What happens if gerrymandered zoning lots are permitted?
In NYC, we have **tax lots** & we have **zoning lots**

**Tax lots** are real property: they are recorded, owned, and taxed

**We have very good data on tax lots**
**Zoning lots** are made up of one or more adjacent tax lots

Zoning lots are not real property: they are used for zoning purposes only

We have terrible data on zoning lots
Why would someone merge zoning lots?

Usually done to move floor area from one lot to another.
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But it’s also done for:

- Legal windows on the lot line
- Building and tower coverage requirements
- Open space ratios and height factor calculations
- To connect two other lots
- Parking
Most of the time, a bigger zoning lot is better for developers

• A bigger lot means more floor area and a bigger building

• But sometimes a smaller zoning lot better
200 Amsterdam’s zoning lot was gerrymandered from a huge zoning lot using **PARTS** of tax lots.
This lot has been challenged to the Board of Standards and Appeals

- The Department of Buildings interprets zoning
- The BSA oversees DOB’s interpretation of the zoning resolution
- If you’re unhappy with the DOB, the BSA is the last stop before a judge
- Other than testimony, there is no role for City Council in this process
The Zoning Resolution defines a zoning lot as:

A tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of 10 linear feet, located within a single block.

But ZR also says:

A zoning lot may be subdivided into two or more zoning lots, provided that all resulting zoning lots and all buildings thereon shall comply.

Around 99% of the time, since 1977, this has meant that zoning lots are composed of tax lots: both in creating and subdividing.
The DOB acknowledged their approval was a mistake!

- In early 2018, DOB issued a draft Building Bulletin
- It said that zoning lots were made of “tax lots (not parts of tax lots)”
Up until the March 26 Review Session, I believed there were two possible findings for the BSA:

1) Find for petitioners: Zoning lot is illegal, permit is revoked

2) Find for DOB: Zoning lot is illegal, the permit is not revoked, but no more gerrymandered lots will be permitted

https://youtu.be/4Zhe6UwePWU?t=3820
After the Review Session, it was clear there were three options:

1) Find for petitioners: Zoning lot is illegal, permit is revoked

2) Find for DOB: Zoning lot is illegal, the permit is not revoked, but no more gerrymandered lots will be permitted

3) Find for the developer: allow the permit to stand; prohibit DOB from issuing the Building Bulletin; allow gerrymandered zoning lots anywhere in NYC

The third option appears likely and has citywide policy impacts!
What are the citywide impacts?

1) Infill development becomes much easier
   a) Buildings can be placed much closer to existing windows
   b) Open space is lost

2) Increases development potential with no ULURP or EIS

3) Gerrymandering will create an enormous administrative headache

4) All the things I haven’t thought of
1) Infill development becomes much easier

- ZR 23-70 dictates minimum spacing between buildings on the same zoning lot

- Usually, 23-70 requires residential buildings to be spaced 40, 50 or 60 feet apart

- In 2015, the DCP tried to change required building spacing in this section to no more than 40 feet as a part of ZQA

- In 2016, the City Council rolled back that change

- If zoning lots can be gerrymandered, 23-70 may become moot
An example: Residential infill

- Infill development is most often an issue on “height factor sites” (e.g. R6, R7-1, R7-2 and R8), which have not used all available floor area

- These can be developments like Stuyvesant Town, Mitchell Lama projects or NYCHA

- They are usually on a single lot and might look like this development, zoned R8:
Building spacing rules of 23-70 make small and awkward development sites for residential infill here

- The green areas comply with window-to-window or window-to-wall building spacing requirements
- Small, irregular corner pieces are poor development sites for large buildings
- The northern middle site would cover the driveway and emergency access, leaving only the southern site for development
Gerrymandering would allow the tax lot to be subdivided into two zoning lots, as follows:

- The gerrymandered zoning lot could be drawn just 30 feet from the existing residential buildings windows (the minimum required to be "legal")
- A new building could be built directly on the gerrymandered zoning lot line, provided it has no windows facing on the lot line
- The result is a much bigger site for infill development
Buildings need to fit within a sky exposure plane.

Neighboring development

Existing buildings

Sky Exposure Plane

Development site
There is enough unused development rights on the zoning lot for a 300,000 SF tower about 500’ tall
On the un-gerrymandered zoning lot, the building does not fit under the sky exposure plane.
The gerrymandered zoning lot would allow the building to fit.
2) Gerrymandering increases development potential with no ULURP or EIS

- How much is an open question, but in 2015, the capacity of East Harlem sites were evaluated in the East Harlem Neighborhood Plan

- They were studied under 60 foot building spacing and under the then proposed 40 foot building spacing

- Gerrymandering effectively changes building spacing to 30 feet, with conditions
Changing building spacing to 40 feet increased infill capacity 50% in East Harlem

60 foot building spacing = 3,900 units

40 foot building spacing = 5,800 units
Where might else might gerrymandering happen?

- Map is work in progress from the MAS
- Underbuilt height factor blocks shown
3) Gerrymandering will be an administrative nightmare

This is a zoning lot exhibit for the gerrymandered lot at original resolution
The numbers can’t be read
There is no database

There are no shapefiles

There is no website

We have bad scans like this →

Widespread gerrymandering would be an administrative disaster, which is one reason why DOB issued their draft Building Bulletin

We are simply not equipped to deal with this
4) What am I not thinking of?

• Whenever zoning text changes, there are nearly always unexpected consequences

• DCP and City Council write text, but DOB interprets it without ever asking DCP or CC what it means

• There are often unintended consequences

• If zoning lots can be any shape, how will developers form them?

• I’ve answered only one way. There will be others . . .