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City of New York
Borough President Gale Brewer
Council Member Keith Powers

November 4, 2021

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

Dear Commissioner LaRocca:

We write in response to your July 21, 2021 letter regarding the proposed Combined Heat and Power (“CHP”) facilities at Stuyvesant Town (“Stuy Town”) in Manhattan, at locations on Avenue C and on East 20th Street, and in follow-up to our earlier correspondence. We continue to have questions over the interpretation of the “accessory use” definition, as set forth in the Zoning Resolution (“Z.R.”), and precisely how the proposed Stuy Town CHP facilities meet all of the requirements of that definition. This letter therefore requests a clear and comprehensive statement of all relevant facts.

As you are well aware, “accessory use” is defined in the Z.R. as follows:

- (a) [] a *use* conducted on the same *zoning lot* as the principal *use* to which it is related (whether located within the same or an *accessory building or other structure*, or as an *accessory use* of land), except that, where specifically provided in the applicable district regulations or elsewhere in this Resolution, *accessory* docks, off-street parking or off-street loading need not be located on the same *zoning lot*; and
- (b) [] a *use* which is clearly incidental to, and customarily found in connection with, such principal *use*; and
- (c) is either in the same ownership as such principal *use*, or is 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*.

*Z.R. § 12-10 DEFINITIONS.*¹

Regarding the threshold issue of whether the Stuy Town CHP facilities fall under this definition, your July 21 letter affirms that they do, and specifically states that “the [proposed] CHP system will generate its own electricity *and rely on the existing grid for distribution* and is sized to generate no more electricity than what is needed for peak consumption on the zoning lot” (emphasis added). This statement goes directly to our questions over the facilities’ purported “accessory” nature. We respectfully request clarification as to how the Stuy Town CHP meets each of the 12-10 requirements, with an emphasis on subsections (b) and (c).

As part of such clarification, we specifically request a list of all known, comparable residential sites where conforming CHP plants (or similar facilities) are located and have been approved by DOB; such list should specify the extent to which electricity generated on-site (*e.g.*, 0-100%) is *actually used* on-site and the extent to which DOB-approved facilities do not use the electricity onsite. Your July 21 letter notes your “aware[ness] of several facilities with comparable CHP plants located within, and accessory to” residential sites. We are aware of at least two residential developments with on-site energy facilities—Penn South and Co-op City—but we understand that these are distinguishable from the proposed Stuy Town facilities in certain key aspects, namely that they utilize the electricity they produce, and have “black-start capability”—the ability to fully supply themselves with power in the event of an outage.

Setting aside the “clearly incidental” and “customarily found in connection with” requirements of subsection (b), we note here that the failure to use, on-site, the electricity that is generated, and that is instead transferred off-site to the Con Edison grid, is a key distinguishing factor with regard to the “substantially for the benefit of” requirement of subsection (c). In the event of an outage, for example, our understanding is that the proposed CHP facilities—as they lack black-start capability—would not maintain electricity service to Stuy Town, a result which would directly undermine their “accessory” nature and is in contrast to the Penn South and Co-op City systems.

In addition, in a 2011 letter by the Department of City Planning (“DCP”) to then-Council Member Daniel Garodnick, DCP clarified its interpretation of subsection (c) by noting that it specifically “prohibit[ed] businesses which are not primarily restricted to use by residents.” We remain unclear as to how (our understanding of) the facts in this case align with the position in the 2011 DCP letter.

Our concern, and our constituents’ concern, is more than a matter of strict zoning compliance; how the City assesses these types of facilities could raise essential policy questions, and this case may establish a significant precedent. In an effort to fully understand how the proposed Stuy Town CHP plants satisfy the definitional requirements of the zoning text, we respectfully request: 1) a clear and comprehensive statement of facts surrounding the proposed system; 2) a comprehensive list of residential sites which DOB has determined meet the definitional requirements of “accessory use” under zoning, as referenced in the preceding paragraph; and 3) a

¹ The Z.R. enumerates specific uses in § 12-10 that are included within the definition; that list does not include power plants.

confirmation as to whether any forthcoming response should be considered a final determination on the matter.

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, as well as any opportunity to meet with you and the property owner directly.

Sincerely,



Keith Powers
Council Member



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