

THE URBAN PROSPECT

Housing, Planning and Economic Development in New York

June / July 2003

Volume 9, Number 2

NEW YORK'S UNDERGROUND HOUSING

New York City's aggressive efforts to create affordable housing have rightfully won praise from housing experts nationwide. But less widely recognized is the extent to which informal dwellings, illegal and unregulated, have proliferated in response to the city's surging housing demand. During the past fifteen years informal housing may have accounted for as much as half of the city's net housing creation, approaching a scale comparable to the celebrated Mitchell-Lama program.

In many communities, illegal housing units have reached a critical mass, eroding neighborhood aesthetics, straining services, and turning parking into a frustrating ordeal. Many feel the situation is hopeless, with demand for housing simply overwhelming the city's capacity to enforce housing and zoning codes. Cynics wonder if there isn't a "don't ask, don't tell" attitude towards enforcement, with inaction on the part of local officials encouraged by fear of what vigorous enforcement would uncover. In the meantime, an illegal market thrives, and unplanned, unanticipated density crowds neighborhoods once considered among the city's finest.

Informal Density

Alterations or additions to an existing structure for the purpose of creating residential units must be approved by the city's Department of Buildings (DOB). Illegal housing units are any dwellings that have not been issued certificates of occupancy (Cs of O) by DOB, either because they violate zoning or building requirements, or because owners failed to pursue the required documentation.

The units may take a variety of forms: rooming houses or SROs; commercial or manufacturing spaces used as living areas; and, most common in low-density areas, converted garages, attics, and basements in one- and two-family homes. In some instances, an abundance of illegal units is a reflection of neighborhood change outpacing zoning or regulatory reform. Some obsolete manufacturing spaces illegally reclaimed as residential lofts, for example, have been rezoned by the city to allow housing and mixed uses.

The effects of illegal housing units may be benign, the

units themselves and the population they house absorbed into neighborhoods without noticeable impact on local services or street life. This is most likely the case in higher-density neighborhoods, where the housing stock and local services are intended to support large populations. Similarly, some units may comply with building code and zoning regulations, but simply lack appropriate documentation.

Other illegal units violate fundamental regulatory principles intended to safeguard health and safety and to maintain neighborhood character and quality of life. Fatal fires caused by building code violations are the most horrendous consequence, but also troubling from a planning perspective are the cumulative impacts on communities.

Widespread conversions can have a significant effect on the population density of a block or neighborhood. The additional population burdens schools and open spaces, increases traffic and parking congestion, and strains sanitation, fire, and police services. Homeowners may create illegal curb cuts, or pave front or rear yards to provide private parking spaces for themselves or tenants. Equally vexing are increases in noise and garbage, and unsightly alterations to facades to create entrances for illegal units.

The neighborhoods in which the greatest number of complaints about illegal conversions are made tend to be those with the largest immigrant populations. There is no data that allows us to judge whether illegal conversions are more common in immigrant communities, or whether other residents are simply more likely to complain about conversions in those neighborhoods. It is obvious to anyone living in the boroughs, however, that illegal conversions are not limited to immigrant communities. Those who portray informal housing as an exclusively immigrant practice, as well as those who charge that concern about the problem is motivated by prejudice, minimize the very real housing and planning issues it poses.

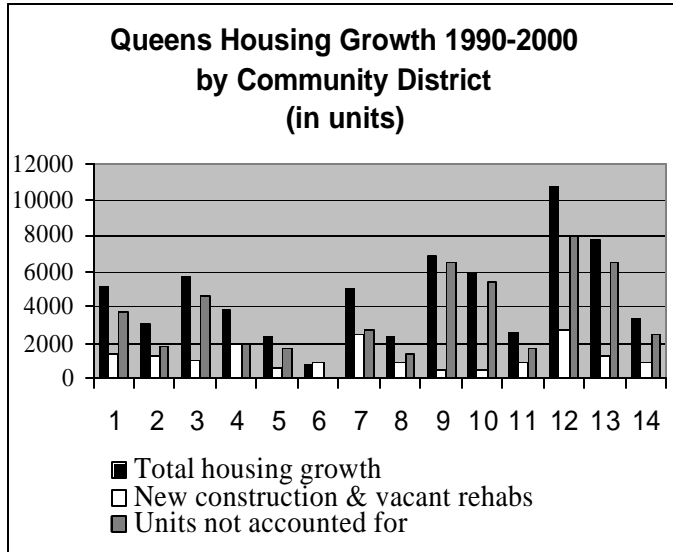
Measuring the Invisible

There are indicators that illegal units exist in all five boroughs, but no agency of the City of New York has formulated

estimates. The evidence, however, suggests that the problem is most extreme in Queens, where complaints of illegal conversions increased steadily from 856 in 1996 to more than 10,000 in 2002. Queens accounted for more than half of the 90,000 complaints filed citywide between 1992 and 2002. The character of its housing stock, immigration patterns, and income distribution probably make that borough most susceptible to informal housing creation.

To begin to understand the scale and nature of the illegal housing market, CHPC drew upon Census 2000 data for the fourteen Queens community districts, as well as for the city as a whole. Short of a house-by-house survey, the census is the logical starting point for building an estimate of the illegal housing market. Census data should reflect housing growth at a rate comparable to the rate of new construction, as reflected by new construction certificates of occupancy (Cs of O), and by data on rehabilitation of vacant units through city housing programs. Both series are available in the Furman Center’s “2002 State of New York City’s Housing and Neighborhoods” report. Housing growth in excess of documented new construction and rehabilitation activity could be interpreted as illegal additions.

The Queens housing stock increased by 63,867 units over the 1990 Census count, including 21,733 units in structures built during the 1990s. This is roughly consistent with



the city’s new construction data, which show that 17,228 new units came on the Queens market during the 1990s. The additional 4,505 units found in new structures, but not accounted for by city statistics, may be due to lags in city recording, or to temporary Cs of O not included in the data.

This leaves nearly 42,000 "new" Queens housing units that were counted by Census 2000 but were not identified in the earlier census and are not attributable to new construction or rehabs of vacant units. These “unaccounted for”

new units amount to 73 percent of total Queens housing growth. Brooklyn had the second highest percentage of unaccounted for units at 56 percent of total growth, while the figure was 44 percent in the Bronx and 29 percent in Staten Island. Manhattan experienced a net loss in housing units due to apartment enlargements and the elimination of older units, despite the fact that twice as many new Cs of O were issued in Manhattan than in any other borough. These unaccounted for units provide a rough estimate of the size of the informal housing stock.

While the units appear for the first time in the 2000 Census, some were added to the housing stock prior to 1990. Due to the efforts of the Department of City Planning (DCP) to improve census accuracy, approximately 150,000 housing units, whose addresses were either inaccurate or omitted on the Census Bureau’s master list, were added to the 2000 Census tally. Some were surely legal apartments previously overlooked by Census Bureau enumerators, but we believe that most were illegal additions to existing buildings. As a result, the 2000 Census includes the most accurate count of the city’s housing stock to date, including its illegal units.

Most illegal units are additions to older structures. Census data for Queens reveal an increase in the number of older housing units. Thirteen Queens Community Districts showed increases in units in structures built prior to 1990, some adding twice as many older units as newly constructed units. Only in Community District 6, the Forest Hills/Rego Park area, could all housing growth be attributed to new construction. There was a loss of some 200 units in structures built prior to 1990 in the district.

In contrast, in Queens Community District 3, the Jackson Heights/North Corona area, 5,700 new housing units were identified in the 2000 Census. Only 1,600 of the units were in structures built during the 1990s, while nearly 4,100 units were apparently added to the existing housing stock. In Community District 10, Ozone Park/Howard Beach, only 690 units were found in new structures built during the 1990s, while 5,200 units were added to structures built earlier.

The census is self-administered, and some residents of dwellings built in the 1990s may have misreported the year of their building’s construction. Even so, it is unlikely that misreporting can explain the magnitude of the surge in older units found by the census.

The Enforcement Dilemma

By the late 1990s, constituent concern about the proliferation of illegal units, especially in Queens, caused a flurry of political activity on the issue. Then-Borough President Claire Schulman convened the Queens Illegal Conversion Task Force in 1997 to examine the issue, which pressured the city to step up enforcement efforts. The DOB, in turn, created

the Quality of Life Task Force to exclusively respond to Queens complaints. Shortly afterwards the City Council passed Local Law 65 of 1997, increasing fines for illegal conversions. The city also committed funding to DOB for investigative staff increases. Both DOB and the Queens Borough President's Office also launched information campaigns to educate tenants, homeowners, and concerned neighbors about illegal housing creation and how to file complaints. Complaints clearly increased as residents became more savvy and the process itself was simplified, but it is unclear that enforcement efforts have done much to suppress the market.

The DOB's enforcement policy is complaint-driven, with investigators responding to complaints alleging illegal conversions but not actively seeking out illegal units. At any given time there are about a dozen investigators assigned to the Task Force, which is overwhelmed by the sheer volume of complaints. The DOB's fiscal 2004 budget included funds for five new assistants to support investigators.

Aside from the volume of complaints, legal and bureaucratic obstacles hinder investigations. Investigators are not legally permitted to enter apartments alleged to be illegal without either a court order or a willing tenant or landlord. They are often unable to access units, and are forced to close investigations without ascertaining whether or not a unit is in fact illegal. Unlike legal apartment inspections, neither the landlord nor tenant has an incentive to grant access.

When investigations do reveal illegal units, unless they are in dangerous or uninhabitable condition, landlords are given a grace period to correct violations. Correcting the violation means either bringing the unit up to code and obtaining a certificate of occupancy, or certifying that tenants and any fixtures added to a basement or attic to allow residential use have been removed. The DOB can issue a vacate order if a dwelling is deemed immediately dangerous, but rarely does so because of the shortage of relocation options. During all of fiscal 2002, DOB issued only 251 vacate orders.

If a follow-up inspection finds that a landlord has failed to correct a violation, responsibility for enforcement or punishment then passes to the Environmental Control Board (ECB). The ECB may impose fines, which remain the city's main punitive tool. Since 1997, homeowners may be fined \$250 to \$1,500 for a first offense and up to \$15,000 and one year in jail for a third offense within an 18-month period. The maximum penalty is rarely imposed by the ECB. In the end, there is little to deter homeowners from creating new illegal dwellings and it is difficult to ensure that existing units are permanently removed from the market.

Legalization is similarly complicated, requiring navigation of both zoning and building code regulations. In areas zoned R1 and R2, only single-family houses are permitted, and in R3-1 zones, only one- and two-family houses are

allowed. Consequently, most accessory units in those areas cannot be legal, regardless of the unit's conformity with building codes. Owners would be required to go before the Board of Standards and Appeals to request a variance to the zoning resolution. Boardinghouse and SRO situations are also prohibited under most circumstances, regardless of the quality of the accommodations.

In R3-2 zones and above, residential additions may be legal and appropriate according to zoning designations, but the housing stock may not be structurally suitable for accessory units. In the case of wood-frame houses, a building form that is common in some neighborhoods believed to have high rates of illegal conversion, multiple dwellings are simply not permitted.

In other cases, the cost of meeting building and housing guidelines for additional units in structures designed for single-family occupancy may be prohibitive. For example, the Housing Maintenance Code defines "basement" as an area that is below grade but more than 50 percent above ground while "cellars" are less than 50 percent above ground. Basements can be legally converted for residential use, while under most circumstances a cellar cannot. Basement conversions, however, need to meet Building Code requirements, such as that windows cover ten percent of total wall area and be twelve square feet in size. Few basements in their original state meet those standards. In either case, requirements on room size, fire stops on exterior walls, sprinkler systems, or second means of egress may preclude legalization unless significant structural changes and financial investments are made.

Some of the building code requirements precluding legalization may be ripe for reform, while others are fundamental to humane housing standards. Zoning, theoretically more malleable, is wrought with political and planning minefields. In either case, simply changing the rules to redefine these units as legal would evade the substantive health, safety and planning problems they pose. A progressive strategy would carefully differentiate the circumstances where accessory units are desirable from where they are detrimen-

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tal and devise procedures that effectively enforce those determinations.

Where Will They Live?

Few housing advocates would openly support blatant disregard for zoning, building, or housing maintenance codes, but some quietly wonder whether New York City should be grateful for the housing provided by illegal conversions. They view illegal units as the housing of last resort for poor and immigrant households, and fear that eliminating them would flood homeless shelters and service agencies with displaced tenants. Elected officials, meanwhile, are concerned that strict enforcement will be interpreted as harassment of immigrant constituencies.

If the city's illegal housing stock is now in excess of 100,000 units, as our analysis suggests, then the scale of dislocation that could result from sudden enforcement would indeed be problematic. On the other hand, the longer the city waits to devise a workable strategy to control illegal conversions, the more daunting the problem will become. As long as the city's population continues to grow, increasingly substandard spaces will be brought into the market -- making action more urgent but the dislocation potential greater.

Advocacy groups are understandably loathe to limit the housing options of people already isolated from the mainstream market. However, substandard housing has been linked to poor health and reduced mobility; allowing immigrants or native-born poor households to depend on such housing could have long-term adverse effects.

It is also dangerous for New York City to assume that immigration, widely considered a contributor to urban economic growth, will continue if housing and living conditions are unsatisfactory. If the city's neighborhoods are allowed to deteriorate through unplanned density and overloaded housing, they risk becoming the permanent wards of the most desperate populations, while upwardly mobile immigrants leave the city. Something like that is happening in at least one Queens neighborhood, Richmond Hill, from which Guyanese and Caribbean immigrants are relocating in search of better housing and a higher quality of life. Schenectady and other surrounding towns are actively wooing those New York City immigrant groups.

Another argument made for accepting illegal housing is that the rental income makes homeownership affordable. In fact, in neighborhoods where illegal units proliferate, homeownership may become less affordable. Rental income from accessory units will be capitalized into the market value of homes. For example, a \$600 per month net rental income translates, at a reasonable capitalization rate, into an additional \$100,000 in market value. Furthermore, if accessory units become the norm, house prices throughout the neigh-

borhood increase, regardless of whether or not a particular homeowner intends to operate an illegal unit. For first-time homebuyers, the higher price presents greater financing obstacles, and biases the market against those intending to obey the law. Some unsophisticated homebuyers may not even be aware that the rental income is illegal.

The Demise of Housing Standards

Coming to grips with the city's informal housing sector will be complicated, contentious and expensive. Solutions will undoubtedly mix regulatory reform, amnesty, evictions and subsidies, as well as additional legitimate housing creation. The longer we wait, however, the more formidable the problems will become.

The proliferation of illegal units is clearly a market response to the city's resurgent population and shortage of affordable housing. Increased housing production would allow many tenants in illegal units to find legitimate dwellings. Providing greater building densities in places where it is desirable would also divert density from areas where it is unplanned and inappropriate. Such measures are not enough, however, because housing demand is elastic and the illegal market will continue to have a price advantage. New supply is a complement to regulatory enforcement, not a substitute.

A century ago, in the midst of an earlier population surge, housing reformers fought for regulations to ensure minimum standards of habitability for the city's housing stock. The Tenement House Act of 1901, for example, was passed despite dire warnings that higher standards would worsen the city's housing shortage. Few New Yorkers today would question the wisdom of requiring that all rooms have windows, or every apartment have a bathroom. In contrast, the response to the current housing crisis has been to neglect existing housing and zoning standards. Without a doubt, changing conditions demand that public policies, including housing regulations, be periodically reviewed to ensure that they are still serving the public purpose. New York City's policy toward the proliferation of illegal housing, however, does not represent model regulatory reform. Rather, it constitutes a politically expedient approach that may have long-term consequences for the quality of neighborhoods and the legitimacy of housing regulation.

The rise in complaints about illegal housing indicates that the public is growing impatient with the city's laxity toward enforcement. The complaints are reactions to the visible social costs of a burgeoning informal housing sector that affects entire neighborhoods. The problems faced by tenants of illegal dwellings are seldom heard, however, since they have virtually no rights or recourse to regulatory protection. -- *This article was written by Martha Galvez and Frank Braconi*