, but its anti-displacement provisions have also made it very difficult to redevelop Chinatown's tenements and mid-rise housing at higher densities to add units in the neighborhood for the growing Chinese community.¹¹¹

¹⁰⁶ Been, et al., *supra* note 29, at 98.

¹⁰⁷ Kwong, *supra* note 95. This paper discusses unauthorized housing accommodations primarily through the lens of Bangladeshi and ethnically South Asian communities in Queens, but the practice is also rampant in Chinatown, albeit in a different form owing to different housing typologies.

¹⁰⁸ *Id.*

¹⁰⁹ Kwong, *supra* note 95.

¹¹⁰ Richard D. Lyons, “Satellite Chinatowns Burgeon Throughout New York” *New York Times*, September 14, 1986.

¹¹¹ Personal conversation with Frank Ruchala, city planner, NYC Department of City Planning.

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.¹¹²

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," said Margaret Chin in 1986.¹¹³ Then president of Asian-Americans for Equality, a community organization in Chinatown, she became Chinatown's first Asian-American councilperson in 2009, a surprisingly late date that speaks to the enclave's somewhat limited political heft.¹¹⁴

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.¹¹⁵ 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.¹¹⁶ We will take a closer look at these enclaves below. The migration patterns also had an ethnic and linguistic component, with newer, poorer, and largely undocumented immigrants from Fujian province – i.e., the "Downtown Chinese" – heading to Sunset Park, and Mandarin-speakers from the mainland and Taiwanese – i.e., the "Uptown Chinese" – heading to Flushing.¹¹⁷ While it had and has many sub-enclaves, Manhattan Chinatown remained a

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ See Margaret Chin Homepage, available online at <http://council.nyc.gov/d1/html/members/home.shtml>.

¹¹⁵ Malcolm Gladwell, "Rebirth in New York; Neighborhoods Growing Again in the City" *Washington Post* September 18, 1993.

¹¹⁶ *Id.*

¹¹⁷ See Kwong, *supra* note 95, on the Downtown/Uptown distinction.

primarily Cantonese-speaking enclave dominated by southern Chinese, as it has been since its earliest days.¹¹⁸

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."

Why did the Chinese employ an "Exit" strategy and disperse to other, cheaper neighborhood to found satellite Chinatowns? Why not "Voice" – like the Hasidim – in an attempt to densify and expand their existing enclave to accommodate current residents and newcomers? Several factors deserve attention. 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 weren't yet part of New York City, was verdant farmland or outright wilderness. A century and change later, the enclave that had started in the 1860s was in the midst of immensely valuable real estate, and its use as an enclave for poor immigrants was a holdover from a previous era rather than something with a present-day economic logic. Chinatown simply lacked the economic power to expand in that location. If, like the Bangladeshis, the first wave of Chinese immigration had been in the 1980s, they too would have founded their first enclaves in far-off Queens or Brooklyn. Immigrants go where they can afford to go and where there's space. As it was, there was simply very little room for expansion, and the densification that was happening was typically for very different populations – luxury buildings for rich, typically white in-movers seeking to capitalize on Chinatown's excellent location.¹¹⁹

Second, Chinatown lacked the political power of the Hasidic enclaves. Most foreign-born Chinese are not citizens and do not have the power to vote. In the 1990s, when Chinatown was at or near peak population of around 100,000 Chinese, it had fewer than 10,000

¹¹⁸ Merle English, "Brooklyn Enclave Is The New Chinatown As it grows, neighborhood confronting its problems" *Newsday*, August 1, 1993.

¹¹⁹ Bethany Y. Li. *Chinatown: Then and Now*, Asian American Legal Defense and Education Fund (2013).

voters.¹²⁰ While the city council members for Hasidic Brooklyn are almost obsequious in their solicitude, 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.¹²¹ "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-90s. "She knows we don't have a lot of votes."¹²² 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.¹²³

Third, and related, is the fact that Chinatown lacked strong central leadership. Unlike, say, the Satmar Hasidim of previous decades, Chinese immigrants in Chinatown are not a monolithic body guided by a grand rebbe. There are Chinese immigrants from every 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, etc., and this presents coordination problems. This is not to mention the pitched battles between Chinatown community groups for political power. Chinatown had traditionally been run, more or less, by the Chinese Consolidated Benefit Association (CCBA), an assembly of 60 or so Chinatown social organizations. The dominance of the CCBA was challenged beginning in the late 1960s by the rise of community-based social welfare organizations seeded with federal dollars in the Great Society era.¹²⁴ These groups run the gamut. Some, like Chinese-American Planning Council (CPC), advocated 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 create needed housing

¹²⁰ Andrew Jacobs, "The War of Nerves Downtown" *New York Times*, July 14, 1996.

¹²¹ *Id.*

¹²² *Id.*

¹²³ See John Liu's website, available online at: <http://liunewyork.com/about/>.

¹²⁴ See Kwong, *supra* note 95.

for Chinatown's cramped population.¹²⁵ Other groups, like Asian-American Legal Defense and Education Fund (AALDEF) and Chinese Staff and Workers Association (CSWA), have opposed upzonings and proposed downzonings as a tactic to keep out luxury development and preserve the neighborhood. For some, retreat to satellite enclaves represents surrender.

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-80s.¹²⁶ David Chen, the 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, which led to restaurants and grocery stores to feed the workers, which led to residential in-movers and so on in a self-reinforcing cycle.¹²⁷ 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. This is what happened in Sunset Park as the Scandinavian and Italian immigrants left in greater numbers than others moved in. The population declined from a peak of over 100,000 in the post-WWII period to 86,000 in the 1970s.¹²⁸ A survey in that period counted 200 abandoned one-, two-, and three-family homes and 40 abandoned apartment buildings. Vacant storefronts lined Eighth Avenue, the main commercial corridor for eastern Sunset Park, well into 1980s. The Chinese population in Sunset Park grew incredibly fast.

¹²⁵ Christine Haughney, "High-Rises Are at Heart of Manhattan Zoning Battle" *New York Times*, November 15, 2008.

¹²⁶ Albor Ruiz, "A Fresh Look at Chinese Immigration" *Daily News*, September 9, 1999. But – need to determine what, if any, role CPC played in the establishment of the enclave. See Tarry Hum's forthcoming book on Sunset Park.

¹²⁷ Interview with David Chen, August 6, 2014.

¹²⁸ Gladwell, *supra* note 88.

While Sunset Park was only mentioned in passing in a 1986 article about New York’s Chinese enclaves, within a decade it had an estimated population of 70,000 Chinese and was neck-and-neck with Flushing as New York’s second largest Chinatown.¹²⁹

The documented foreign-born Chinese population has increased from 20,000 in 2000 to about 34,000 today, a 71-percent increase.¹³⁰ Sunset Park is threatened by some of the same problems that squeezed Manhattan Chinatown in the 1980s. Sunset Park has had the 3rd fastest housing-price appreciation since 2000, an increase in sales prices of 163 percent for two- to four-family buildings.¹³¹ It has a crowding rate – more than one person per room – of 30.1 percent, and its severe crowding rate – more than 1.5 persons per room – is the second highest in the city, after Jackson Heights, Queens.¹³² (Note: These rates also include Mexican and Dominican households in western Sunset Park, and these groups also have high rates of crowding.) 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.¹³³ 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. Relatively wealthy Taiwanese immigrants – i.e., the “Uptown Chinese” – wanted a place apart from the predominantly poor and uneducated hordes in Lower Manhattan and established an outpost in predominantly white outer Queens. In the 1980s, it 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, attenuating

¹²⁹ English, *supra* note 90.

¹³⁰ NEWEST NEW YORKERS, *supra* note 6, at 68.

¹³¹ Been, et al., *supra* note 29, at 80.

¹³² *Ibid.* at 80 and 114.

¹³³ NEWEST NEW YORKERS, *supra* note 6, at 69.

Flushing's connection to Chinatown a bit, at least compared to the easier access between Chinatown and Sunset Park. The relative wealth and distance – not to mention the lower density – give Flushing something of the feel of a suburb relative to Chinatown's city. Unlike Sunset Park, Flushing also hosts a number of other Asian immigrant groups, including one of New York's largest agglomerations of Koreans.¹³⁴

Flushing has a much lower poverty rate and crowding rate than either Chinatown or Sunset Park.¹³⁵ Housing prices there are rising at comparable rates: Sales prices have appreciated about 80 percent since 2000, and Flushing ranks third in housing appreciation out of the fourteen community districts with predominantly single-family housing.¹³⁶ Median rents are in the top quartile of all community districts. New condos in the area are flirting with the \$1000 per square foot threshold, a definite rarity for a neighborhood so far away from the real estate foment of Manhattan.¹³⁷ 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.¹³⁸

The Flushing enclave historically has more political clout than the enclaves in Manhattan or Sunset Park. 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 body until he switched to the Democratic Party amidst Republican in-fighting in 2012.¹³⁹

The Flushing enclave continues to grow rapidly. The most recent census listed 34,000 foreign-born Chinese residents there, up from

¹³⁴ NEWEST NEW YORKERS, *supra* note 6, at 214.

¹³⁵ Been, et al., *supra* note 29, at 80, 98, and 118

¹³⁶ *Ibid* at 118.

¹³⁷ C.J. Hughes, "A Robust Reception After a Rocky Start," *The New York Times* February 6, 2015, available online at: <http://www.nytimes.com/2015/02/08/realestate/more-condos-in-flushing-queens-at-sky-view-parc.html> (last viewed February 16, 2015).

¹³⁸ *Id.*

¹³⁹ Colin Campbell, "Democrats Huzzah Koo Party Change" *Politicker*, January 23, 2012.

17,300 in 2000 – a 94 percent increase. It is both expanding to the southeast and helping to feed an enclave of 17,000 in Elmhurst.¹⁴⁰

E. *Land Use*

The 2008 rezoning of parts of the East Village and Lower East Side was controversial in some quarters of Chinatown. The rezoning included upzonings of areas between Delancey and Houston streets on the Lower East Side but also protective downzonings and contextual rezonings¹⁴¹ of high-cost or on-their-way residential areas on the Lower East Side or in the East Village. The rezoning did not include Chinatown proper, but did cover an increasingly Chinese eight-block area between Grand and Delancey east of Chrystie Street.¹⁴² 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. They also argued that the downzonings on areas just outside Chinatown would increase development pressure on adjacent, unprotected areas in Chinatown. 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. 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 seven years' hindsight how the rezoning may be impacting the evolution of Chinatown or its satellites.

Rezoning activity in the outer boroughs, particularly Flushing, has consisted primarily of defensive contextual rezonings. 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. The booming market in the 2000s led to teardowns and development in relatively low-density parts

¹⁴⁰ NEWEST NEW YORKERS, *supra* note 6, at 216.

¹⁴¹ "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.

¹⁴² Haughney, *supra* note 96.

of the outer boroughs, leading to the call for a spate of rezonings limiting development. East Flushing was rezoned in 2005 and North Flushing was rezoned in 2009.¹⁴³

In Sunset Park, the contextual rezoning approved in 2009 occurred in response to the as-of-right development of large apartment buildings.¹⁴⁴ The rezoning generally allowed for larger development along the avenues but newly limited the bulk of development in strictly residential areas along the streets.¹⁴⁵ 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 as the outer borough real estate market recovers more fully from the financial crisis.

Part IV: Bangladeshi Enclaves and the “Underground” Strategy

The Bangladeshi and other ethnically South Asian enclaves in various neighborhoods in Queens use what I call 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 over the few decades of their immigration. At the time Chinese immigrants were forming satellite enclaves in outer Brooklyn and Queens, the Bangladeshis were just beginning to arrive in this country. 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

¹⁴³ See Queens land use page at Department of City Planning, available online at: <http://www.nyc.gov/html/dcp/html/subcats/queens.shtml>.

¹⁴⁴ See Tarry Hum, *Planning in Neighborhoods with Multiple Publics: Opportunities and Challenges for Community-Based Nonprofit Organizations*

¹⁴⁵ See Sunset Park rezoning page at Department of City Planning, available online at: http://www.nyc.gov/html/dcp/html/sunset_park/index.shtml.

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 have become the new norm and have resulted in what amounts to *guerilla rezoning*. Incumbent residents have fought back with land use law, calling in 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 any numbers until the late 1980s. Between 1990 and 2000, the population nearly quintupled – it increased by 393 percent.¹⁴⁶ The increase was due both to increasing diversity and family reunification visas for Bangladeshis as well as high birthrates common to South Asian Muslim populations. Bangladeshis exhibit the high male-to-female ratios common to recently arriving immigrant groups, yet they have high marriage rates and a high percentage of men and women in childbearing age. They are a young population, with a median age of 35 – well below those of most other immigrant groups and the native-born population.¹⁴⁷ In the last three censuses, 1990, 2000, and 2012, Bangladeshis have leapt from the 42nd most populous immigrant group, to the 17th most populous, to the 11th. Because of their high rates of growth – 74 percent since 2000, making them the fastest-growing immigration group in New York City – Bangladeshis are poised to overtake the shrinking Russian population and the moderately growing Indian population in the next few years for a spot on the top ten list. There are currently about 74,000 Bangladeshis in New York City to Russia's and India's 75,000.¹⁴⁸ Bangladeshis have among the highest average household size in New York – 4.3, exceeded only by Mexicans' 4.5 – and also the highest rates of crowding – nearly 45 percent of households are overcrowded.¹⁴⁹

The most common neighborhoods for Bangladeshis are Jackson Heights, Elmhurst, Jamaica Hills, Woodside, and Richmond Hill in

¹⁴⁶ Nina Bernstein, "Record Immigration Changing New York's Neighborhoods" *New York Times*, January 24, 2005.

¹⁴⁷ NEWEST NEW YORKERS, *supra* note 6, at 96.

¹⁴⁸ *Ibid.* at 113.

¹⁴⁹ *Ibid.* at 99.

Queens; there is also a community in Kensington, Brooklyn, and a growing presence in City Line, Brooklyn, just across the border from Ozone Park, Queens.¹⁵⁰ Enclaves tend to grow around mosques. "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, in a *New York Times* article from 2003. "I wanted a convenient neighborhood with good schools. Now many people are moving here because of the mosque."¹⁵¹

There is significant spatial overlap in Queens with other ethnically South Asian populations, including Indians and Indo-Caribbeans from countries like Guyana and Trinidad & Tobago, where ethnic South Asians are in the plurality. Guyanese, for instance, are the fourth most populous immigrant group in New York City with about 135,000 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; a respectable 32,000 live in an enclave in those adjacent neighborhoods.¹⁵² Much of what this section of the paper has to say about unauthorized conversions and defensive rezonings applies to these populations as well, not to mention Queens's sizeable Latino populations who employ similar methods to make room for newcomers and expanding families. Unauthorized conversions are a widespread strategy among poor and overcrowded immigrant populations; I do not mean to imply that only Bangladeshis use it.

B. *The "Underground" Strategy*

Between 1990 and 2000 alone, 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

¹⁵⁰ *Ibid.* at 219. Note: In an amazing story that deserves much more attention in a future draft, the Bangladeshis of Astoria – 8000 of them – migrated almost wholesale to Detroit in the late 90s and early 00s. See Sarah Kershaw, Queens to Detroit – A Bangladeshi Passage, *New York Times* March 8, 2001.

¹⁵¹ Mayara Guimaraes, "The City Line neighborhood on the Brooklyn-Queens border has become a booming Bangladeshi enclave" *Daily News*, September 15, 2013; Diana Dhaman, "If You're Thinking of Living In/Jamaica Hills; Tranquil Haven for Many Ethnic Groups" *New York Times*, June 8, 2003.

¹⁵² NEWEST NEW YORKERS, *supra* note 6, at 212.

construction and renovation.¹⁵³ Many of these 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.¹⁵⁴ 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, the dwellings represent 4 percent of the housing stock, with 300,000 to 400,000 people.¹⁵⁵

The highest rates of unauthorized conversions are in Queens, which had a surge of conversions in the 1990s. An estimated three quarters of Queens housing growth since then 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.¹⁵⁶ 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”. It’s the new norm. 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.¹⁵⁷ Many of the owners are immigrants who wouldn’t be able to afford the house without the rental

¹⁵³ Robert Neuwirth, “New York’s Housing Underground: A Refuge and a Resource” Pratt Center for Economic Development and Chhaya CDC (2008).

¹⁵⁴ *Id.*

¹⁵⁵ “Illegal Dwelling Units: A Potential Source of Affordable Housing in New York City” Chhaya CDC with Citizens Housing and Planning Council (2008).

¹⁵⁶ Neuwirth, *supra* note 120.

¹⁵⁷ Chhaya, *supra* note 122.

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-doc loan than it was for that family to find an appropriately large apartment on the rental market.¹⁵⁸ (This 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.¹⁵⁹

Many of the units raise health and safety concerns – some units lack multiple means of egress, for instance – but some 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 is why many of these people ended up in 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 percent of the land area in Queens is zoned for one- and two-family houses, and only 11 percent is zoned for multifamily units.¹⁶⁰ 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's difficult to imagine in districts with multifamily structures.

Second, 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

¹⁵⁸ Interview with Seema Agnani, head of Chhaya CDC.

¹⁵⁹ Martha Galvez and Frank Braconi, “New York’s Underground Housing” *The Urban Prospect*, June 2003.

¹⁶⁰ Chhaya, *supra* note 122, at 5.

populations are more dispersed. This tends to diminish the political power of the Bangladeshis, the Indians, the Indo-Guyanese in a way that limits their ability to use a “Voice” strategy to accommodate their growing populations.

Third, the fact that they are relatively poor and relatively recent arrivals further limit the locations where they can live and the strategies they can employ to make room. Unlike the Chinese or much of the Hasidic population, destination neighborhoods for Bangladeshis have always been in farther out neighborhoods in the outer boroughs. While Bangladeshis can and do make use of something like an “Exit” strategy in order establish footholds in new neighborhoods, these new neighborhoods are lateral moves – from farther out neighborhood in an outer borough to another similarly situated neighborhood, like City Line, Brooklyn. They are not retreats from dense, high-cost neighborhoods to much less expensive neighborhoods with much more space as was the case with Chinese migration in the 1980s.

Fourth, combine the above with the fact that many Bangladeshis and other ethnically South Asian people do not have citizenship and can’t vote, they have relatively weak representation in the City Council and other layers of government. Like many immigrant groups, these populations rely on community organizations like Chhaya and the Bangladeshi-American Community Development and Youth Services Corporation to press their interests where elected representatives won’t. 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; South Asian Youth Action (SAYA), among others. The coalition is working to amplify the political power of the community both inside and outside the electoral process.¹⁶¹ They count the election of Daniel Dromm over Helen Sears, a Councilmember how 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. They are also planning to be more engaged with issues relating to land use and development: Chhaya recently hired a planner and will be working for increased density in the neighborhoods where their constituency lives. They are careful to note that, as in Chinatown,

¹⁶¹ Interview with Seema Agnani, head of Chhaya.

not all groups are in agreement about increased density, which may complicate efforts to create more housing for the burgeoning South Asian population in Queens.¹⁶²

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.

C. *Backlash*

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.) The increase might not be reflected in official statistics and city services from garbage pickup to public schools might not be able to accommodate it, especially given the tax revenue lost from these “off the books” units. In Queens in the mid-1990s, enrollment in public schools in neighborhoods with widespread conversions began to exceed 100 percent capacity. School officials brought in trailers to accommodate the overflow.¹⁶³ Complaints about illegal conversions began to skyrocket through starting in the 1990s and into the 2000s, though part of the increase might have to do with the implementation of New York City’s 311 System in 2002. 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. The incumbent residents of these neighborhoods increasingly urged their elected representatives and city officials to do something to “preserve the character of the neighborhood.”

The result in the 2000s was a wave of what I call defensive downzonings or historic district designations in immigrant neighborhoods 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, Mayor Bloomberg came to Queens to announce plans to downzone or contextually rezone more than a dozen Queens

¹⁶² Interview with Seema Agnani

¹⁶³ Dick Sheridan, “Trailer Classroom Vote Tonight” *Daily News*, July 24, 1997.

neighborhoods.¹⁶⁴ 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.¹⁶⁵ "Overdevelopment changes the character, overdevelopment changes the traditional appearance of neighborhoods," Mayor Bloomberg said in a 2004 *New York Times* article.¹⁶⁶ 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."¹⁶⁷ Over the next ten years, the balance of the Bloomberg administration, the city conducted over 40 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."¹⁶⁸

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.

The Bangladeshi and ethnically South Asian populations of Queens present an interesting contrast to other groups this paper 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

¹⁶⁴ Jennifer Steinhauer, "City Plans to Rezone Overdeveloped Neighborhoods in Queens" *New York Times*, June 16, 2004.

¹⁶⁵ *Id.*; *See, also*, the Queens Land Use page at NYC Department of City Planning, available online at: <http://www.nyc.gov/html/dcp/html/subcats/queens.shtml>.

¹⁶⁶ Steinhauer, *supra* note 128.

¹⁶⁷ Mike Saul, "Beep Ready for a Rezone; Joins Mike in Preservation Push" *Daily News*, June 16, 2004.

¹⁶⁸ *See, e.g.*, the Queens Land Use page at NYC Department of City Planning, available online at: <http://www.nyc.gov/html/dcp/html/briarwood/index.shtml>.

the area – 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.

Part V: Conclusion

The basic function of this paper is to reveal the ways that land use, politics, community characteristics, and recent history interact to shape housing production and development in a particular set of ethnic and immigrant neighborhoods in New York City. These stories are interesting in themselves, but a close-to-the-ground perspective also complements the higher-level story about housing production in New York City and other supply-constrained, high-housing-cost cities across the country.

There is a growing consensus about the broad outlines of the problem. Devising policies to address the problem – actually a tangled set of regulatory and political problems that exist in reciprocal relationship to each other – is trickier. This is not a policy paper, but it does point in directions that will be useful to policy makers and future researchers.

The problem of anti-development politics is the most daunting obstacle to lower-cost housing that high-cost regions face. Figuring out how to assuage opposition – rather than attempting to overpower it – is perhaps the most promising way forward. As this paper has at least 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, more political and economic power. For native-born populations, that

may take the shape of neighborhood bargains like better transit, tax breaks, or some other inducement.¹⁶⁹

Regardless, this paper challenges the popular notion that incumbent residents are always and everywhere reflexively opposed to development in their neighborhoods. As this paper shows, some neighborhoods are not opposed to infill development or upzonings and larger buildings they can bring. Why? Under what conditions does that hold? Are there insights here that might help resolutely anti-development neighborhoods to become less so?

Furthermore, the paper suggests that land use politics may change as foreign-born populations succeed native-born populations in outer-borough neighborhoods. In the outer-borough neighborhoods the paper describes, wariness of neighborhood change, among other factors, leads incumbent residents to support measures that prevent development and the densification of their neighborhoods, leading to housing cost increases city-wide. Will these neighborhoods be more open to development as they become more increasingly foreign-born? They may very well be, especially if the in-movers are from the same countries of origin. How will that affect land use politics, development, and housing cost trajectories citywide and across the region?

The paper 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. The paper suggests immigrant- and ethnic-based Community Development Corporations (CDCs) and other community-based organizations can make particularly good partners for policy makers, city officials, and others seeking to expand housing production in cities where that's difficult. Many of these groups are uniquely positioned to understand the housing needs of their communities while also possessing the political credibility to win support for expanding development in the community.

Of less central concern to policy makers, but perhaps of greater interest to social scientists, the paper provides a perspective on what appear to be group-regarding land use decisions that contrast with the (generally accurate) atomistic, property-value-regarding take on land use politics found elsewhere in the scholarship. How do these groups arise

¹⁶⁹ Roderick Hills and David Schleicher, *City Replanning* available online at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2477125. Mangin, *supra* note 1.

and come to share a perspective on development in their communities? How do they coordinate? Or do these processes arise organically?

Finally, and optimistically, the paper shows that communities – immigrant, ethnic, but presumably others as well – can continue to make a space for themselves – a neighborhood, an enclave, a place to live – in the midst of a city that sometimes works with them and sometimes against.