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Council Member Keith Powers

June 16, 2021

Melanie La Rocca  
Commissioner  
New York City Department of Buildings  
280 Broadway  
New York, NY 10007

Dear Commissioner La Rocca:

We write in response today to your April 20, 2021 letter regarding the proposed Combined Heat and Power (“CHP”) facilities at Stuyvesant Town in Manhattan, at locations on Avenue C and on East 20<sup>th</sup> Street, and in follow-up to our earlier letter of January 19, 2021.

In addition to all of our original concerns in the January 19 letter, which we fully maintain and re-assert here, this response specifically focuses on the purported “accessory” nature of the proposed CHP facilities, as that term is defined in the Zoning Resolution of the City of New York (“ZR”) and interpreted by the Department of Buildings (“DOB”).

First and foremost is our persistent skepticism over the nature of the proposed facilities. As you point out in your April 20 letter, “accessory” uses are subject to the statutory requirements of ZR Section 12-10. The definition requires, among other things, that an accessory use be “clearly incidental to” and “customarily found in connection with” the principal use to which it is related. Your April 20 letter confirms that CHP facilities “[are] considered [as] use group 17c [manufacturing]” uses, and as such, we believe the siting of such facilities within exclusively residential settings should plainly not be permitted, or, at an absolute minimum, should trigger a much higher level of scrutiny as to safety and compatibility.

We understand that, as the applicant has argued, certain residential developments in New York City may employ power generated from CHP plants. However, if the DOB accepts such plants as facially meeting the “accessory” requirements under zoning, we believe that some clarification is necessary to justify how these instances satisfy the threshold test for being found “customarily” in connection with a principal use consisting (exclusively) of Use Group 2 residences.

Additionally, the ZR requires that an “accessory” use must relate to the principal use on the same zoning lot (i.e., as noted in your April 20 letter, that “the electricity and heat generated by the CHP plant is distributed to the users within the same zoning lot”). Paragraph (c) of the ZR definition for “accessory” use further clarifies that any such use must “either [be] in the same ownership as [the] principal use, or [be] operated and maintained on the same zoning lot substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal use.” We understand this to mean that the energy generated by the CHP plants – in the event such plants are not owned by BPP ST Owner LLC – must primarily be returned to and used by the residents of Stuyvesant Town. Clear documentation of the on-site energy usage, relative to production, should be required as part of any permit application process, to demonstrate conformance and that such operations are “clearly incidental to” the primary residential use.

Finally, it remains unclear to us how, where, and at what heights any proposed exhaust stacks are to be located. Previously-provided project renderings have not highlighted any proposed stack locations, and we remain fundamentally concerned that the proposed facilities be in strict compliance with all applicable bulk regulations, in addition to our concerns over whether the facilities themselves satisfy all applicable use requirements.

In light of all of the above-stated concerns, as well as all of those articulated in our January 19 letter, we respectfully re-state our request that, should DOB not be in receipt of any and all information from the applicants sufficient to make its determination – with respect to either CHP plant location – that the Department withhold all approvals and permits until it has reviewed all necessary drawings and specifications to do so.

We would welcome any opportunity to meet with you and the property owner, to share our concerns directly and better understand the ongoing review and potential range of outcomes. As always we thank you for your work on behalf of all New Yorkers, and we look forward to your latest updates on this matter.

Sincerely,



Keith Powers  
Council Member



Carolyn Maloney  
Congress Member



Brad Hoylman  
State Senator



Harvey Epstein  
Assembly Member



Gale Brewer  
Borough President



Corey Johnson  
Council Speaker