



ISSUE BRIEF

Creating an Innovative Mix: What We Can Learn from San Francisco

IN THIS BRIEF:

An examination of NYC's proposal to create Enhanced Business Areas—a new type of zoning district, and the related special permit for 25 Kent Avenue, with recommendations for how the new zoning district could better achieve its stated goals, including specifications for enforcement, mission-driven non-profit stewardship, workforce linkages, and space requirements.

New York City is exploring the creation of a new type of zoning district intended to increase job density in the City's manufacturing and industrial areas, called Enhanced Business Areas. These districts will allow for a mix of "creative-office" and manufacturing/production space by utilizing an internal cross-subsidy mechanism to incentivize the preservation and creation of production space. A very similar initiative was recently launched in San Francisco in their Production, Design, and Repair (PDR) districts. New York should adapt several strategies employed in San Francisco to increase the amount of space being preserved for production, improve enforcement of use restrictions essential to achieving the mix of office and production uses in these districts, and maintain affordability for manufacturing businesses. These strategies will enable the Department of City Planning to meet its articulated goal of maintaining spaces for long-term production use in the Enhanced Business Areas.

NEW YORK'S ENHANCED BUSINESS AREAS AND SPECIAL PERMIT PROPOSAL

The Department of City Planning in New York City (DCP) has proposed creation of an "Enhanced Business Area," or EBA, a special district that stipulates a ratio to balance manufacturing and creative-office uses. The ratio is designed to create a cross-subsidy sufficient to underwrite the manufacturing space through a bonus for additional office development beyond what is currently allowed. Construction of new manufacturing space is generally not financially feasible without subsidy, while new office development can be highly profitable in an emerging market like North Brooklyn.

The EBA can be mapped over existing Industrial Business Zones (IBZ) without changing the underlying M1 zoning designation as the city has proposed for a portion of the existing Greenpoint Williamsburg IBZ in North Brooklyn. This proposed zoning text amendment does not address any of the underlying zoning problems in M zones that have been flagged by manufacturing advocates and the de Blasio administration itself, such as the need to restrict hotels, self-storage spaces, and other non-conforming uses.

Figure 1
 Rendering
 of 25 Kent
 Ave.



Image: Heritage Equity Partners

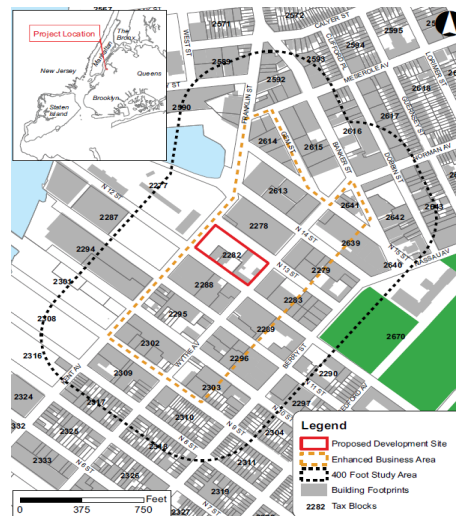


Figure 2
 25 Kent
 Site
 Location

Map: NYC Dept. of City Planning

25 KENT PROPOSAL

In tandem with the creation of a new type of special district and its first application in North Brooklyn, DCP has also certified an application for a special permit for a mixed use commercial-industrial development at 25 Kent Avenue (25 Kent) in that zone. The project will create approximately 63,700 square feet of space dedicated for production, or 17% of the total project, and 316,300 square feet of commercial and light industrial uses (which can be used for offices). Enforcement of use restrictions to preserve the production space is not discussed in the land use review materials for the special permit.

THE SAN FRANCISCO MODEL

San Francisco's equally strong real estate market and analogous zoning mechanisms provide an important model for New York City to address the goals of balancing mixed uses and increasing job density.

In 2004, San Francisco recognized that more restrictive zoning was required to protect its industrial sector and grow jobs. The city created Production, Distribution and Repair (PDR) districts, which explicitly disallow office, retail, hotel and other non-industrial development in these areas, except when ancillary to PDR use.

In 2014, the San Francisco Planning Commission and Board of Supervisors (the municipal legislature) approved an innovative zoning strategy with the intent of testing a cross-subsidy model to preserve a balance of industrial and commercial uses.

The zoning strategy addresses a market gap that, given the economics of industrial development, prevents the development of several large vacant PDR parcels. A limited amount of office development can create sufficient return to support construction of new manufacturing space. The zoning text for this mechanism requires that 33% of a new development be maintained for PDR uses. All projects require a Conditional Use Permit, similar to New York's Special Permits, ensuring that each mixed use project is subject to public review, and providing an opportunity to negotiate for community benefits tied to the permit. Issuance of the Certificate of Occupancy for the office space is tied to the Certificate of Occupancy for production space, and there are periodic reporting requirements.

Figure 3
Rendering
of Hundred
Hooper



Image: SFMade

The 2014 zoning also articulates criteria for the selection of appropriate sites, which the Commission determined might be met by 15 existing PDR parcels. The criteria included that sites be:

- Vacant or near-vacant¹ as of January 1st, 2014, a “look back” provision included to prevent the loss of viable industrial space and displacement of existing companies;
- In excess of 20,000 square feet; and
- In an area which already had a mix of uses including appropriate amenities.

The first project to move forward under this strategy is Hundred Hooper, which received its Conditional Use Permit with unanimous support from the Planning Commission on January 22, 2015. Ground breaking is projected in summer 2016.²

The project includes:

- 284,472 gross sq. ft. of office or other commercial uses which will be owned by the private developer, 100 Hooper Fee Owner LLC;
- 142,800 gross sq. ft. for PDR uses which will be owned by 100 Hooper Fee Owner LLC; and
- 56,402 gross sq. ft. for PDR uses which will be owned and operated by PlaceMade, a new non-profit organization that was created to provide affordable production space to strengthen San Francisco’s manufacturing sector.³

As presently contemplated, PlaceMade is purchasing Hundred Hooper at cost from the developer and the financing includes a developer contribution in the form of the donation of the land. The financing is also likely to include New Markets Tax Credit, and low-interest loans. These terms – the land contribution and “at cost” purchase price – recognize that the developer has already received a return on investment in the form of the office bonus, and does not need to obtain a return on the production space through the sale to PlaceMade.

Figure 4
Components
of San
Francisco’s
“PDR Business
Plan”

THE “PDR BUSINESS PLAN” REQUIRES DEVELOPERS TO:

Create a viable financial model based on reasonable rental rates for production, distribution and repair (PDR) uses

Identify target sectors for the space

Design the space to attract the most appropriate PDR businesses

Specify a mechanism to inform tenants about local hiring opportunities

San Francisco’s Planning Commission is employing two strategies to preserve affordable production space in this project and ensure enforcement. First, the Commission’s approval mandated that 56,400 sq. ft. of the PDR space (12 %) be owned and operated by PlaceMade or another qualified, mission-driven nonprofit organization. With the support of the City, PlaceMade is currently engaged in exclusive negotiations with the developer to purchase the property which was originally designed as a section within one building but was redesigned to be a separate, on-site PDR building.⁴ Ownership by PlaceMade is intended to both ensure the preservation of some affordable production space and to create a mechanism that advances the key policy objective, i.e. to curate the space for tenants that meet employment and job quality standards.

Secondly, the remaining PDR space that is owned by the private developer (142,784 sq. ft.) will be restricted to ensure that it meets public objectives. The requirements include creation of a “PDR Business Plan” which must identify target PDR sectors, design the space to attract the most appropriate PDR businesses, create a viable financial model based on reasonable PDR rental rates, and specify a mechanism to inform tenants about local hiring opportunities and First Source programs. These requirements are included in the terms of the Special Permit and become a deed restriction.

COMPARING THE SAN FRANCISCO AND NEW YORK MODELS

There are two major differences between the models in these cities: 1) the amount of space dedicated for production based on the stipulated ratios; and 2) the conveyance of a portion of the production space to a non-profit to facilitate enforcement of use restrictions and advance public policy objectives, including hiring local residents.

RATIO OF OFFICE TO PRODUCTION SPACE

In comparison to New York, the San Francisco mixed use model requires that approximately twice as much space be used for production. In San Francisco, 33% of the new building must be used for PDR uses. In New York, approximately 17% of the new building must be used for production. This disparity is not the result of differences in costs or rents. San Francisco and New York have very similar real estate markets and construction costs. A reason for this disparity may be that New York's underlying M1 base can be used entirely for offices (or hotels, or a number of other non-industrial uses) while San Francisco's base must be PDR uses. However, this difference doesn't change the cash flow which would result from these developments.

In addition, from a policy perspective, the fact that in New York the M1 zoning base permits as-of-right non-ancillary office uses highlights the need for reform and is not a justification for a weaker bargain. The de Blasio administration should complete its study of the North Brooklyn Industrial Business Zone and move forward on its commitment to strengthen industrial zoning before creating this new type of mixed use district.

Finally, it is also notable that the production space proposed for 25 Kent is all upper floor space, which is less attractive for many types of production uses, and is difficult to enforce. The Hundred Hooper project includes ground floor space for production and its special permit requires access to a freight elevator for upper floor PDR uses.

NON-PROFIT MANAGEMENT TO ENFORCE USES

In San Francisco, transferring ownership to PlaceMade achieves two policy objectives. First, it creates a benchmark for assessing management of the privately owned PDR space and helps to determine if the developer is truly making a good faith effort to comply with PDR restrictions.⁵ Second, it engages a public-spirited partner who can work with the tenants, the community, and city government to capitalize on opportunities


for equitable growth and resident employment. The mission of PlaceMade is to provide affordable space for manufacturers so it is far less likely to be impacted by the market.

In New York, there is no discussion of enforcement in the land use review (ULURP) materials associated with the 25 Kent special permit. New York has a history of weak and unsuccessful enforcement strategies in mixed use areas.⁶ During the initial community board review, it was repeatedly asserted that responsibility for enforcement rests with the Department of Buildings, which has a complaint-driven enforcement process and can levy fines if a non-compliant use is found in a restricted space. It is worth noting that locating the space above street level makes it less visible and consequently will make this already inadequate mechanism even less effective. In hot markets, building owners routinely flout use restrictions because the risks are so modest and the fines become a cost of doing business. There is also no process to ensure that the developer must make a good faith effort to lease the space. The developer can allow it to remain vacant and eventually apply to the Board of Standards and Appeals for a variance.

It could be that an enforcement mechanism will be spelled out in a community benefits agreement at a later point in the process. However, New York's experience with this approach has been largely unsuccessful to date. For example, at the Rheingold brewery site, just blocks from 25 Kent, the new owners of the property are not honoring provisions for affordable housing that were negotiated by the original landowner during ULURP. Furthermore, an agreement for 25 Kent would not ensure similar agreements for other sites in the proposed Enhanced Businesses Areas.

New York has been a leader in the use of non-profit organizations to preserve industrial space and has been much more aggressive than San Francisco in using its capital budget to support non-profit development.

Figure 5
Comparison
of Hundred
Hooper and
25 Kent
developments

SAN FRANCISCO: HUNDRED HOOPER	
	
Current Use	Vacant
Previous Zoning	PDR
Previous FAR	4.0 PDR FAR
Proposed Uses	<p>INDUSTRIAL (33%) 199,200 sq. ft. of which:</p> <ul style="list-style-type: none"> • 56,400 sq. ft. owned by Place Made • 142,800 sq. ft. owned by 100 Hooper LLC <p>OFFICE (67%) 285,000 sq. ft.</p> <p>TOTAL 484,200 sq. ft.</p>
Other	41,600 sq. ft. Open space
Enforcement	Non-profit ownership and PDR Business Plan specifying target industries, anticipated rents, conflicting use strategies and workforce development commitments

NEW YORK: 25 KENT AVENUE	
	
Current Use	Vacant
Previous Zoning	M1-2
Previous FAR	2.0 Industrial FAR (permits offices, hotel and storage) 4.8 Community Facilities FAR Bonus
Proposed Uses	<p>INDUSTRIAL (17%) 63,700 sq. ft.</p> <p>OFFICE (83%) 316,400 sq. ft.</p> <p>TOTAL 380,100 sq. ft.</p>
Other	
Enforcement	No special provisions beyond current Department of Buildings process

The Brooklyn Navy Yard Development Corporation and the Greenpoint Manufacturing and Design Center (GMDC) are nationally recognized examples of this strategy. Evergreen, which currently serves the businesses in the proposed EBA, has also become increasingly engaged in this work and already owns three buildings. The benefits of non-profit ownership are well documented⁷ and include long-term commitment to industrial use, alleviating displacement fears and encouraging tenants to reinvest in their businesses. These organizations also curate tenant businesses for potential high-quality job creation, and prioritize strong community engagement leading to increased local employment.

New York is now in the process of launching an Industrial Development Fund as part of the 2015 Industrial Policy. This fund could not only provide additional financial support for non-profit management, but also routinize and add certainty to the process which would assist non-profit developers. The City should leverage its track record of success in non-profit management and investment to improve enforcement.

CONCLUSION AND RECOMMENDATIONS

The City is currently engaged in a major study of the North Brooklyn Industrial Business Zone (including the area of the proposed EBA) with the intent of creating new zoning models for both solid industrial areas and mixed commercial and production areas that might be applied citywide. Certain commitments announced by the Mayor, including increased protection for the IBZs by limiting development of hotels and self-storage, have been put off pending that study.

It is curious that the Administration has decided to move forward with implementation of Enhanced Business Areas that will apply not only in the Greenpoint Williamsburg IBZ but create the template that might be used throughout the City, without waiting for completion of its study. Undoubtedly, some of the challenges discussed here might have been addressed as part of that study and various options to address them could be more fully vetted. The study may also have recommendations for the M1 base which would affect the overall cross-subsidy mechanism that is the heart of the proposed EBA.

Absent a more comprehensive approach to the industrial areas, there are several actions the City should take as part of the Enhanced Business Area and 25 Kent review process:

1. Increase the amount of space dedicated for production in Enhanced Business Areas to adequately address the demand for affordable, stable real estate for manufacturing and industrial businesses. San Francisco is requiring twice the amount that New York is seeking from developers.
2. Require that any production space created through a special permit be owned and /or operated by a non-profit organization dedicated to providing affordable space to strengthen the city's industrial sector.
3. Better integrate planning, economic development and workforce development initiatives:
 - a. Implement the already announced Industrial Development Fund and use it to support the acquisition of dedicated production space by non-profit managers;
 - b. As a condition of the special permit, require a business plan similar to the plan required in San Francisco to map how the developer will achieve the creation of affordable, compatible space for production and the hiring of local residents prior to occupancy
4. Include a "look-back" provision to ensure that the creation of new production space does not create an incentive to displace existing manufacturing firms.
5. Consider creation of a Development Rights Transfer District that would coincide with the Enhanced Business Area and allow developers to create dedicated production space off-site but within the district. There is often a premium cost to mixed use buildings because of increased costs from venting, sound attenuation, additional access and egress, loading dock requirements, etc. Reducing such operational conflicts can decrease the cost of the building and it might be possible to create more space with less subsidy by financing off-site industrial development (including provision for ownership by a non-profit).

ENDNOTES

1. Near vacant is defined as developed to less than 0.3 FAR
2. A second project is beginning the process.
3. PlaceMade also has the options of a long-term lease or a short-term lease with an option to buy.
4. PlaceMade has not completed the financing package for the acquisition of 56,400 sq. ft. As part of the negotiations the developer has agreed to contribute the land, valued at \$5 million, to PlaceMade and to sell the building at the cost of construction. PlaceMade is now in the process of lining up New Market Tax Credit and other support from the City to close a financing gap.
5. In New York, city agencies and elected officials have struggled with the problem of how to assess a developer's "good faith" efforts to meet special permit requirements to lease to industrial tenants and in the past have resorted to process indicators such as contacting brokers and advertising the availability of vacant space. Those process requirements are meaningless if the rent level is well beyond market for a manufacturer. The availability of comparable rents from a non-profit developer provides a better indicator of a developer's good faith.
6. See "Making Room For Housing And Jobs" (May 2015) available at <http://prattcenter.net/research/making-room-housing-and-jobs>; "Illegal Conversion of Industrial Space In The East Williamsburg Industrial Business Zone," (2005) and "The Garment Center: Still In Fashion," (2001), New York Industrial Retention Network
7. See "Brooklyn Navy Yard: An Analysis of Its Economic Impact (2013)" available at <http://prattcenter.net/research/brooklyn-navy-yard>



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