

HISTORIC HOUSING FOR ALL: HISTORIC PRESERVATION AS THE NEW INCLUSIONARY ZONING

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“The real world of human action is too varied and complex to be captured by any set of categorical structures [L]ife’s diversity and complexity cannot be contained within square corners.”¹

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1. STEVEN L. WINTER, A CLEARING IN THE FOREST: LAW, LIFE, AND MIND 189–90 (2001).

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INTRODUCTION

When Americans celebrated the 100th anniversary of Jane Jacobs’s birth this year, they reflected on her tireless advocacy for vibrant, diverse cities in the face of widespread urban renewal.² Jacobs championed an animated streetscape of unique buildings, old and new; an eclectic array of merchants; and colorful, if chaotic, sidewalk activity—essentially “an oasis with an irresistible sense of intimacy, cheerfulness, and spontaneity.”³ Although urban renewal cut a path of destruction through the heart of many cities during the mid-twentieth century, Jacobs’s ideas lived on to shape the historic preservation movement and many other progressive policies that have influenced modern planning.⁴

But Jacobs’s fight is far from over. Ironically, the renewed interest in urban living—and urban pioneering—that was sparked by her theories has reignited the same tensions that divided Jacobs and her contemporaries back in the 1950s: preservation versus demolition, old versus new, rich versus poor.⁵ At the core of these tensions is an affordable housing crisis. Consequently, the strides Jacobs made and the policies she advanced—particularly historic preservation—are being criticized by housing advocates as obstructing affordable housing development.⁶

2. See, e.g., Roberta Brandes Gratz, *The Jane Jacobs Century*, CITYLAB (May 4, 2016), <http://www.citylab.com/design/2016/05/happy-100th-birthday-jane-jacobs/481035> (reflecting on Jane Jacobs’s lasting impacts on urban culture and planning).

3. Jane Jacobs, *Downtown is for People*, FORTUNE (Sept. 18, 2011), <http://fortune.com/2011/09/18/downtown-is-for-people-fortune-classic-1958/>.

4. See Libby Nelson, *Jane Jacobs Believed Cities Should Be Fun—and Changed Urban Planning Forever*, VOX (May 4, 2016 4:30 PM), <http://www.vox.com/2016/5/4/11583342/jane-jacobs-100th-birthday> (“Jacobs argued [that urban renewal] ignored everything that made cities great: the mixture of shops, offices, and housing that brought people together to live their lives. And her vision triumphed.”).

5. See Peter Moskowitz, *Bulldoze Jane Jacobs*, SLATE (May 4, 2016), http://www.slate.com/articles/business/metropolis/2016/05/happy_100th_birthday_jane_jacobs_it_s_time_to_stop_deifying_you.html (arguing that Jacobs’s vision of urbanism had shortcomings that today are being realized, as once-diverse neighborhoods have become “all-white, aesthetically suburban playground[s] for the rich”).

6. See, e.g., Conor Dougherty, *In Cramped and Costly Bay Area, Cries to Build, Baby, Build*, N.Y. TIMES (Apr. 16, 2016), <https://nyti.ms/2kmANOG> (reporting on a pro-development renters group in San Francisco, the SF Bay Area Renters’ Federation, or SFBAREF, which argues that the city needs as much new development as possible, no matter the consequences). “You have to support building, even

Thus, on Jacobs's 100th birthday, the question on the minds of many was: on which side of the affordable housing debate would Jacobs fall?⁷ Would she side with affordable housing development or the preservation of historic districts?⁸ It is impossible to answer this question, and not just because Jacobs is no longer around to opine on the issue, but because it is the wrong question. We should be asking: how can historic preservation be used to further affordable housing goals?

The main argument from housing advocates is twofold: that the only way to create enough affordable housing to meet the demand is to build as much housing as possible, and that historic districts prevent development, thereby obstructing affordable housing growth.⁹ This Article proposes that historic preservation is not the problem and that preservation is a necessary tool for creating and maintaining quality, affordable housing.

Part I of this Article provides a background on the tension between historic preservation and affordable housing, and lays out the argument against historic preservation. Part II examines the flawed assumptions on which the argument is premised, and explains why preservation is not the problem. Part III illustrates how historic preservation can, in fact, further affordable housing goals. Finally, Part IV explores ways in which historic preservation laws and policies can be strengthened to create more higher-

when it's a type of building you hate," said the head of SFBARF. *Id.*; see also Gabriel Metcalf, *What's the Matter with San Francisco?*, CITYLAB (July 23, 2015), http://www.citylab.com/housing/2015/07/whats-the-matter-with-san-francisco/399506/?utm_source=SFFB (explaining that progressive policies developed to respond to blight and urban disinvestment during the twentieth century are not effective in dealing with modern-day problems of rapid population growth and high housing costs).

7. Kriston Capps, *Whose Side in the Housing Wars Would Jane Jacobs Take Up Today?*, CITYLAB (May 4, 2016), <http://www.citylab.com/work/2016/05/would-jane-jacobs-be-a-nimby-or-yimby-bob-dylan/481269>.

8. *Id.*

9. See Dougherty, *supra* note 6 (discussing the tension between Bay Area progressives that pits preservation of the City's historic beatnik charm against the accommodation of affordable housing through increased construction); Edward L. Glaeser, *Preservation Follies: Excessive Landmarking Threatens to Make Manhattan a Refuge for the Rich*, CITY J. (Spring 2010), <http://www.city-journal.org/html/preservation-follies-13279.html> (arguing that historic district restrictions on new construction reduce housing supply and drive up real estate costs, "mak[ing] those districts exclusive enclaves of the well-to-do, educated, and white"); Kriston Capps, *Why Historic Preservation Districts Should Be a Thing of the Past*, CITYLAB (Jan. 29, 2016), <http://www.citylab.com/housing/2016/01/why-historic-preservation-districts-should-be-a-thing-of-the-past/431598> (arguing that historic districting is "protectionist single-family zoning" that "thwart[s]" access to desirable neighborhoods); Matthew Yglesias, *Legalize Skyscrapers*, SLATE (Apr. 18, 2012 4:26 PM), http://www.slate.com/articles/business/moneybox/2012/04/d_c_s_height_restrictions_on_buildings_are_hurting_america_.html (arguing that affordability problem in D.C. "could be ameliorated" by removing height restrictions and building taller).

quality affordable housing, while at the same time encouraging preservation.

I. BACKGROUND

A. Local Historic Preservation Controls

Local governments have implemented a variety of zoning regulations that restrict or condition development, but historic preservation has received the brunt of the criticism in the affordable housing debate. The reason for this heavy criticism is that historic preservation is perceived as little more than an exclusionary tool for the elite, keeping out low-income, multi-family development.¹⁰ Before considering the strength of this argument, it is important to understand the structure of historic preservation laws and how they do or do not restrict development.

1. National Register Historic Districts

The National Register of Historic Places formally recognizes the historic and architectural significance of properties and districts but exercises no regulatory control; designation is merely honorary.¹¹ As the National Park Service states: “National Register listing places no obligations on private property owners. There are no restrictions on the use, treatment, transfer, or disposition of private property.”¹² Properties listed on the National Register may, however, benefit from state and federal tax incentives and preservation grants.¹³ With over 11,000 National Register

10. See, e.g., J. Peter Byrne, *Historic Preservation and its Culture Despisers: Reflections on the Contemporary Role of Preservation Law in Urban Development*, 19 GEO. MASON L. REV. 665, 668 (2012) (discussing economist Edward Glaeser’s critique of preservation laws as “legal tools by which the wealthy and powerful exclude high-rise developments from their cozy historic districts”); Todd Schneider, Note, *From Monuments to Urban Renewal: How Different Philosophies of Historic Preservation Impact the Poor*, 8 GEO. J. POVERTY L. & POL’Y 257, 258 (2001) (“[Critics] accuse preservationists of being elitists who manipulate the preservation process to keep ‘undesirables’ (i.e., the poor and minorities) out of their neighborhoods.”). See generally David B. Fein, Note, *Historic Districts: Preserving City Neighborhoods for the Privileged*, 60 N.Y.U. L. REV. 64 (1985) (tracing the evolution of historic districting while noting perceived connections between designations and development).

11. See *National Register of Historic Places Program: Fundamentals*, NAT’L PARK SERV., https://www.nps.gov/nr/national_register_fundamentals.htm (last visited Apr. 28, 2017) (outlining the process, benefits, and lack of restrictions associated with a National Register designation).

12. *Id.*

13. *Id.*

Historic Districts containing over 850,000 buildings, the potential benefits are vast.¹⁴

2. Local Historic Districts

The local historic district is the strongest preservation tool. To create an historic district, the local government adopts an ordinance providing for the formation of the district, the criteria for establishing the district, and the guidelines for review.¹⁵ Before property owners can make exterior alterations, demolish existing buildings, or construct infill development, they must obtain a certificate of appropriateness from the commission, certifying that the work satisfies the guidelines.¹⁶ Typically, preservation ordinances incorporate the Secretary of the Interior's Standards and Guidelines for Rehabilitation,¹⁷ but local governments may adopt more or less restrictive guidelines based on the community's preservation or other planning goals.¹⁸ Even the more restrictive guidelines remain flexible; they are merely guidelines and cannot prevent change or halt new development.¹⁹

The first local historic district was established in Charleston, South Carolina in 1931.²⁰ Nearly a century later, there are over 2,300 local historic districts in all 50 states.²¹ Historic districts are found in rural areas, suburban neighborhoods, and city centers; they may be comprised of small clusters of buildings or encompass hundreds of acres of urban land; and they may reflect a range of architectural styles, development patterns, and historical trends.²² Regardless of the location, size, or level of significance, the recognized benefits of historic districts—economic development,

14. DONOVAN RYPKEMA, HISTORIC PRESERVATION AND AFFORDABLE HOUSING: THE MISSED CONNECTION 11 (2002), <http://www.placeeconomics.com/wp-content/uploads/2016/08/placeeconomicspub2003b.pdf>.

15. Jess R. Phelps, *Moving Beyond Preservation Paralysis? Evaluating Post-Regulatory Alternatives for Twenty-First Century Preservation*, 37 VT. L. REV. 113, 132–33 (2012).

16. *Id.* at 134.

17. The Secretary of the Interior's Standard and Guidelines for Rehabilitation are discussed further in Part II.

18. *Creating & Using Design Guidelines: Role They Play*, NAT'L PARK SERV., <https://www.nps.gov/tps/education/workingonthepast/roletheyplay.htm> [hereinafter *Role They Play*] (last visited Apr. 28, 2017).

19. *Creating & Using Design Guidelines: What They Can and Cannot Do*, NAT'L PARK SERV., <https://www.nps.gov/tps/education/workingonthepast/canandcannot.htm> [hereinafter *What They Can and Cannot Do*] (last visited Apr. 28, 2017).

20. Phelps, *supra* note 15, at 122.

21. *Id.* at 132.

22. *See National Register of Historic Places Program: Research*, NAT'L PARK SERV., <https://www.nps.gov/nr/research> (last visited Apr. 28, 2017) (database of National Register properties).

sustainability, stabilized property values, and social and psychological well-being—remain constant.²³

3. Neighborhood Conservation Districts

A neighborhood conservation district is an aesthetic zoning regulation typically implemented in neighborhoods that do not qualify for historic district designation, due to their lack of historical significance or loss of historic fabric, but have distinct characteristics that are worthy of protection.²⁴ Often referred to as “historic districts lite,” conservation districts “have less stringent regulatory hurdles and more flexibility in implementation [than do local historic districts]”²⁵ While conservation districts range in their level of regulatory control, many focus more on preventing teardowns and encouraging the rehabilitation of existing buildings, rather than preserving individual architectural details.²⁶

Cambridge, Massachusetts created the first neighborhood conservation district in 1983, and a number of other cities followed suit, including Nashville, Dallas, Miami, Boise, and Chapel Hill.²⁷ Currently, there are an estimated 165 neighborhood conservation districts in 35 states.²⁸ While there is little documentation on the benefits (or shortcomings) of these districts, anecdotal evidence suggests that they provide benefits similar to those conferred by historic districts, while providing property owners more flexibility for change.²⁹

4. Height of Buildings Act of 1910

Building height restrictions are one of the more controversial growth controls. While many of these restrictions have been lessened or eliminated

23. *People Protecting Community Resources: Summary of Benefits*, NAT'L PARK SERV., <https://www.nps.gov/tps/education/workingonthepast/benefits.htm> (last visited Apr. 28, 2017).

24. Anika Singh Lemar, *Zoning as Taxidermy: Neighborhood Conservation Districts and the Regulation of Aesthetics*, 90 IND. L.J. 1525, 1533 (2015).

25. *Id.* at 1534 (alteration in original) (quoting Adam Lovelady, Comment, *Broadened Notions of Historic Preservation and the Role of Neighborhood Conservation Districts*, 40 URB. LAW. 147, 148 (2008)).

26. Lovelady, *supra* note 25, at 155.

27. Lemar, *supra* note 24, at 1532.

28. *Id.*

29. See Rebecca Lubens & Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*, 21 PRES. L. REP. 1001, 1040–41 (2002–03) (concluding that “[w]hile meaningful studies on the effectiveness of conservation districts as a neighborhood conservation tool have yet to come, initial reports are promising,” and discussing benefits conferred in several districts).

over time,³⁰ one notable example has remained in full force for over 100 years: the Height of Buildings Act of 1910.³¹ The Act provides that, in Washington, D.C., no building shall exceed in height the width of the street, plus 20 feet; no building shall exceed 130 feet in any business district, with some exceptions on Pennsylvania Avenue for buildings not exceeding 160 feet; and no building in a residential district shall exceed 85 feet.³² While adoption of the Act was motivated in part by fire safety concerns,³³ preservationists have embraced the height restrictions as protective of L'Enfant's plan and the monumentality of the nation's seat of government.³⁴ The height restrictions also prevented skyscrapers from consuming Washington, D.C.—the fate of many inner-ring suburbs surrounding the city.³⁵

B. The Affordable Housing Problem

Low-income families have always struggled with securing safe, sanitary, and affordable housing. More than a century ago, the poor and immigrant classes crowded into tenement houses lacking sanitation, fire safety, and adequate light and ventilation.³⁶ In the mid-twentieth century, low-income African-American families were warehoused in substandard public housing high rises, many of which were segregated from the rest of the city by highways and other physical and psychological barriers.³⁷ Fortunately, law and policy progressed over the past century. Today, health and safety regulations (when enforced) protect tenants from substandard housing conditions, and inclusionary zoning policies seek to abate the

30. See, e.g., Benjamin M. Gerber, "No-Law" Urban Height Restrictions: A Philadelphia Story, 38 URB. LAW. 111, 112–13 (2006) (discussing elimination of Philadelphia's height restriction).

31. Act of June 1, 1910, ch. 263, 36 Stat. 452.

32. *Id.* at 453–54.

33. See *id.* at 452–53 (providing for fireproofing and other fire safety mechanisms).

34. See ACHP Comments to U.S. House Oversight Committee on D.C. Height Act, ADVISORY COUNCIL ON HISTORIC PRESERVATION, http://www.achp.gov/news_20131212_heights.html (last visited Apr. 28, 2017) (emphasizing that "the Height Act has been an essential element in protecting the historic character of the city in its entirety").

35. See Georgette C. Poindexter, *Light, Air, or Manhattanization?: Communal Aesthetics in Zoning Central City Real Estate Development*, 78 B.U. L. REV. 445, 455 (1998) (noting that Maryland and Virginia suburbs, which have less restrictive regulations, are consumed by "clump[s] of towers" and "maze[s] of . . . ugly buildings").

36. See Elizabeth M. André, *Fire Escapes in Urban American: History and Preservation* 75 (2006) (unpublished M.S. thesis, University of Vermont), <http://www.uvm.edu/histpres/HPJ/AndreThesis.pdf> (detailing conditions of tenement life in turn-of-the-century New York City).

37. See Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 U. PA. L. REV. 1285, 1295 (1995) (explaining how public housing projects were isolated "in the least desirable parts of town").

publically funded segregation of the twentieth century (albeit with mixed results).³⁸ Nonetheless, cities still struggle to meet the demands of providing quality affordable housing, particularly in tight markets where population growth limits housing supplies.³⁹

C. The Perceived Tension Between Preservation and Affordable Housing

Many housing advocates believe there is only one viable solution to the affordability problem—more housing—and to achieve that goal, cities with tight housing markets need to eliminate their growth controls and add greater density.⁴⁰ This is where historic preservation is perceived as an obstacle: historic districts prevent new construction, thereby gentrifying those districts as enclaves for the wealthy, reducing the supply of housing in the city, and decreasing the availability of affordable housing.⁴¹ This fight against historic preservation is particularly persistent in San Francisco, New York City, and Washington, D.C., where there is no longer room to expand outward, only upward, all while the populations continue to grow and exert pressure on already tight housing markets.⁴²

II. PRESERVATION IS NOT THE PROBLEM

Housing advocates who criticize historic preservation as an obstacle to affordable housing premise their arguments on several unfounded assumptions: (1) that the actual cost of housing is the only factor that impacts a family's ability to afford housing; (2) that historic districts prevent development; (3) that historic preservation causes gentrification and displaces residents; and (4) that housing is fungible and increasing the overall supply will meet the affordable housing demand. These assumptions are, at best, overstated. At worst, they are completely false.

38. The scholarship debating the merits of inclusionary zoning is myriad. For one example, see Tim Iglesias, *Maximizing Inclusionary Zoning's Contributions to Both Affordable Housing and Residential Integration*, 54 WASHBURN L.J. 585 (2015).

39. See BARRY L. STEFFEN ET AL., U.S. DEP'T OF HOUS. & URBAN DEV., WORST CASE HOUSING NEEDS: 2015 REPORT TO CONGRESS 11–19 (2015) https://www.huduser.gov/portal/Publications/pdf/WorstCaseNeeds_2015.pdf (detailing the scope of the affordable housing problem across geographic regions).

40. See *supra* comments and sources accompanying note 9 (advocating for the elimination of historic preservation protections in favor of increased construction to accommodate affordable housing).

41. See Glaeser, *supra* note 9 (“This preservation is freezing large tracts of land, rendering them unable to accommodate the thousands of people who would like to live in Manhattan but can’t afford to.”).

42. Dougherty, *supra* note 6; Glaeser, *supra* note 9; Yglesias, *supra* note 9.

A. Factors Impacting Affordability

The first assumption is that the actual cost of housing is the only factor that impacts a family's ability to afford housing.⁴³ Before addressing this assumption, it is necessary to define "affordable housing." According to the U.S. Department of Housing and Urban Development (HUD), a family is considered "cost burdened" if it pays more than 30% of its income for housing,⁴⁴ and a family is "severely cost burdened" if it pays more than 50% of its income for housing.⁴⁵ This ratio "is the most widely used and the most conventional measure of housing affordability . . . and has shaped views [on] who has affordability problems, the severity of the problems, and the extent of the problems."⁴⁶

As a measure of housing affordability, the housing-income ratio is problematic on many fronts. First, the ratio is not adjusted based on household income. A household earning \$100,000 per year that is paying 50% of its income on housing may not be as severely cost burdened as a household earning \$30,000 per year and spending the same percentage on housing. While housing affordability is a very real problem for many families, this ratio does not accurately reflect the housing needs of low-income families. As is obvious, "severe rental burdens disproportionately impact poor families."⁴⁷ And families with the lowest incomes, "those earning less than 50 percent of the area median income [and] pay[ing] more than half their income [o]n rent," often live in substandard housing.⁴⁸

Why is this distinction important? Because the affordable housing problem cannot adequately be addressed without accurate information on the families with the greatest need—those with the lowest incomes and the most severe rental burdens. Building more housing units may decrease the shortage of affordable units *to an extent*, but ensuring that those newly created units are affordable *and available* to the lowest income families is critical. Currently, "higher income renters occupy substantial shares of units

43. See *Rental Burdens: Rethinking Affordability Measures*, U.S. DEP'T HOUSING & URB. DEV. (Sept. 22, 2014), https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html [hereinafter *Rental Burdens*] (critiquing the presumption that housing affordability is directly tied to cost).

44. *Affordable Housing*, U.S. DEP'T HOUSING & URB. DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing (last visited Apr. 12, 2017).

45. *Rental Burdens*, *supra* note 43.

46. Melanie D. Jewkes & Lucy M. Delgadillo, *Weaknesses of Housing Affordability Indices Used by Practitioners*, 21 J. FIN. COUNSELING & PLAN. 43, 46 (2010) (citation omitted).

47. *Rental Burdens*, *supra* note 43.

48. *Id.*

that would be affordable to the lowest income renters,” further exacerbating the affordability problem.⁴⁹

The second major problem with the affordable housing ratio is that it does not account for the other myriad variables that drive housing decisions and impact household expenditures.⁵⁰ For example, a household with children will certainly have greater expenses than one without.⁵¹ Furthermore, many households make trade-offs, foregoing more affordable housing options to live in close proximity to public transit or within walking distance to jobs, schools, stores, and other amenities.⁵² The savings on transportation costs and medical bills (which a walkable lifestyle may reduce) can offset higher housing costs—or even provide a financial bonus to households.⁵³ This is particularly relevant for historic districts, which are often located in transit-oriented, walkable neighborhoods and are desirable for this very reason.⁵⁴

Finally, the ratio does not consider other external factors that impact household income. Lack of jobs, low wages, and the high cost of other necessities, such as health care, child care, and food are all factors that impact a household’s ability to afford housing—the less income one has for housing after factoring in other expenses, the greater the need for affordable housing.⁵⁵ These are all important factors to consider because they help inform local governments about the best way to achieve affordable housing goals.

49. STEFFEN ET AL., *supra* note 39, at 2.

50. Jewkes & Delgadillo, *supra* note 46, at 46; *Rental Burdens*, *supra* note 43.

51. *Rental Burdens*, *supra* note 43.

52. *Id.*; Jewkes & Delgadillo, *supra* note 46, at 48.

53. *See generally* AM. PUB. HEALTH ASS’N, HIDDEN HEALTH COSTS OF TRANSPORTATION 1–9 (2010), <http://www.railstotrails.org/resourcehandler.ashx?id=4546> (describing health and monetary benefits of transit-oriented, walkable communities); Todd Litman, *Evaluating Affordable Housing Development Strategies*, PLANETIZEN BLOG (Mar. 23, 2016, 6:00 AM), <http://www.planetizen.com/node/85106/evaluating-affordable-housing-development-strategies> (“[A] cheap house is not truly affordable if its isolated location leads to high transportation costs, and a more costly house may be more affordable overall if located in an accessible, multi-modal neighborhood where transport costs are minimized.”). *See also* Jewkes & Delgadillo, *supra* note 46, at 50–51 (emphasizing that transportation costs are significant percentage of household expenses and that increase in commute time “usually outweighs the savings on housing” one might obtain from living farther from work and transit).

54. *See* RYPKEMA, *supra* note 14, at 12–13 (explaining that historic neighborhoods are already transit-oriented and walkable).

55. *See* Jewkes & Delgadillo, *supra* note 46, at 46 (noting that the HUD ratio fails to consider a range of factors affecting household expenses); STEFFEN ET AL., *supra* note 39, at 25 (concluding that a contributing factor in reduction in “worst case needs” households was an increase in income).

B. Development in Local Historic Districts

The second assumption is that local historic districts are exclusionary and prevent development.⁵⁶ This statement demonstrates a fundamental misunderstanding of historic preservation law and the extent to which historic district regulations impact housing affordability. First, historic district guidelines are not designed to prevent development or obstruct change.⁵⁷ In fact, they *cannot* “[l]imit growth, or regulate where growth takes place.”⁵⁸ Rather, they ensure the appropriateness of new development and building alterations—i.e., that the changes do not compromise the integrity of the historic and architectural qualities that contribute to the district’s significance.⁵⁹ The Secretary of the Interior’s Standards, on which many local historic district guidelines are modeled, expressly provide for compatible new additions, exterior alterations, and new construction, as long as the “character-defining features are not radically changed, obscured, damaged, or destroyed.”⁶⁰ Not only is the inherent flexibility of the guidelines evidenced by the use of the word “compatible,” but also the measure of compatibility as defined in the guidelines—*radical change*—is far from restrictive. The process itself is also flexible, as it encourages applicants to work with commissioners to achieve a balanced result.⁶¹ Importantly, preservation ordinances often contain provisions that make concessions for undue financial hardship⁶² or for projects that have “important public benefits,” including “social or other benefits having a high priority for community services.”⁶³

Undoubtedly, some property owners in historic districts attempt to use their ordinance as an exclusionary tool to keep out undesirable development, but the historic district commission as an administrative body

56. See Fein, *supra* note 10, at 88–89 (presuming a correlation between prior zoning manipulations and potential historic districting abuses).

57. Byrne, *supra* note 10, at 670–71. See also *Role They Play*, *supra* note 18 (“Design guidelines are not, in and of themselves, mandatory like the ordinance and should not be confused with the ordinance. In most cases, guidelines are just that—helpful, interpretive, explanatory recommendations.”).

58. *What They Can and Cannot Do*, *supra* note 19 (emphasis added).

59. Byrne, *supra* note 10, at 670.

60. *Secretary’s Standards for Rehabilitation*, NAT’L PARK SERV., <https://www.nps.gov/tps/standards/rehabilitation/rehab/guide.htm> (last visited Apr. 28, 2017).

61. See Phelps, *supra* note 15, at 134 (“[A]n impacted homeowner will typically engage in pre-discussions with either professional staff working within the jurisdiction or the commission members to gauge reaction to the proposal and to see if changes can be made to comport with the district’s review standards.”).

62. *Id.* at 133.

63. Byrne, *supra* note 10, at 672 (quoting D.C. CODE § 6-1102(11) (2001)).

plays a neutral role in adjudicating certificates of appropriateness.⁶⁴ The commission's role is to further the interests of the public, as articulated in the preservation ordinance.⁶⁵ While commissioners are not all immune from the vagaries of the political process, or of outside influence, the (slight) threat of bias should not be used to undermine the value of historic preservation laws and their ability to balance the protection of significant resources with the need for change. And again, nothing in the Secretary of the Interior's Standards prevents infill construction, accessory uses, or multi-family buildings, all of which provide an excellent vehicle for integrating affordable housing into historic districts.⁶⁶ Neighbors' outcries against such development should go unheeded.⁶⁷

Those who characterize historic preservation as exclusionary possess a very limited understanding of historic districts and their residents. Historic districts are often portrayed as enclaves for wealthy urbanites who moved in and pushed longtime residents from their homes, or as refuges for suburbanites who escaped the city for large single-family homes on sprawling lots. But the reality is that many historic districts house low-income residents: roughly 60% of the 850,000 buildings protected by historic districts are located in census tracts with a poverty level of 20% or more.⁶⁸ Residents in these census tracts are more likely to embrace changes that bring new housing and economic development opportunities.⁶⁹

C. Gentrification

The third assumption is that historic preservation causes gentrification and displaces residents.⁷⁰ Indeed, gentrification remains a polarizing term in the urban planning context,⁷¹ but a growing body of research indicating that historic district designation can have a positive effect on low-income

64. See *id.* at 673 ("Most commissioners can be expected to favor preservation rather than the incidental interests of well-heeled neighbors.").

65. *Id.*

66. *What They Can and Cannot Do*, *supra* note 19.

67. See Byrne, *supra* note 10, at 671 (describing high-density development projects that were approved in historic districts in New York, Philadelphia, and Washington, D.C., despite neighborhood opposition).

68. RYPKEMA, *supra* note 14, at 11.

69. See Ryan Howell, Note, *Throw the "Bums" Out? A Discussion of the Effects of Historic Preservation Statutes on Low-Income Households Through the Process of Urban Gentrification in Old Neighborhoods*, 11 J. GENDER RACE & JUST. 541, 561 (2008) (highlighting the benefits afforded to neighborhood residents as a consequence of historical designation).

70. See *id.* at 542 n.9 (citing John A. Powell & Marguerite L. Spencer, *Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 HOW. L.J. 433, 450 (2003)) as an example of such critics.

71. *Id.* at 555.

residents undermines much of the previous discourse on the issue.⁷² As this research shows, historic preservation does not necessarily cause gentrification, and even where gentrification does occur, it does not necessarily displace residents.⁷³

A 2016 study commissioned by the Historic District Council looked at the effects of historic districts on affordable housing in New York City, using data on changes in median income, rent, and rental burdens in each borough between 1970 and 2010.⁷⁴ Brooklyn was the only borough with any statistically significant relationship between historic district designation and an increase in median income.⁷⁵ In no borough did historic district designation or timing of designation have any statistically significant relationship with an increase in rent or rental burden.⁷⁶ “While the average rental burden . . . in historic district census tracts rose from 1970-2010, it increased at a slower rate than all census tracts in New York City.”⁷⁷

This data reinforces the findings of an earlier 2002 study by the Citizens Housing and Planning Council, in which researchers analyzed renter mobility in both gentrifying and non-gentrifying neighborhoods.⁷⁸ The findings revealed that, when controlling for other factors, disadvantaged residents in gentrifying neighborhoods were 17% less likely to move than those in non-gentrifying neighborhoods.⁷⁹ And increases in rent in gentrifying neighborhoods were associated with a *lower* probability of moving, even when controlling for other factors affecting mobility.⁸⁰ “The probability of a poor household or a non-college graduate moving from a unit declined as the rate of rent inflation in their neighborhood increased.”⁸¹

The conclusion drawn from this research is that gentrification can improve housing and neighborhood conditions, and encourage stability in

72. See, e.g., RYPKEMA, *supra* note 14, at 14 (rebutting the argument that historic districts negatively impact low-income residents).

73. *Id.*

74. HISTORIC DISTRICT COUNCIL, THE INTERSECTION OF AFFORDABLE HOUSING AND HISTORIC DISTRICTS 8, 27 (2016), hdc.org/wp-content/uploads/2016/05/Intersection-of-Affordable-Housing-Historic-Districts.pdf.

75. *Id.* It is important to note that “a finding of ‘significance’ does not imply *causation*” but “merely suggests that changes in [two] variables (while holding other variables constant) are happening in a similar way” *Id.* at 4.

76. *Id.* at 27.

77. *Id.* at 8.

78. Citizens Hous. & Planning Council, *Gentrification and Displacement*, 8 THE URB. PROSPECT 2 (Jan. / Feb. 2002), http://chpcny.org/wp-content/uploads/2011/01/UP_Gentrification_Displacement.pdf.

79. *Id.* at 3–4.

80. *Id.* at 4.

81. *Id.*

low-income households.⁸² It is important to keep in mind that in most circumstances, pre-gentrification neighborhoods are economically disadvantaged.⁸³ They suffer from the effects of segregation, concentrated poverty, loss of employment opportunities, low-performing schools, and crime.⁸⁴ When wealthier households invest in disadvantaged neighborhoods, they bring local tax dollars, which can be used to maintain affordable housing; spend money on local goods and services, spurring the establishment of new local businesses and other jobs; and create economic and racial diversity.⁸⁵ And, over time, these neighborhoods see a reduction in crime and an improvement in public schools.⁸⁶

While gentrification is not the panacea for all the ills of inner-city blight, it is certainly one of the best solutions.⁸⁷ Urban renewal dealt a sweeping blow to inner-city neighborhoods; gentrification, on the other hand, is an incremental process, particularly when it occurs through historic preservation.⁸⁸ As neighborhoods slowly revitalize, local governments, land trusts, community development groups, and other housing advocacy organizations can implement policies to maintain housing affordability and limit displacement.⁸⁹ In fact, it is difficult to see how economic and racial diversity can be achieved without some degree of gentrification. As long as gentrification is demonized and avoided, affordable housing will continue to be concentrated in areas of poverty.

82. *Id.*

83. Ebenezer O. Aka, *Gentrification and Socioeconomic Impacts of Neighborhood Integration and Diversification in Atlanta Georgia*, 35 NAT'L SOC. SCI. J. 1, 1 (2010) ("In the simplest form [gentrification] can be explained as the upgrading of devalued or deteriorated urban property . . .").

84. See J. Peter Byrne, *Two Cheers for Gentrification*, 46 HOW. L.J. 405, 415–19 (2003) (describing decline in inner-city neighborhoods since 1945); Justin Graham, *Playing "Fair" with Urban Redevelopment: A Defense of Gentrification Under the Fair Housing Act's Disparate Impact Test*, 45 ARIZ. ST. L.J. 1719, 1731–32 (2013) (same).

85. See Byrne, *supra* note 84, at 419–24 (describing economic, political, and social improvements in gentrified neighborhoods).

86. *Id.* at 423–24.

87. See Graham, *supra* note 84, at 1734–35 (noting that "gentrification 'represents one of the most encouraging trends in city life since the 1960s'" (quoting J. Peter Byrne, *Rhetoric and Realities of Gentrification: Reply to Powell and Spencer*, 46 HOW. L.J. 491, 491 (2003))).

88. Byrne, *supra* note 10, at 674; DONOVAN D. RYPKEMA, *THE ECONOMICS OF HISTORIC PRESERVATION* 22 (1994).

89. See, e.g., Byrne, *supra* note 10, at 674 (describing the successful renovation of a substandard apartment complex into mixed-income condominiums and rentals in a gentrifying historic district in the District of Columbia).

D. Housing Fungibility: Supply and Demand

The final assumption is that all housing is fungible—i.e., that one house is like the next, and thus the only thing motivating an individual's choice of housing is its availability and affordability.⁹⁰ Accepting a theory that housing is fungible leads inevitably to the conclusion that increasing the supply of housing overall will reduce or eliminate the affordable housing problem. But housing supply and demand is more nuanced than this unitary theory,⁹¹ and the scholars who have advanced this theory have relied solely on a narrow set of observations that do not accurately reflect the realities of the housing market.⁹²

1. Filter Theory

The traditional housing supply and demand theory is rooted in the “filter theory” that was proposed in the 1960s as a market-driven solution to housing shortages and contributed to the housing disparity we have today.⁹³ The filter theory posited that low-income households would benefit from the construction of high-end units through a “trickle-down” process.⁹⁴ When a family at the top of the income ladder upgrades to a new housing unit, it leaves the old unit vacant. The next family down the income ladder will upgrade into that vacated unit, leaving another unit vacant. This continues down to the lowest-income family. When that family abandons its housing unit, that unit will be demolished.⁹⁵

The filter theory drove the housing policies of the 1970s and 1980s that perpetuated the extreme economic and racial segregation that began during the middle-class suburban migration and urban renewal of the 1950s and

90. Arnold King, *What Is Bernanke Saying about Housing*, LIBR. ECON. & LIBERTY (Feb. 22, 2012), http://econlog.econlib.org/archives/2012/02/what_is_bernank.html (showing that housing can be seen as fungible, since properties depend on their availability on the market, and are subject to typical supply and demand rules).

91. See Andrew G. Dietderich, *An Egalitarian's Market: The Economics of Inclusionary Zoning Reclaimed*, 24 FORDHAM URB. L.J. 23, 43–44 (1996) (rejecting “unitary market” for housing, and observing that consumers bid “not against everybody, but against particular peers interested in particular types of spaces”).

92. See *id.* at 44–45 (explaining that supply and demand housing theories ignore nuances of the housing market).

93. See *id.* at 43 (explaining that filtering has been blamed for “abandonment, gentrification, the concentration of poverty, and the perpetuation of racial segregation”) (footnotes omitted); Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L.J. 699, 797, 808 (1993) (detailing how filtering led to disinvestment in urban neighborhoods).

94. Aoki, *supra* note 93, at 798; Dietderich, *supra* note 91, at 43.

95. Aoki, *supra* note 93, at 798; Dietderich, *supra* note 91, at 43.

1960s.⁹⁶ During the era of filtering, there were “record numbers of new luxury housing starts” alongside a “swelling homeless population and drastic shortages of affordable housing.”⁹⁷ Wealthier families were able to upgrade to suburban homes or segregate themselves into more affluent urban neighborhoods, while the poor African-American families remained in the inner-city neighborhoods the wealthier families left behind.⁹⁸ The result was concentrated, entrenched poverty, high crime, poor schools, loss of business, and declining property values.⁹⁹ While several other factors, including the impacts of deindustrialization, racial prejudice, and redlining and landlord milking contributed to neighborhood decline and segregation, the filter model failed to account for these factors, thereby exacerbating them.¹⁰⁰

2. Applying the Lessons of Filtering to Today’s Housing Market

Today, inner-city neighborhoods in San Francisco, New York City, and Washington, D.C. are burgeoning with newcomers, and buildable land is scarce.¹⁰¹ But the lessons we learned from filtering 30 years ago are equally applicable to today’s housing market. First, housing choices are driven by several factors, and no unitary theory can be applied.¹⁰² Second, affordable housing is not market-driven; it must be either mandated or incentivized, particularly in areas of high demand.¹⁰³ And finally, the end result of filtering is that low-income families are segregated into areas of concentrated poverty and substandard housing.¹⁰⁴

96. See Aoki, *supra* note 93, 798–800 (“The[] inadequacies [of the filtering model] had emerged by the late 1980s, and policies premised on the simplistic assumptions of the filtering model began seeming implausible at best and malevolent at worst, insofar as these policies negatively impacted on the inner cities and allowed those at the high-end to deny complicity in urban decline.”).

97. *Id.* at 799.

98. See *id.* at 800–01, 829 (observing that “mixed pattern of gentrification and abandonment occurred” as professionals upgraded to luxury housing and other neighborhoods were left to “entrenched poverty, despair, and homelessness”).

99. See Steven J. Knox, *Reconstructing an End to Concentrated Poverty*, 16 J.L. Soc. 223, 227–28 (discussing impacts of concentrated poverty).

100. See Aoki, *supra* note 93, at 800–08 (noting that filter theory “fail[ed] to account for these numerous housing market imperfections and distortions”).

101. Edward L. Glaeser, *Why is Manhattan So Expensive? Regulation and the Rise in Housing Prices*, 48 J.L. & Econ. 331, 334 (2005).

102. See Dietderich, *supra* note 91, at 43–44 (showing that a “unitary market” theory ignores the many factors that influence housing production).

103. See Aoki, *supra* note 93, at 799 (explaining that housing remained unaffordable even during the building boom); John M. Quigley & Steven Raphael, *Is Housing Unaffordable? Why Isn’t It More Affordable?*, 18 J. Econ. Persp. 191, 205 (2004) (observing that construction of high-quality housing for wealthier families is more profitable than lower-quality, low-income housing).

104. See Knox, *supra* note 99, at 227–28 (discussing impacts of concentrated poverty).

Applying these lessons to the current housing crisis, it is clear that initiating another building boom will not create the necessary supply of affordable housing. Populations in cities like San Francisco, New York City, and Washington, D.C. continue to grow and put pressure on the housing market, and job growth in these metropolitan regions, particularly the San Francisco Bay Area, attracts new residents from other regions in the country and abroad.¹⁰⁵ To a large extent, the new housing constructed in these cities will serve those new professionals. For the market to create affordable housing, there must be an *oversupply* of housing, far more than necessary to serve the growing population of educated, affluent jobseekers. This is an unlikely prospect, and one that does not necessarily make good financial or planning sense.

Because the market will not supply enough, or any, affordable housing, it must be either mandated or incentivized. At present, developers in cities with mandatory inclusionary zoning laws are typically required to set aside around 10–20% of their units as affordable housing.¹⁰⁶ While developers can apply for incentives, like the low-income housing tax credit (LIHTC), to create additional affordable units, they are less likely to do so in areas where they can receive a market rate for the unit that is substantially higher than the tax credit offset.¹⁰⁷ And given the high cost of new construction—particularly with large development projects—developers will need to either absorb the costs of creating affordable housing, which they are not likely to do, or pass these costs on to the tenants, decreasing affordability overall.¹⁰⁸ Moreover, studies on LIHTC effectiveness reveal that a large proportion of affordable housing projects are concentrated in areas of high poverty and racial segregation: 73.9% of inner-city units are located in census tracts with more than 50% low-income households, and 48% are

105. See, e.g., Kathleen Pender, *Bay Area Building Boom May Not End Housing Shortage*, S.F. CHRONICLE (Apr. 2, 2016), <http://www.sfchronicle.com/business/networth/article/Bay-Area-building-boom-may-not-end-housing-7223711.php> (explaining that, even with the recent housing boom, San Francisco’s housing supply cannot keep up with population growth and in-migration).

106. See, e.g., CITY & CTY. OF S.F., *Inclusionary Housing Program*, <http://sfmohcd.org/inclusionary-housing-program> (last visited Apr. 28, 2017) (requiring developments with ten or more units to pay an affordable housing fee, or set aside 12% of units onsite or 20% of units offsite as affordable to low- and moderate-income families); *Inclusionary Zoning Affordable Housing Program*, D.C. DEP’T HOUSING & COMMUNITY DEV., <http://dhcd.dc.gov/service/inclusionary-zoning-affordable-housing-program> (last visited Apr. 28, 2017) (requiring residential developments containing ten or more units to set aside 8–10% of floor area as affordable housing).

107. Cf. Benjamin Powell & Edward Stringham, “*The Economics of Inclusionary Zoning Reclaimed*”: *How Effective Are Price Controls?*, 33 FLA. ST. U. L. REV. 471, 483–85 (2005) (rejecting the notion that developers will absorb costs of inclusionary zoning when it is not profitable to do so, and noting that density bonuses “are of little value and come nowhere close to making up for the costs of the program”).

108. *Id.*

located in tracts with more than a 50% minority population.¹⁰⁹ In short, there is a limit to how much affordable housing a developer will be willing or able to create in high-demand areas when building new construction from the ground up.

Given this backdrop, two things can be expected to happen if historic district controls in high-demand neighborhoods are removed and developers can add substantially more height. The first scenario is that developers continue to build more market-rate housing and less affordable housing, pushing even more low-income residents out of the neighborhood and into areas of poverty, which was the consequence of the filter model.¹¹⁰ The second scenario is that, as new high-rise construction consumes the neighborhood and the desirable elements of the neighborhood are lost—the historic character, human scale, walkability, and social and psychological connections—the affluent residents that “gentrified” the area in the first place will no longer find it attractive and leave.¹¹¹ This is intuitive when looking at historic districts, which attract residents based on a range of qualitative factors. The current supply and demand theory fails to account for this and other non-quantitative factors driving housing decisions, the very flaw in the filter model. In either scenario, the poor end up concentrated into areas of poverty.

IV. HISTORIC PRESERVATION FURTHERS AFFORDABLE HOUSING GOALS

In its infancy, the preservation movement focused on restoring buildings of great national importance, but modern-day preservationists have increasingly viewed preservation as “an effective tool for a wide range of public goals,” including affordable housing, neighborhood revitalization and stabilization, and economic development.¹¹² While historic preservation alone cannot eradicate the affordable housing crisis, it can—and should—play a central role in a comprehensive, long-term plan to increase the availability *and quality* of affordable housing; protect the affordability of that housing; and create vibrant, mixed-income neighborhoods that improve the standard of living for low-income families. As this Part explains: (1) rehabilitation of existing buildings is more cost effective than new construction; (2) historic preservation creates jobs and boosts the local

109. Sagit Leviner, *Affordable Housing and the Role of the Low Income Housing Tax Credit Program: A Contemporary Assessment*, 57 TAX LAW. 869, 884 (2004).

110. MIRIAM ZUK & KAREN CHAPPLE, HOUSING PRODUCTION, FILTERING AND DISPLACEMENT: UNTANGLING THE RELATIONSHIPS 4 (2016).

111. *Id.*

112. DONOVAN RYPKEMA & CAROLINE CHEONG, MEASURING ECONOMIC IMPACTS OF HISTORIC PRESERVATION I (2011).

economy; (3) historic buildings improve quality of life; and (4) historic districts can preserve smaller, cheaper housing, and prevent displacement of residents.

A. Historic Preservation is Cost-Effective

The prevailing belief that rehabilitation is costlier than new construction has been repudiated by empirical data.¹¹³ While each individual project has its own unique costs, the evidence demonstrates that rehabilitation is, at least, a competitive option—and often a more affordable one.¹¹⁴ This is particularly true when creating affordable housing because the level of rehabilitation need not be substantial to make the housing livable.

A recent study from Harvard University is worth highlighting for its applicability to affordable housing.¹¹⁵ In 2013, a team of researchers studied the business models of investors who purchased foreclosed properties in Cleveland, Ohio to see if renovating the vacant properties would be a more cost-effective alternative to demolition.¹¹⁶ At the time of the study, an estimated 8,300 vacant homes in Cleveland were slated for condemnation.¹¹⁷ The cost of demolition was \$10,000 per home.¹¹⁸ In the alternative, each house renovated through the HUD Neighborhood Stabilization Program was eligible for a \$90,000 subsidy.¹¹⁹ The research team was tasked with determining how Cleveland should best spend its limited subsidy: by renovating the vacant buildings or demolishing them.¹²⁰

The study found that in five out of six neighborhoods, rehabilitation was more cost effective than demolition when the rehabilitation was limited to making the house livable (as opposed to bringing the house up to modern

113. FRANK FORD ET AL., *THE ROLE OF INVESTORS IN THE ONE-TO-THREE FAMILY REO MARKET: THE CASE OF CLEVELAND* 56 (2013).

114. Maya Brennan et al., *Comparing the Costs of New Construction and Acquisition-Rehab in Affordable Multifamily Rental Housing: Applying a New Methodology for Estimating Lifecycle Costs* 1 (Ctr. for Housing Policy, Working Paper, 2013) (“[O]ur findings are consistent with other data suggesting that acquiring and rehabilitating existing multifamily rental housing may be significantly more cost-effective than new construction.”).

115. FRANK FORD ET AL., *supra* note 113, at 8; Thomas A. Jorgensen, *Harvard Study Compares Demolition to Rehabilitation*, PRESERVATION LEADERSHIP F. BLOG (March 19, 2015, 3:44 PM), <http://forum.savingplaces.org/blogs/special-contributor/2015/03/19/study-compares-demolition-rehabilitation>.

116. FORD ET AL., *supra* note 113, at 3.

117. *Id.* at 4.

118. *Id.*

119. *Id.*

120. *Id.* at 52.

green building standards).¹²¹ Notably, the study looked at the cost of *demolition alone*, rather than demolition plus new construction.¹²² Adding in the cost of new construction invariably tips the scale in favor of rehabilitation and allows additional room for substantial rehabilitation beyond mere code compliance.

Similar studies reinforce this conclusion. A 2001 HUD-sponsored study found that it would cost \$75,000 to repair an older home with *severe* physical problems, and \$25,000 for one with *moderate* problems.¹²³ The study further found that only 11% of the older housing stock suffered from severe or moderate physical problems, meaning that only a small percentage of homes would require the full \$75,000 for repairs.¹²⁴ Importantly, “the \$75,000 figure is comparable to the most cost effective of Federal housing programs and significantly cheaper than some programs,”¹²⁵ making rehabilitation of even the most deteriorated housing stock a competitive option.

Of course, quality of construction is always a factor to be considered in the preservation-versus-new-construction debate. To achieve affordability without “massive subsidies,” developers may use cheaper, lower-quality building materials, which adds costs over the long term and reduces the quality of the unit.¹²⁶ On the other hand, historic buildings have already withstood the test of time, largely because of their higher-quality, old-growth wood, load-bearing masonry construction, and overall superior workmanship.¹²⁷ These older buildings will remain durable, helping to preserve the affordability and quality of the housing over time.¹²⁸ Even when new construction costs are cheaper compared to rehabilitation costs,

121. *Id.* at 59; Jorgensen, *supra* note 115.

122. FORD ET AL., *supra* note 113, at 4, 52.

123. RYPKEMA, *supra* note 14, at 10 (citing DAVID LISTOKIN ET AL., BARRIERS TO THE REHABILITATION OF AFFORDABLE HOUSING (2001)).

124. *Id.*

125. *Id.*

126. *See id.* at 4 (stating that the market cannot produce affordable housing “without either massive subsidies or very low quality units”); *id.* at 16 (explaining that “very low cost housing . . . would fail the quality test”).

127. *See* WBDG Historic Preservation Subcomm., *Historic Preservation*, NAT’L INST. OF BUILDING SCI., https://www.wbdg.org/design/historic_pres.php (last updated Oct. 11, 2016) (noting that historic building materials, such as old-growth wood, are durable and high-quality); Julia Rocchi, *Six Practical Reasons to Save Old Buildings*, NAT’L TR. FOR HISTORIC PRESERVATION (Nov. 10, 2015), <http://savingplac.es/2ku2YPk> (“Buildings of a certain era, namely pre-World War II, tend to be built with higher-quality materials such as rare hardwoods Prewar buildings were also built by different standards. A century-old building might be a better long-term bet than its brand-new counterparts.”).

128. WBDG Historic Preservation Subcomm., *supra* note 127; Rocchi, *supra* note 127.

the added factor of building quality will inevitably tip the scale in favor of rehabilitation.¹²⁹

Rehabilitation becomes even more competitive with the availability of tax incentives. When property owners undertake substantial rehabilitation, state and federal rehabilitation investment tax credits are available to help defray the costs. The federal government offers a tax credit for 20% of the rehabilitation costs on income-producing properties (this excludes owner-occupied residences) that are listed or eligible for listing on the National Register of Historic Places and are rehabilitated in compliance with the Secretary of the Interior's Standards.¹³⁰ A 10% credit is available for properties built before 1936 that are not eligible for listing.¹³¹ While the tax credit is limited for properties producing only passive income (e.g., rental income), where the property owner is a real estate professional, he or she may be eligible for the full credit.¹³² States administer an even wider range of credits to piggyback on the federal credit. Many offer a 25% credit, allow full credit for passive activity and owner-occupied residences, and require a lower minimum investment.¹³³

Developers of affordable housing can also piggyback the low income housing tax credit (LIHTC) on top of their federal and state rehabilitation tax credits.¹³⁴ The LIHTC is available for new construction as well as the adaptive reuse of existing buildings,¹³⁵ and the ability to piggyback the tax credits gives developers working with historic buildings a financial windfall over those constructing new units.

B. Historic Preservation Boosts the Local Economy

Many variables impact housing affordability that cannot be addressed simply by building new housing. Low wages, lack of jobs, high taxes, and many other factors directly impact household income and housing

129. See RYPKEMA, *supra* note 14, at 10 (comparing the costs of repair between new and older construction while highlighting the resulting quality).

130. NAT'L PARK SERV., HISTORIC PRESERVATION TAX INCENTIVES 3–5, 9–10 (2012), <https://www.nps.gov/tps/tax-incentives/taxdocs/about-tax-incentives-2012.pdf>.

131. *Id.* at 3.

132. Mark Primoli, *Claiming the Credit*, NAT'L PARK SERV. (Oct. 2000), <https://www.nps.gov/tps/tax-incentives/before-apply/irs.htm>.

133. NAT'L TR. CMTY. INV. CORP., FIRST ANNUAL REPORT ON THE ECONOMIC IMPACT OF THE FEDERAL HISTORIC TAX CREDIT 31–32 (2010), <http://www.kiplinger.com/members/taxlinks/100319/Historic-tax-credit.pdf>.

134. *Id.* at 11.

135. *Id.* at 29.

affordability.¹³⁶ By looking at the impacts of rehabilitation projects made possible by state and federal tax credits, researchers have gathered empirical evidence on the economic benefits of historic preservation.

“Dollar for dollar, historic preservation is one of the highest job-generating economic development options available.”¹³⁷ Rehabilitation work is significantly more labor intensive than new construction, the impacts of which have a ripple effect through the local economy because the construction workers and other laborers hired locally will spend their money at local businesses.¹³⁸ And general contractors undertaking rehabilitation work are more likely to purchase materials from local vendors.¹³⁹ For every \$1,000,000 spent on rehabilitation versus new construction, rehabilitation will result in \$120,000 more staying within the community; five to nine more construction jobs; 4.7 more jobs elsewhere in the community; \$107,000 more in household income; and over \$100,000 more in retail sales.¹⁴⁰ Clearly, as household incomes increase, families have more money to spend on housing.

Rehabilitation work has additional benefits beyond job creation, including tourism, new business growth, additional private investment, and increased property and sales taxes, to name a few.¹⁴¹ Again, these benefits significantly impact household income. For example, as the city’s tax base increases, it can provide more services to the community—e.g., public transit, childcare, better schools—which can improve the quality of life of the residents and reduce their household expenses.¹⁴²

C. Historic Buildings Improve Quality of Life

In light of the substandard public housing of the twentieth century, there is an increasing recognition that housing cannot be merely affordable, it must also improve the quality of the life of the residents and the larger community. In the quest to build ourselves out of an affordable housing shortage, we may be building ourselves into unlivable communities.

136. See Jewkes & Delgadillo, *supra* note 46, at 46 (noting that the HUD ratio fails to consider the range of factors affecting household expenses).

137. RYPKEMA, *supra* note 88, at 13.

138. *Id.* at 14.

139. *Id.* at 15.

140. *Id.* at 14.

141. *Id.* at 15.

142. See Howell, *supra* note 71, at 559–61 (highlighting how an increased tax base can improve municipal services and schools); Graham, *supra* note 84, at 1734 (noting that gentrification can increase the tax base and thus increase the “availability and quality” of services).

The type of density most housing advocates are seeking is high-rise construction, as this is the only way to add significantly more density in tight markets. But when it comes to affordable housing, this type of density has been proven harmful, particularly for children growing up in poverty.¹⁴³ And as the public housing projects of the twentieth century have shown us, there is a greater risk of segregation and concentrated poverty in high rises than in the mixed-use, lower-density, human-scale neighborhoods.¹⁴⁴

Affordable housing should be located in diverse, mixed-income, walkable, transit-oriented neighborhoods close to shopping, schools, parks, and other amenities. Historic neighborhoods possess many, if not all, of these qualities, and creating historic districts preserves and enhances those qualities.¹⁴⁵ Placing incompatible high rises in the middle of historic districts degrades the quality of life that makes these places livable and desirable. The result is that we are destroying the things we value, so that *nobody* can enjoy them, when we should be figuring out how to bring the things we value to a wider audience, so that *everybody* can enjoy them. Historic preservation, when part of a comprehensive housing plan, can achieve this goal.

D. Historic Districts Protect Affordable Housing

The strongest argument for maintaining historic districts is that they *protect* affordable housing. There is a misconception that historic districts are home to only affluent households.¹⁴⁶ But the data does not support this. Sixty percent of the 850,000 buildings listed in historic districts are located in census tracts with a poverty level of 20% or more,¹⁴⁷ and 32% of households below the poverty line live in older and historic homes.¹⁴⁸ Data on the effectiveness of the LIHTC indicates that many older buildings already serve low-income families, and when developers construct new

143. See Schill & Wachter, *supra* note 37, at 1293 (“High density apartment buildings are now generally thought to be inappropriate for poor families with children. Elevators break down as a result of heavy usage and insufficient maintenance. In addition, parents find it difficult to monitor the activities of their children when recreation spaces are located at a distance from their apartments. Furthermore, the large volume of residents fosters anonymity, making it difficult for tenants to maintain security and a sense of community. All of these factors combine to promote vandalism, which further undermines the quality of life in public housing.”) (footnotes omitted).

144. See *id.* at 1293–94 (describing concentrated poverty in high density, residential towers that characterized public housing and observing that “these types of projects often generated a series of problems that led to their abandonment by all but the poorest and least mobile tenants”).

145. RYPKEMA, *supra* note 14, at 8–9.

146. *Id.* at 11.

147. *Id.*

148. *Id.* at 5.

affordable housing with the tax credit, it often replaces older buildings already serving that purpose.¹⁴⁹ Since the late 1970s, nearly a third of the over 500,000 housing units completed under the auspices of the federal historic preservation tax credit were affordable to low- and moderate-income families,¹⁵⁰ a figure that is “noteworthy when compared with some better-known affordable housing production programs.”¹⁵¹ While the need to create new affordable housing is critical, the need to protect existing historic housing is even more critical.

When historic district guidelines recommend against demolition of existing buildings, incompatible additions, or out-of-scale infill development, they protect the smaller homes that, by their size alone, are made more affordable. Because many historic neighborhoods are located in desirable neighborhoods, the land is more valuable than the building itself.¹⁵² New, more affluent residents moving into these neighborhoods often try to maximize their square footage with large additions that double the size of the home, second story “pop tops” on single-story homes, or new McMansions squeezed onto narrow lots.¹⁵³ Inevitably, these larger homes drive up property values and make the neighborhoods unaffordable—the exact problem critics claim historic districts create.

This is particularly relevant in suburban neighborhoods, which housing advocates claim are constrained by too many exclusionary zoning regulations to allow affordable housing growth. It is true that many newer suburbs are zoned only for single-family homes and mandate strict minimum lot sizes and minimum setbacks. But many historic suburbs, particularly those built pre-World War II, were designed with smaller lots and setbacks, allowing greater density (as compared to more modern suburbs with minimum lot sizes), and many of the properties boast

149. Leviner, *supra* note 109, at 876–77.

150. NAT’L PARK SERV., ANNUAL REPORT ON THE ECONOMIC IMPACT OF THE FEDERAL HISTORIC TAX CREDIT FOR FY 2014, at 5 (2015).

151. NAT’L TR. CMTY. INV. CORP., *supra* note 133, at 28.

152. See, e.g., David Matthews, *140-Year-Old Gold Coast Cottage Set to Be Torn Down*, DNAINFO (June 21, 2016, 5:45 AM), <https://www.dnainfo.com/chicago/20160621/gold-coast/140-year-old-gold-coast-cottage-set-be-torn-down>. In Chicago’s wealthy Gold Coast neighborhood, the last extant nineteenth-century worker cottage may be slated for demolition. *Id.* The property owner applied for a demolition permit, but, thanks to the 90-day demolition delay required for historic buildings, the cottage could still be saved. *Id.* The other worker cottages have all been lost to mansions and high rises. *Id.* As the listing agent for the property stated, “[t]he cottage ‘is a special place, but it’s sitting on a gold mine.’” *Id.*

153. See, e.g., Kate Anderson Brower, *Teardowns: Tearing Apart or Building Up the Neighborhood?*, WASH. POST (June 25, 2015), https://www.washingtonpost.com/realestate/the-charm-of-an-old-house-clashes-with-allure-of-a-garage-and-mudroom/2015/06/24/6fed1fb2-09fe-11e5-95fd-d580f1c5d44e_story.html (describing the phenomenon of tearing down older, more modest homes and replacing them with larger, more luxury homes, which drive up property values).

secondary structures, like carriage barns or shops, that can easily be transformed into accessory living spaces.¹⁵⁴ In fact, many of the larger, older homes themselves were long ago divided into apartments for boarders or other family members, and may be grandfathered in in areas otherwise zoned only for single-family dwellings.¹⁵⁵

It is important to keep in mind that zoning regulations that prohibit multi-family housing are not tied to historic preservation laws. Historic districts do not regulate interior alterations and cannot prevent a property owner from converting a single-family home into apartments.¹⁵⁶ Local governments interested in creating affordable housing can loosen other zoning restrictions while keeping historic district regulations in place. This will protect neighborhoods from teardowns but allow flexibility for adding density. And larger historic homes are very adaptable.¹⁵⁷ Their divided interior spaces (as opposed to the open floor plans common in modern homes) can easily be broken up into small apartments or condos, or converted back to single-family living if the needs of the neighborhood change.¹⁵⁸

Finally, while it is important to add density to curb sprawl and generate diversity and affordability, limiting the amount of development in certain high-demand neighborhoods can be beneficial on a wider metropolitan, regional, or national perspective. While cities with the tightest markets, like San Francisco and New York City, have little buildable land, many other cities still contain swaths of vacant land and abandoned buildings that need redevelopment.¹⁵⁹ As pressure increases in key, high-demand areas, these disadvantaged communities continue to struggle with extreme poverty,

154. NAT'L PARK SERV., HISTORIC RESIDENTIAL SUBURBS: GUIDELINES FOR EVALUATION AND DOCUMENTATION FOR THE NATIONAL REGISTER OF HISTORIC PLACES 8–13 (2002), <https://www.nps.gov/Nr/publications/bulletins/pdfs/Suburbs.pdf> (describing landscape features of historic residential suburbs).

155. *Id.* at 9 (explaining that historic residential subdivisions contained both single- and multiple-family housing). This statement and the previous statement are also supported by the author's own experience growing up in Chicago's North Shore suburbs. The author's great-grandmother's house was a small, one-and-one-half-story, wood-frame house built in the late 1890s. It had a second-story apartment where a number of family members had lived over the years, and a lawnmower shop and secondary dwelling unit located to the rear. When the house was torn down in the early 2000s, it was replaced with a large single-family home more than double the size of the old home.

156. *What They Can and Cannot Do*, *supra* note 19 (emphasizing that guidelines cannot “[c]ontrol how space within a building is used”).

157. STEWART BRAND, *HOW BUILDINGS LEARN* 190–93 (1994) (illustrating how San Francisco's Victorian row houses are highly adaptable to subdivision into multiple apartments).

158. *Id.*

159. See Elizabeth M. Tisher, Note, *Re-Stitching the Urban Fabric: Municipal-Driven Rehabilitation of Vacant and Abandoned Buildings in Ohio's Rust Belt*, 15 VT. J. ENVTL. L. 173, 176–80 (2013) (detailing population loss in rust belt cities and rise in vacant and abandoned buildings).

disinvestment, and declining populations. Incentives can lure businesses and developers into these areas, but placing a cap on growth in already-overpopulated areas can further encourage revitalization of underpopulated communities.¹⁶⁰ This should be happening at both the regional and national levels. For example, many older industrial cities in the Northeast are crippled with disinvestment while New York City keeps growing. And rust belt cities in the Midwest are suffering from extreme decline while drought-stricken cities in the West and Southwest are booming. Limits on overbuilding in tight markets can stimulate the growth necessary in those areas currently lacking investment.¹⁶¹

V. FURTHERING AFFORDABLE HOUSING THROUGH PRESERVATION

Many programs are dedicated to creating and maintaining affordable housing, including land trusts, grants, and tax incentives, and many local governments have mandatory inclusionary zoning policies to help achieve their goals. The purpose of this Part is not to discuss the strengths and weaknesses of those programs, but to recommend new approaches to affordable housing that should be adopted by the preservation community. Preservationists should raise awareness about the intersection between preservation and affordable housing, and demonstrate positive ways preservation can be used to further those dual goals.

A. Top-Down Approach

The most effective way to integrate affordable housing into historic preservation is for the National Park Service (NPS) and State Historic Preservation Offices (SHPO) to encourage or mandate certain activities through the grants and technical assistance that they provide to local governments. This can occur through the Certified Local Government (CLG) Program, cost-share programs between SHPOs and local governments, matching preservation grants, and downtown revitalization programs.

160. Edward Glaeser argues that “[t]he social costs of binding development restrictions lie in the misallocation of consumers by having them live in less productive, less attractive places.” Glaeser, *supra* note 101, at 335. What Glaeser is essentially arguing is that we should let the undesirable areas further decline, while the more attractive areas continue to grow. This would arguably lead back to segregation and isolation of the poor in areas of concentrated poverty—less productive, less attractive places—exactly the thing that Glaeser claims is a result of exclusionary historic districts.

161. With climate change and the threat of rising sea levels, the idea that we should encourage growth in the interior and away from at-risk coastal areas is not unfounded.

1. Certified Local Government Program

The CLG program, jointly administered by the NPS and SHPOs, provides funding and technical assistance to local governments undertaking preservation activities.¹⁶² To be certified, a local government must meet a set of minimum goals: establish an historic preservation commission; enforce state or local legislation for the designation and protection of historic properties, typically through a preservation ordinance; maintain a system to survey and inventory historic resources; facilitate public participation in local preservation; and follow any other procedures established by the states.¹⁶³ States receive annual appropriations from the Federal Historic Preservation Fund and must pass at least 10% of their funding along to CLGs for surveys, National Register nominations, rehabilitation work, design guidelines, educational programs, training, structural assessments, feasibility studies, and a host of other activities.¹⁶⁴

To integrate affordable housing into the CLG program, the federal and state governments should add an affordable housing goal as a condition of certification, and offer additional funds to CLGs with significant affordable housing needs. This would require local preservation officers or commissions to work with planners and housing advocates to identify affordable housing needs, an important first step in integrating affordable housing into local preservation activities. An important component to this planning process is identifying the affordable housing needs by neighborhood and flagging those that are “high need”—e.g., tight housing markets and rising real estate prices—“moderate need”—e.g., some multi-family rentals mixed with pricier single-family homes—or “low need”—e.g., plenty of affordable housing that should be maintained. This initial step should focus on only the housing needs; not the preservation goals.

The next step would be for the CLG to include an affordable housing goal within the purpose statement of its preservation ordinance. This purpose statement should not only articulate the goals of creating and maintaining affordable housing, but also it should explain how that goal is to be carried out. Once a proper ordinance is drafted, the CLG can decide which preservation activities will best address both its affordable housing needs and its important preservation objectives. The focus of this step

162. *Certified Local Government Program & Local Preservation Tools*, NAT'L PARK SERV., <https://www.nps.gov/clg> (last visited Apr. 28, 2017).

163. *Become a Certified Local Government (CLG)*, NAT'L PARK SERV., <https://www.nps.gov/clg/become-clg.html> (last visited Apr. 28, 2017).

164. *Certified Local Government Program & Local Preservation Tools*, *supra* note 162.

should be to balance the dual goals of preservation and affordable housing in a way that achieves a positive result for both.

The next activity a CLG should undertake is the survey and inventory of historic buildings. States routinely require this activity of its CLGs, as it provides information for preservation planning purposes and facilitates with National Register listing, review under Section 106 of the National Historic Preservation Act, review of tax credit projects, and many other activities. While many communities target, or at least prioritize, the most significant buildings for survey, states should require their CLGs to survey all historic buildings (those over 50 years in age) and to perform this in a systematic way that prioritizes the most threatened buildings or neighborhoods. Through the survey process, CLGs should consider neighborhoods that are in need of affordable housing, or that contain affordable housing in need of protection, and should highlight properties that are suitable for multi-family use or low-cost rehabilitation. This inventory of historic resources can be useful at the regional and state levels as a means of identifying where affordable housing growth should occur, and it can also be used by the CLG to plan for historic districts and other local preservation activities.

The most important activity for a CLG is the designation of properties to the National Register of Historic Places or local landmark registers. And key here is the local historic district, which can be used to create or maintain affordable housing. First, CLGs should be required to create historic districts in low-income areas, particularly those with small, vernacular buildings, as these areas are often overlooked by local historic preservation commissions. A neighborhood that is eligible under traditional criteria—e.g., that buildings retain their historic and architectural significance—should be protected as a traditional historic district with guidelines that adhere to the Secretary of the Interior's Standards. A neighborhood that has lost its integrity, either through individual building alterations or overall loss of building stock, but nonetheless merits protection—e.g., at least 50% of its building stock remains intact or the buildings have lost architectural detail but retain their historic footprint and envelope—can be protected as a neighborhood conservation district. The guidelines for the conservation district should be more flexible, focusing on preventing teardowns, oversized additions, or out-of-scale infill development. The conservation district is important, as it protects more low-income or potentially affordable properties from being replaced by higher-end housing, and the more flexible guidelines allow for less costly renovations. For both the historic and neighborhood conservation districts, the ordinance should mandate strong demolition delays, particularly in neighborhoods with high land values and smaller homes, and should also

contain mechanisms to discourage demolition and incentivize rehabilitation, such as impact fees, exactions, or transferable development rights.

In addition to planning for the creation of affordable housing, CLGs should design educational programs that train property owners and local builders on performing rehabilitation work that does not compromise the quality of the construction or destroy energy-efficient features. This is an important addition to the survey and landmark designation activities because it ensures that the properties are not just affordable, but also safe, sanitary, and durable.

Finally, the NPS and SHPOs should provide technical assistance to CLGs in designing and carrying out these projects. This should include sample historic and conservation district guidelines for neighborhoods targeted as “high” or “moderate need”; sample criteria for designating neighborhood conservation districts; guidelines for identifying properties well-suited for affordable housing; and guidelines for crafting a strong preservation ordinance.

2. Cost-Share Programs

Through cost-share programs, state and local governments partner to undertake preservation survey and inventory projects. The state and local governments share costs, while the state administers the program—hiring consultants, reviewing the work, and ensuring completion of the final product—which is typically a comprehensive survey report detailing the findings and providing recommendations for stewardship.¹⁶⁵ Like the surveys undertaken by CLGs, discussed above, these surveys should identify buildings suitable for affordable housing and the condition of those buildings, and provide recommendations on how the housing goals can be incorporated into larger preservation goals.

3. Matching Grants

Other preservation matching grants are available to local governments on a competitive basis for the rehabilitation and repair of historic buildings.¹⁶⁶ States should give preference to projects involving the rehabilitation or repair of affordable housing, particularly in areas where the

165. See, e.g., *Survey & Planning*, VA. DEP'T HISTORIC RES., <http://dhr.virginia.gov/survey/Survey1.htm> (last updated Oct. 17, 2016) (describing the process of surveying historic properties).

166. See, e.g., *Historic Preservation Grants*, VT. AGENCY COM. & COMMUNITY DEV., <http://accd.vermont.gov/historic-preservation/funding/historic-preservation-grants> (last visited Apr. 28, 2017).

need for housing is great. States should also increase their share of the matching grants for projects based on how much affordable housing will be created.

4. *Downtown Revitalization*

The National Main Street Center, a subsidiary of the National Trust for Historic Preservation, maintains a network of local downtown revitalization organizations (“Main Street programs”); provides technical assistance, training, and workshops; and has created an organizing framework—the Main Street Four Point Approach—that the local Main Street programs implement to achieve their revitalization goals.¹⁶⁷ Many states have coordinating programs that work with the local communities to carry out the Four Point Approach.¹⁶⁸ As Main Street programs are located in central business districts, their primary focus is on business growth, but most central business districts also contain housing. As this housing is centrally located and typically in the form of rentals, the affordable housing opportunities are significant. Economic development certainly has ripple effects into the residential community, and Main Street programs should take the reins to promote rehabilitation of housing and ensure that housing remains affordable, even as property values begin to rise. This can be achieved through a revised Four Point Approach that expressly addresses the residential component of the downtown, as well as training and workshops on how to incorporate affordable housing goals into an economic development plan.

In addition to the Main Street program, states should adopt an Elm Street program for revitalization of residential neighborhoods bordering central business districts.¹⁶⁹ In many cases, these neighborhoods have suffered population loss and disinvestment, and they often boast large historic homes that have already been divided into multi-family rentals. As the central business district revitalizes, these residential neighborhoods may feel pressure from developers. One goal of an Elm Street program should

167. *The Main Street Approach - Main Street America*, MAIN STREET AM., <http://www.mainstreet.org/main-street/about-main-street/main-street-america/the-main-street-approach.html> (last visited Apr. 28, 2017).

168. *See, e.g., Downtown Designation*, VT. AGENCY COM. & COMMUNITY DEV., <http://accd.vermont.gov/community-development/designation-programs/downtowns> (last visited Apr. 28, 2017).

169. *See Elm Street*, PA. DOWNTOWN CTR., <http://www.padowntown.org/programs-services/elm-street> (last visited Apr. 28, 2017). Pennsylvania launched the first Elm Street program in 2004. *Id.* The program is now statewide. *Id.*

be to preserve both the historic character and affordability of these neighborhoods.

B. Enhanced Tax Incentives

Another way preservationists can drive affordable housing development is by advocating for enhanced federal rehabilitation tax credits. Currently, several limitations in the federal tax credit hinder its use for affordable housing projects, particularly small ones undertaken by individual property owners. For example, the requirement that properties be income-producing precludes rehabilitation of owner-occupied properties; limits on income from passive activity make it difficult for property owners to use the tax credit to create rental housing; and the substantial rehabilitation requirement (\$5,000 or the adjusted basis, whichever is greater) makes small projects infeasible.

The solution is a second federal tax credit for affordable housing projects. The requirement that properties be listed or eligible for listing on the National Register of Historic Places would remain, as would the requirement that the completed work satisfy the Secretary of the Interior's Standards, albeit in a modified form that would grant more flexibility to the property owner.¹⁷⁰ First, removing the requirement that properties be income-producing opens the tax credit to a wider range of projects that could provide affordable housing. And second, eliminating the substantial rehabilitation requirement would make feasible both small projects that involve bringing a building up to code, and larger projects that would not generate as much profit for the developer (e.g., rehabilitating a former industrial building to be used for low-income housing).

Maintaining affordability is as important as creating affordable housing. For large projects of ten units or more, an additional, smaller credit should be available for every 5 years the units are maintained at an affordable rate for low-income families, up to 30 years. For example, the developer could receive an initial 20% credit and an additional 5% every 5 years up to 30 years, for a total credit of 50% of the rehabilitation costs. This will encourage substantial rehabilitation of large historic buildings for affordable housing when such a project would not otherwise be economically feasible, and it would help stabilize the neighborhood by ensuring that the units remain affordable over a generation.

170. See ADVISORY COUNCIL ON HISTORIC PRES., AFFORDABLE HOUSING AND HISTORIC PRESERVATION (2006) (providing modified guidelines to be applied in Section 106 review of affordable housing projects).

CONCLUSION

So what would Jane Jacobs do today if faced with the question of how to address the affordable housing shortage? We can say with confidence that she would still advocate for an animated streetscape of unique buildings, an eclectic array of merchants, and colorful sidewalk activity. We can also say with confidence that she would advocate for better-quality housing for low-income families, and more integrated and diverse neighborhoods. Knowing that, the answer to the question is simple: Jacobs would support historic districts. Jacobs saw historic districts as a way to preserve city life for both the wealthy and disadvantaged. And they still serve that purpose today. Historic districts are inherently inclusionary because they are varied, adaptable, and unique places that people love. They confer benefits on everyone. New construction will always be necessary, but it should supplement—not supplant—historic preservation.