



BROOKLYN COMMUNITY BOARD 14
FLATBUSH–MIDWOOD COMMUNITY DISTRICT
810 East 16th Street
Brooklyn, New York 11230

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September 13, 2023

Brooklyn Community Board 14

Recommendation of non-ULURP Application No. N 2301112 ZRY
City of Yes for Carbon Neutrality Text Amendment

In May of 2023, the Department of City Planning (DCP) proposed to make a series of amendments to the NYC Zoning Resolution to enable developers, industry specialists and property owners to undertake building modifications and installations intended to further the city's goal to reduce carbon emissions. Within the text amendment are 17 proposals. To decarbonize the energy grid, proposals pivot on rooftop solar; parking lots; community solar; energy storage; and onshore wind. To decarbonize the building stock goals target electrification retrofits; building exterior retrofits; fixing zone green; and funding through the accelerator model. To decarbonize vehicles the proposal focuses on vehicle charging; charge sharing; parking flex; automated parking and bike parking. To decarbonize waste streams amendments, porous paving; street trees; organics and rooftop greenhouses are proposed.

- OVERVIEW

Community Board 14 is supportive of the aspirations of the text amendment. The board takes seriously the opportunity to offer local insight in order to improve and strengthen the way toward the laudable goals of the plan and weighed in on this text amendment in early July. Due to the number of specific goals woven into a complex text amendment proposal, additional time was taken to review, discuss and opine on the amendment. The following recommendations are offered to complement CB14's previous submission.

Broadly speaking members of CB14 have remaining questions and concerns related to interagency coordination of the proposed amendments. The success of the amendments is heavily reliant on DOB, DOT, DPR, FDNY etc. code and rule enforcement. Many of the agencies involved don't exhibit the capacity to enforce rules already on the books. For instance, if DOB enforced all illegal curb cuts and parking pads, cool roof requirements, and developer's new tree planting requirements, there would already be a significant step toward the goal of carbon neutrality even without the text amendment. How can we ensure that the capacity of the city is level with the needs that will arise from this amendment?

Another general concern is, while some portions of the zoning text amendment are prescriptive, many other elements of the proposal remain vague to allow for flexibility in terms of the new technologies to be installed pursuant to the amendment. While we recognize the difficulty in finding a balance between the overly vague and too descriptive, the board has not been able to discern a pattern or reasoning between the detailed versus the open-endedness in the proposal. It is difficult to approve an as-of-right proposal without understanding the details and implementation strategies. Community approval does not have to be a heavy lift – consider the difference between community board review of

ULURPs versus the review of block parties. There is a wide lane for creating a review process that still supports the goals toward carbon neutrality while allowing for local consideration.

Lastly, Community Board 14 recognizes global implications of these zoning text amendments. In the quest toward carbon neutrality in NYC and reducing our reliance on fossil fuels through electrification, we risk, very plainly, cleaning up our local environment at the cost of degrading and dirtying living conditions and pressuring the human rights of workers around the world who supply the required elements (cobalt, graphite, etc.). What steps can the city, in partnership with the global arena, take to ensure that environmental tradeoffs and worker and economic impacts in Central Africa and South America (for instance) are not compromised for the goals of local carbon neutrality?

- ENERGY

As for the specifics of the proposal, CB14 cautions that an as-of-right solar canopy option over parking lots might disincentivize other lot land use. Said parking lots could lend themselves to housing development without impacting parking allowances.

Solar parking canopies in residential areas where roof solar would be more efficient creates a concerning incentive. It would be the height of irony if homeowners begin to install as-of-right solar canopies over their illegal front yard parking pads. The option to install canopies versus rooftop solar raises questions as to whether DCP considered how well the cost of installing solar aligns with optimal energy generation. There was also a concern expressed that trees might be removed to capture sunlight, incentivized to store energy for private use or for sale and thus offsetting the heat island goals of the amendment.

Given that placement efficiency varies across districts depending on surrounding land use, will the city assist with cost parity among solar panel installations? Impacting the streetscape for suboptimal energy production is a concern, and CB14 is quite reluctant to forego community review. Additionally, does DCP anticipate a requirement that community solar arrays would have to provide affordable energy to the host community?

- BUILDINGS

The board wonders if there have been any studies that demonstrate to what extent the decreased costs of energy offsets the expense of retrofits. Has the city conducted a cost-benefit analysis? Importantly, who will ultimately bear the costs in multiunit dwellings? Presumably, landlords will submit MCIs and tenants will certainly pay increased rents but since energy costs vary, their utility bills remain uncertain over time. Similar concerns pertain to HOA/common charges/maintenance fees on owner occupied multi-family dwellings.

CB14 has significant concern regarding how capital costs to property owners to retrofit and comply with local laws introduced as a result of ZCN text amendments will burden tenants. Rents have already created a situation where tenants are rent burdened and in cases, extremely rent burdened. To alleviate silos between state and city agencies, we recommend DCP/CPC notify the New York State Division of Housing and Community Renewal via executive summary to the extent of which these zoning text amendments will create an expectation/necessity for retrofitting NYC rent controlled and stabilized buildings, including accessory mechanical equipment (energy infrastructure equipment), wind turbines, insulation and roof modifications, etc. The intent of delivery of this executive summary to DHCR is to prompt a decision ahead of DOB local law development and ensure that major capital improvement (MCI) charges will be sparingly levied on tenants in conjunction with retrofitting and compliance. In many cases, the investment of energy

improvements are offset by lower bills. There is significant potential here for tenants to have borne the costs of installing energy collection and storage without access to the potential costs savings.

As to accessory, the expanding definition of what will be “accessory mechanical equipment”, coupled with more permissive FAR exemptions could cause a far too expansive application of these types of systems, for which the technology is fast evolving. Also, coupled with the blanket square foot threshold of 10,000 square feet, it may cause anomalous results allowing very large systems on lots that are not appropriate to accommodate same.

Additional concerns about energy storage remain as well. What codes would allow and enforce what quantity of energy storage, and would it differ for interior, exterior, roof top, ground level locations? How have flood plain locations been considered? What FDNY and DOB codes would be in place to ensure safety. Have noise levels requirements been adequately considered? Will the contemplated screening provisions provide sufficient protections to neighbors when the possibility of out of character mechanical systems on small lots could occur? How does DCP address health and safety concerns related to potential thermal runaway and lithium battery fires. Would DCP consider some limits on the as-of-right application of energy storage or allowing a phase-in so that communities could gain insight as to potential tradeoffs?

We will note here that this document is an expression of consensus for the most part. There are matters on which there was reasonable disagreement. Some expressed a concern that to locate solar generation in the district, solar and storage system need to be kept small so that they can be considered “accessory” which precludes grid-supporting installations and suggested a consideration to reclassify this use as “renewable energy generation” and permit installations of less than 10,000 sf in residential districts.

- TRANSPORTATION

Ensure that ongoing conversations with DOB and FDNY result in fire safety measures paired with fire safety education campaigns pertinent to charging stations. Work with DOT to create a rationale by which street use is determined (charging stations, bike lanes, bike corrals, bus lanes, open streets, delivery windows, etc. are zero sum uses).

While the Board is supportive of the efforts to aid in converting existing internal combustion vehicles to electric ones, we again question considerations such as mining that must be undertaken to allow for this transition. Further, if we are to further encourage the transition away from individual vehicle reliance to greater public transportation usage and investment (supported by such measures as congestion pricing), the Board believes that the text amendment could include requirements such as contributions or impact fees associated with the benefits afforded to parking garage and lot uses.

- WASTE & WATER

If illegal curb cuts and parking pads were enforced, we would be further along in the goal of obtaining carbon neutrality. The city itself should take responsibility for adding permeable pavement where possible on all pedestrian plazas, bike lanes, park paths, neck downs and potentially road resurfacing.

Street tree requirements are also poorly enforced, as they exist today. Certificates of Occupancy are issued before street trees are planted, redefined as rain gardens, relocated due to feasibility or waived with penalty due. There is no incentive for a developer to comply if the current norm continues. In the north of the district several new developments had created tree pits, but for years did not endeavor to plant the required trees. In fact, Council Member Joseph ultimately had to use funding from her budget to plant 40 street trees,

many of which were in tree pits created by developers. The proposal requires robust enforcement for planting and relies on a substantially increased DPR Forestry budget to dramatically increase the pruning cycle, address emergency pruning requests, clear branches, improve contracting practices, and to engage in consultation site visits with developers for required plantings. DEP has demonstrated a lackluster capacity to install an impactful number of bioswales that, again, would have the city in a better starting position toward carbon neutrality.

Further, the text amendment should add flexibility to the street tree requirements to allow connected tree beds, as well as substitution of one required street tree with a DEP-compliant raingarden. As it's currently written in the proposal, the text precludes the use of newer more inventive prototypes.

We urge DCP to revise the language to make it clear that permeable paving is always permitted and to provide incentives instead of adding DOB red tape. More prescriptive language regarding allowable materials may be in order to reduce the potential of dust and spill of gravel or other loose materials. Impervious surfaces in CD14 can create opportunities to integrate green infrastructure for stormwater management to mitigate chronic flooding locations, as well as combat urban heat island effects.

- CONCLUSION

None of these amendments would impose requirements. Rather, they would provide flexibility with regard to zoning regulations. They would primarily rely on DOB, DPR, DOT and FDNY compliance rather than DCP approval. "The devil is in the details" is a frequent refrain when discussing this text amendment. "Silos" are an often noted concern and in a city as diverse in its topography, land use, and populations, "one size fits all" does not in fact fit. There would be a good deal of value in the ability to consider how this amendment interacts with the concepts of other recent zoning text amendments; Brooklyn's Comprehensive Plan; the New York State Clean Energy Initiative and Federal Infrastructure Investment and Jobs Act.

Community Board 14 reasserts conditional approval of the City of Yes Zoning for Carbon Neutrality in great part because we share the aspirations. The conditions of the approval require a lot of work moving forward and rely heavily on continued community outreach, input and ultimate value on local perspectives. We look forward to continued dialog.

Submitted respectfully,



Jo Ann Brown
Chair