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December 28, 2015

Mr. Carl Weisbrod, Chair
New York City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

RE: Comments on the Draft Environmental
Impact Statement for the Zoning for Quality
and Affordability Text Amendment Proposal
(CEQR 15DCP104Y)

Dear Mr. Weisbrod:

I have reviewed the Draft Environmental Impact Statement (DEIS) for Zoning for Quality and Affordability (ZQA) and these are my comments. I am a certified planner who has been involved in many New York City and State environmental reviews. While I have clients with interests in these matters, these comments are solely my own.

Summary

This letter details two serious omissions in the DEIS for ZQA that will require a Supplemental Draft Environmental Impact Statement to be completed.

The first omission involves impacts created by proposed changes to the building envelope, which are designed, in part, to make construction more cost effective. By making construction more cost effective, there will be impacts on the construction industry that need to be studied and disclosed in the DEIS, as required by the CEQR Technical Manual.

The second omission involves the DEIS assumption that changes proposed under ZQA will not induce development. The change to the building spacing rule will allow development to occur in places where it could not under current zoning, and will induce development. The development inducement of this change has already been demonstrated by NYCHA's recent announcement that hundreds of new units will be placed on Isaac Holmes houses; a site that is not practically developable under current zoning.

Finally, while not a part of the DEIS for the project, this letter concludes with comments on the CPC hearings for ZQA and MIH held on December 16.

While these comments identify issues with the DEIS and process, I am on record supporting changes proposed in ZQA and I still believe that they will result in better, more cost effective buildings. But I also believe in our environmental review process, and I am obligated to identify the serious omissions found therein.

Ironically, the requirement for 60-foot building spacing on the same zoning lot, is a rule that I have publicly criticized as a relic from a previous era that prevents responsible in-fill on height factor housing estates. It is a change that is long overdue and will result in a better City, but the DEIS still has to study and disclose its impacts.

Serious issues

There are two serious issues in the DEIS. The first relates to an omission in the socioeconomic impacts of the proposed action identified in my April 30, 2015 comments on the Draft Scope, yet not amended in the Final Scope, and never studied in the DEIS. The second serious issue relates to omitting growth-inducing impacts of proposed change in the building spacing rule from the DEIS.

Socioeconomic Impacts

The Final Scope of Work for the DEIS (Scope) states that one of the reasons the building envelope is changing is to accommodate new construction practices, including “block and plank” and modular construction. The Scope explains that these practices are favored to reduce construction cost in low- and mid-rise construction:

One of the more pronounced changes in the construction industry has been the steady increase in pre-fabricated components or even modular units. To reduce construction costs, affordable housing developments often utilize a ‘block and plank’ structural system, which is comprised of, and thusly named for, pre-fabricated hollow-core concrete floor planks and concrete masonry unit walls. Hollow-core planks are pre-engineered and have pre-set spans that correlate to their specific depths. For an 8” depth slab, the maximum span is 30’. If two of these planks are placed together, the maximum effective depth of the building is 60’. For districts which allow, and whose ability to fit the permitted floor area were based on, 65 percent lot coverage (or a depth of 65’ on a typical 100’ deep lot) this effective construction depth cap becomes an artificial envelope that limits the full utilization of floor area. [Pages 40-41.]

The use of pre-fabricated construction materials reduces costs, in part, by eliminating workers from the construction site when compared to building using more traditional site-built construction techniques.

The CEQR Technical Manual tells us, “A socioeconomic assessment should be conducted if a project may be reasonably expected to create socioeconomic changes within the area affected by the project that would not be expected to occur without the project.” As an example of a significant impact, the Technical Manual uses the displacement of 100 workers. If this change in the building envelope is successful and results in a significant number of additional buildings using prefabricated materials, there is the potential for a significant socioeconomic impact that would not occur otherwise, and that impact needs to be studied and disclosed. The Building Congress estimates that in 2015, there are

125,100 construction jobs in New York City. If just 1% of these jobs are lost due to savings related to the use of prefabricated materials that is a loss of 1,251 jobs.

A discussion with Department of City Planning (DCP) staff on this issue related the City's belief that ZQA would result in no loss of construction jobs. Rather, there would be an increase in jobs because the change in the building envelope would allow for developments on marginal affordable housing sites that would not "pencil out" without the changes proposed by ZQA. The City also said that market rate housing did not use block and plank construction, so that this change would be limited to impacting these marginal affordable housing sites.

But market rate housing does use block and plank construction techniques, when they are appropriate. While not typical or usual, when the design allows it and the site can still use all floor area allowed under zoning, market rate developments can be found that used block and plank construction.¹ With the change to the building envelope ZQA makes, fewer developers will have to choose between less expensive building techniques and using all the floor area zoning allows. When not faced with having to choose between floor area and less expensive building techniques, additional market rate housing will be built using this less expensive building technique, which will result in an impact on the construction employment that needs to be disclosed.

Additionally, the Technical Manual tells us socioeconomic impacts are not only about employment:

If the project is expected to affect conditions within a specific industry, an assessment is appropriate. For example, a citywide regulatory change that would adversely affect the economic and operational conditions of certain types of businesses or processes may affect socioeconomic conditions in a neighborhood. [Page 5-3]

If the changes to the building envelope reduce construction costs, as they expressly hope to do, the proposal will impact the "economic and operational conditions" of the construction industry and that impact needs to be studied and disclosed. The changes also have the potential to impact the socioeconomic conditions of particular neighborhoods more than others. Highly skilled construction jobs will still be needed to fit prefabricated buildings together—perhaps even more in certain trades than traditional building techniques—but some number of lower skilled laborers may effectively be replaced by factory workers who are manufacturing these products outside of New York City.

This expectation of jobs either being reduced or moving outside New York City due to the change of the building envelope was independently confirmed during a meeting hosted by the Citizens Housing and Planning Council on October 30, 2015. The meeting was one of the many informational sessions on both Mandatory Inclusionary Housing (MIH) and ZQA that took place during 2015.

¹ For example, 22 Caton Place in Brooklyn.

The panel assembled included staff from the DPC, and Mark Ginsberg, an architect who is the principal author of the “Building Envelope Conundrum,” a document which is cited in the Scope multiple times, but principally as follows:

Shortly after the release of the Housing Plan, the Citizens Housing & Planning Council (CHPC) released a study entitled “The Building Envelope Conundrum” which explains that since 1987, when contextual zoning regulations were established citywide, several changes in basic development assumptions have contributed to making the contextual envelope out of date. A combination of factors, namely rising floor-to-floor heights, new construction materials and techniques, an increasing prevalence of irregularly-shaped parcels and a growing number of policy initiatives that utilize floor area incentives or deductions, has left the building envelope so constrained in many zoning districts that a number of case studies in the report were unable to accommodate their permitted amount of floor area. The text amendment described below proposes several adjustments to the bulk envelope, (including heights, setbacks, and maximum lot coverage), in order to facilitate contemporary best practices in building design and construction. [Page 38.]

Many of the changes proposed in ZQA are in direct response to the issues studied in the “Building Envelope Conundrum.” During the October 30 meeting, in response to a question, Mr. Ginsberg, described how he expected the change in the building envelope would impact people who work on the construction site. He said that he expected that some jobs would move to sites in Pennsylvania where the blocks and planks are made, and the jobs would change from construction jobs to factory jobs where the work could be done indoors in better conditions. Mr. Ginsberg’s expectation on the change in employment is perhaps the best description of a socioeconomic impact that needs to be studied and disclosed in an environmental review so that an informed decision on the action’s impacts and benefits can be made.

The foregoing identifies a potentially significant impact that was not studied in the DEIS as required by the CEQR Technical Manual. The Final Scope of Work for the DEIS was not amended, even though the Lead Agency was informed of the deficiency in the Draft Scope of Work in writing, and in a timely fashion. Therefore, the DEIS cannot be complete and an informed decision on the impacts of the proposal cannot be made without the completion of a Supplemental DEIS.

Growth-inducing impacts of the change in building spacing

The second omission in the DEIS involves the growth-inducing impacts of the change in building spacing for buildings on the same zoning lot. The DEIS for ZQA states:

While each component of [ZQA] is designed to act in combination with others to facilitate more cost-effective development, this proposal is not in-and-of-itself expected to *induce* development where it would not have occurred absent the Proposed Action (with the exception of one component allowing as-of-right development over certain existing parking lots for affordable senior housing). [Pg. 2-3, emphasis in the original]

In May 2015, just weeks after comments on the Draft Scope of Work for ZQA were due, the City released “NextGeneration NYCHA,” a 10-year strategic plan that is guiding how NYCHA is funded, operates, and engages with residents. Strategy #10 in that plan is: “Provide underutilized NYCHA-owned land to support the creation of affordable housing units,” with a goal that 10,000 units of affordable housing will be developed on NYCHA sites over the next 10 years. Further, additional market-rate units on top of the 10,000 new affordable units will be developed on NYCHA properties under the 50% affordable housing / 50% market rate housing. While the plan does not state how many market rate units might be developed, it does state that these units could generate \$300 million to \$600 million over the next 10 years, suggesting a non-trivial number.²

A practical difficulty in developing in-fill on NYCHA estates is the 60-foot window-to-window minimum building spacing required by existing zoning above a certain building height. ZQA changes this rule so that the Zoning Resolution will mimic the requirements for building spacing found in New York State’s Multiple Dwelling Law, which essentially reduces building spacing from 60 feet to 40 feet.

In September 2015, NYCHA proposed building 350 to 400 new units on Isaac Holmes Houses on East 92nd Street in Manhattan, which is a small NYCHA development consisting of two buildings. While no specific plans were announced for new building(s) on Holmes, under the 60 foot building spacing rule, Isaac Holmes cannot be practically developed: The development sites on the property are too small for a practical building. Generally, we look for development sites of 10,000SF for substantial buildings, and under the 60 foot rule the largest site on Holmes is an irregularly shaped site of about 7,750 SF. The diagram below shows potential development sites on Holmes, and their sizes, under both the 40 feet and 60 feet building spacing rules:

² NextGen NYCHA, Pages 84-85.



Figure 1: Plan of Isaac Holmes Houses showing potential areas for in-fill under 40 and 60 foot building spacing and the sizes of those areas

The red and blue outlines show 40 and 60 feet distances from the residential portions of the existing buildings. The striped areas are more than 40 feet away from the existing buildings. The green areas are more than 60 feet away from the existing buildings. If 10,000 SF is considered a minimum development site, then three sites, ranging from about 10,930 SF to 13,900 SF could be developed under 40 foot building spacing proposed by ZQA (sizes shown in black lettering), but there are no development sites under the current building spacing rules (sizes shown in green lettering.)³

Because there are no development sites that could accommodate the hundreds of units planned for Isaac Holmes under current zoning, but there are development sites with the changes proposed by ZQA, the change in the building spacing rule is inducing development on Isaac Holmes.

Further, evidence suggests that growth inducement is not limited to Holmes and the change in building spacing will make a significant difference as to which housing estates can be developed, and how many units could be built on them. As a part of the East Harlem Neighborhood Planning process, NYCHA estates in

³ Building sites can be smaller than 10,000SF, but they become less and less efficient in a non-linear fashion as the development site shrinks. This is because the building core remains largely the same size while habitable space becomes smaller and smaller. This limitation, combined with the sky exposure planes required by the R8 district mapped on Holmes means that the units proposed by NYCHA could not be practically built under current rules.

East Harlem were examined as to their potential to produce housing in both 40 and 60 foot building spacing scenarios. In that exercise, it was found that changing building spacing from 60 feet to 40 feet would allow for the potential of about 2,000 additional units to be in-filled on NYCHA estates, just in Community District 11.

“NextGen NYCHA” identifies underutilized NYCHA-owned land to support the creation of affordable housing units. The City then proposes changing the building rule to allow this housing to happen more widely, and just weeks after draft zoning text for ZQA was released, a housing estate that was not developable under the existing rules, was one of two selected for in-fill. Yet the environmental review does not study any growth-inducing impacts of the change of the building spacing rule. The new building spacing changes vastly increases the development potential of many NYCHA properties (and other height factor estates) just as an upzoning would, and therefore needs to have its impact studied and disclosed in the DEIS.

The December 16 public hearing

On December 16, 2015, the Lead Agency held a public hearing on ZQA and Mandatory Inclusionary Housing that started at 9:00am. Individuals who wanted to speak had to wait in line to get a number. They could stay and listen to the testimony, or they could leave and estimate their time to return by monitoring a DCP Twitter feed. I arrived shortly after 9:00am and waited for about two hours to get a number, which was number 151. I gave my testimony about 11 hours later around 8:00pm.



Figure 2: A photograph of the line to get a number to speak at the public hearing distributed by the Historic Districts Council. Based on my own position in this line, I estimate that it was taken at around 10am

From discussions with several colleagues, I have learned that in the days prior to the hearing, selected individuals were asked to give testimony in support of the zoning amendments. The Lead Agency then arranged for these individuals to get a number to speak that accommodated their schedule for the day of the hearing. To be clear, these select individuals were provided their numbers to speak prior to numbers being passed out to the general public so it could be scheduled in their calendars. Selected people I know included professionals such as architects, planners and attorneys, who are knowledgeable and well-informed. Without encouragement and facilitation of the Lead Agency, however, it is unclear how many, if any, of these individuals would have otherwise testified. While the content of the hearing was excellent, with engaged Planning Commissioners and informed testimony, the process was tainted by pre-selecting many of those who would testify, and making it easier for the selected people to testify than other participants in the process.

I have been a member of the American Institute of Certified Planners (AICP) since 1997. All certified planners, including those who work for the City and serve as planning commissioners, have a code of ethics that we pledge to follow in our professional decision-making. Generally, the planner's "primary obligation is to serve the public interest and we, therefore, owe our allegiance to a conscientiously attained concept of the public interest that is formulated through continuous and open debate."

Specifically, one of the aspirational principles we pledge to follow is:

We shall deal fairly with all participants in the planning process. Those of us who are public officials or employees shall also deal evenhandedly with all planning process participants.⁴

In my opinion, by pre-selecting certain members of the public and by providing them numbers accommodating their schedule, that did not require a trip to the hearing site and a wait in line, the Lead Agency, and specifically the Department of City Planning did not deal fairly and evenhandedly with all participants in this planning process. Rather, it procured public testimony that likely would not have been given otherwise. At minimum, I believe that those members of the AICP who participated in this procurement of public testimony should be disappointed that they failed to live up to one of our aspirational principles by not treating all participants in the planning process evenhandedly.

Close

Again, I am supportive of ZQA and spoke at the December 16 public hearing in support of the changes being proposed, but if we believe in our environmental review process and the concept of disclosing impacts of actions before taking those actions so that informed decisions can be made, then the Lead Agency must conduct a Supplemental DEIS and study and disclose the impact on the

⁴ The AICP code of ethics can be found here: <https://www.planning.org/ethics/ethicscode.htm>

construction industry. The Supplemental DEIS would also have to study how changing the building spacing rule will induce development on NYCHA estates, in the context of a strategic plan that states an intention to develop many of these estates, at least some of which could not be reasonably developed without the changes proposed by ZQA.

Thank you for your efforts to make New York City and its zoning better. If you have any questions about these comments, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "G. M. Janes". The signature is fluid and cursive, with the first letter of each name being significantly larger and more prominent.

George M. Janes, AICP
Principal
George M. Janes & Associates