

# For New York, the Time Is Right, but Is the Task Just Too Nighmarish?

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## For New York, the Time Is Right, but Is the Task Just Too Nighmarish?

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**T**HERE may never be a better time to overhaul the Zoning Resolution that governs the physical evolution of New York City. But that does not mean that it will — or can — be changed.

The current ordinance, enacted in 1916, encouraged the development of tall towers set in broad plazas, introduced floor-area restrictions as a way of controlling density and divided the city into residential, commercial and manufacturing districts. Since its last thorough revision in 1961,

however, it has become so heavily laden with amendments and revisions that it now seems a mass of contradictory impulses, no longer embodying a vision or plan.

"The zoning ordinance does both too much and too little," said Peter D. Salins, chairman of the urban affairs and planning department at Hunter College and senior fellow at the Manhattan Institute for Policy Research.

"On the one hand, it is a document of staggering complexity," he wrote, in a paper for a planning symposium on Jan 30. "On the other hand, with all its detail, all its attempts at fine-tuning, all its layers of discretionary review, all its community and watchdog-group involvement, the increments of development that emerge from this regulatory monster are widely despised on all sides."

And this might be the moment to act. "Because there's so little development, it's probably a terrific time to redo the Zoning Resolution," said Robert F. Wagner Jr., a former chairman of the City Planning Commission.

Free from the pressures posed by intense construction, planners have the chance to chart a fresh course in zoning, instead of incessantly fine-tuning a document that took

effect 31 years ago, when New York was a much different city, before communities were given a formal role in land-use review. Indeed, under the new Charter, the planning agency must prepare a comprehensive planning and zoning report every four years. The first is due in December and might form the germ of a new zoning ordinance.

However, the same economic paralysis that theoretically would free planners for such a big task has also devastated the City Planning Department, whose full-time staff has been cut 25 percent since 1990. Moreover, the environmental reviews that have been instituted since the 1961 Zoning Resolution might make it financially and logistically impossible to embark on citywide zoning. An environmental-impact statement for a single project can take years to produce and cost millions of dollars.

Perhaps the most basic reason the Zoning Resolution may never be fundamentally rewritten is the lack of political will to do so. If zoning is the regulatory tool by which a comprehensive plan is shaped, some broadly held

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# New York City's Quest for a New Zoning Resolution

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vision of New York's future would be a necessary precursor to a thoroughly revised ordinance. It is hard to imagine such a consensus' being developed when specific issues like shelters for the homeless and garbage incinerators have proved so divisive.

**Y**ET there seems to be widespread agreement that *something* ought to be done. Few are content with the current zoning ordinance, a cumbersome, bloated, 835-page patchwork that can be navigated only by a handful of specialists, leaving everyone else — developers, architects, community leaders and neighbors — at a baffled disadvantage.

"There's certainly a need to simplify the Zoning Resolution," said Richard L. Schaffer, the chairman of the city's Planning

Commission and director of the Planning Department. "What I'd like to do is prune away the accreted 30 years of amendments, to the extent possible."

In a broader sense, Mr. Schaffer said: "We need to overhaul the Zoning Resolution to accommodate change in economically realistic ways that are more sensitive to the existing built environment. You've got to overhaul the text and overhaul the maps."

New York created the nation's first comprehensive ordinance with the 1916 Zoning Resolution. By the 1950's, its defects were clear. In language strikingly similar to that heard at the symposium, James Felt, then the planning chairman, said on Feb. 15, 1959, that "the price we pay for clinging to an obsolete zoning structure — burdened by the weight of amendments it was never intended to support — is already too high."

The zoning ordinance he introduced that day, crafted by the architectural firm of

Voorhees, Walker, Smith & Smith, was adopted in December 1960 after numerous revisions. Now, some people say, the ordinance is once again overburdened.

"The present city system may have come about as far as it can, as a credible regulatory mechanism," wrote Norman Marcus, former general counsel of the Planning Department and a partner at Bachner, Tally, Polevoy & Misher, in a paper prepared for the symposium, "Planning and Zoning New York City — Yesterday, Today and Tomorrow," held at New York University.

**T**HE passage of 30 years has not aged the ordinance and its administrative apparatus gracefully," Mr. Marcus said. He called the resolution "a collage of ad hoc, jerry-built and more thoughtful inspirations, grafted onto a long-disowned armature."

"I believe it's nearing a nervous break-

down," said John Shapiro, principal in the planning consulting firm of Abeles, Phillips, Preiss & Shapiro. "We should set about overhauling it with all due speed."

However, Marla G. Simpson, director of land-use planning for Borough President Ruth W. Messinger of Manhattan, noted that "everybody says they're for simplicity, but it depends on whose ox is being gored."

"On that score," she said, "the developers don't sound any different than the communities. They want what they're *for* to move quickly and they want what they're *against* not to have a discretionary route."

The most specific and radical vision of a new Zoning Resolution to be offered at the symposium came from Mr. Salins. He differed from many of his colleagues in his view of zoning's basic purpose.

"While planners have long believed that zoning was their God-given and court-sanctioned way of implementing a 'comprehensive plan' and pursuing other planning objectives of the moment," Mr. Salins wrote, it was actually created "to prevent just three kinds of harms: excessive density, the juxtaposition of incompatible activities (especially factories near homes) and the most blatant of visual offenses.

"I propose we go back to the principle that zoning is a harm-preventing, rather than benefit-creating, enterprise."

In contrast to the current 125 district categories and 37 special districts, where zoning rules seek to perpetuate the special characteristics that define a given area, Mr. Salins proposed 18 zoning-district categories and no special districts. He said development ought to be permitted largely on an "as-of-right" basis, without need for discretionary review and special permits.

He urged that zoning be used to support what the market determines to be the "highest and best use" of given sites and that higher-ranked land uses, such as residential, be generally permitted in lower-ranked districts, such as manufacturing zones, instead of being prohibited.

Later in the symposium, R. Susan Motley, a former planning commission member, said, "It horrifies me when I hear conversation about the 'free market,' when I know that large developments are subsidized."

Marilyn Jordan Taylor, urban design partner in the architectural firm of Skidmore, Owings & Merrill, proposed a zoning hierarchy based not on use but on degrees of desired change.

**R**ATHER than residential, commercial and manufacturing districts, in her proposal there would be preserved districts, where "the emphasis would be on proscription — allowing uses to evolve but staying with the physical norm"; stabilizing districts, where "the emphasis would be on balance — meeting the average" and changing districts, where "zoning tools would require response to specific articulated public objectives" and public investment.

Mr. Schaffer said that, in certain respects, an overhaul of the Zoning Resolution was already under way, with the current development of a comprehensive waterfront plan, a citywide industrial study and a reexamination of community-facility regulations, which have been unchanged since 1961.

Yet even these broad initiatives might be seen as more piece-by-piece layering. And Mr. Wagner, who is now vice chairman of the L H Research concern, a public opinion and market research firm, said any attempt to rewrite zoning "should be done all at once, as opposed to incrementally."

Significant hurdles loom in pursuit of a new or thoroughly revised resolution.

"While there are many of us in the trenches who think it should be done, we really don't have a very high official who'd take this on as a major political platform," said Sigurd Grava, president of the American Planning Association's New York chapter, director of the graduate planning program at Columbia University and a vice president of the Parsons Brinckerhoff engineering concern.

"The idea of starting from scratch is probably a nightmare," said Samuel H. Lindenbaum, a zoning expert and partner in the law firm of Rosenman & Colin. "The city is divided into 59 community boards and in any community board you can't get them to

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agree on what's best for that area."

Besides the low rung occupied by zoning on the political agenda and the lack of city planners to carry it out, another obstacle is the absence of an overall plan.

"We need more than a new Zoning Resolution," said Kent L. Barwick, president of the Municipal Art Society, "we need to build a consensus about what we want to be in terms that are sufficiently particular to allow the city to adopt general physical master plans."

Mr. Schaffer said the Planning Department was "going to try, within the constraints of staff and time, to articulate a vision and comprehensive planning policies."

But the commission and department must overcome years of inertia in which the implicit message from City Hall seemed to be, "Make no big plans."

"If anything epitomizes the failure of New York City to plan, it is the fact that the Zoning Resolution *is* the plan," said Richard T. Anderson, president of the Regional Plan Association. "Most people think of it in physical terms. That's a fundamental mistake."

Yet planning on a citywide scale might become ensared in the city's environmental quality review process (called by its acronym, CEQR; pronounced "SEEK-er") and its byproduct, the environmental-impact statement (known as an E.I.S.).

**I**N an ironic turn of events," wrote Michael Kwartler, director of the Environmental Simulation Center at the New School for Social Research, "the idea of the E.I.S., conceived as supportive of land-use planning, has proven in practice to inhibit areawide planning and zoning."

"You really need good environmental planning," Mr. Schaffer said. "At the same time, this litigation-driven process known as CEQR has become a dysfunctional impediment to good planning and to updating the Zoning Resolution and the zoning maps."

"I believe state law allows us to substantially reform the city environmental review process," he said, "and we'll be doing that — with rule-making, management reforms and developing methodologies for areawide E.I.S.'s for area-wide rezonings."

Stuart K. Pertz, a partner at Haines Lundberg Wachler, successor to the Voorhees firm, said, "There may be a way to posit a plan — a concept, a philosophy, a position — which could be clear enough so that people could understand its direction but not so specific that it requires an E.I.S."

"When I was on the Planning Commission," he said, "the reason I was frustrated every minute was that I was told, word for word, that there could not be planning because planning requires an E.I.S. and the city couldn't afford an E.I.S. It was like the police saying, 'We'd like to save people from accidents but we're enjoined from doing so.'"

But Ms. Simpson said, "It seems too facile to say, 'We could do it but for the evils of environmental review.'"

She suggested that officials abbreviate the process by limiting impact statements to the most critical areas of concern rather than studying scores of issues in minute detail, more to forestall lawsuits than to enhance planning.

Even if a new Zoning Resolution should be adopted for the 21st century, it would certainly have unintended effects, particularly during the transition from the 1961 ordinance, when developers would exploit provisions that were on the verge of extinction.

Ultimately, even the best ordinance would have limits.

"A zoning resolution is not going to be able to deal with the root problems that are out there," Mr. Wagner said. "You can put any kind of zoning you want in Harlem, but it won't change the fact that 82 percent of all births are to single mothers." ■