

NEW YORK CITY CLEARS THE PATH FOR PERMITTING OF ENERGY STORAGE SYSTEMS

Hodgson Russ Renewable Energy Alert
December 17, 2020

In a significant move to smooth permitting of energy storage systems in New York City, on December 15, 2020 the City Department of Buildings (“DOB”) established [criteria](#) for classifying stationary storage battery systems and fuel-cell power systems as “accessory uses” under the City’s Zoning Resolution, and outlined the filing procedures for such systems. This is an important step that provides developers with the concrete guidance they need to identify viable sites and streamline project permitting in the City, where, as we discussed in our May 6, 2020 Alert, [Zoning Nuances for Energy Storage Development in New York City that Every Developer Should Know](#), the process for energy storage siting is unique, more challenging than in the rest of New York State, and has consistently stunted deployment progress.

Driven by New York State’s ambitious statewide energy storage goals of deploying 1,500 megawatts (MWs) by 2025 and 3,000 MWs by 2030, and the City’s own building decarbonization mandates, the City’s latest move addresses the specific barriers to permitting and siting of storage systems. For example, while there is no mention of energy storage in the New York City Zoning Resolution, the New York City Planning Commission has in the past confirmed that energy storage falls under Use Group 6 (Utility, Small). As such, energy storage projects were permitted in some Residential Districts (R1-R2 and R3-R10) by special permit and are permitted as-of-right within some Commercial (C1, C2, C4, C5, C6, and C8) and Manufacturing (M1, M2 and M3) Districts. Developers were therefore limited to sites within these districts unless they obtained a use variance from the Board of Standards and Appeals (i.e., an approval to use the land in a manner not permitted by the Zoning Resolution).

While this continues to hold true, the just-issued Bulletin provides developers certainty with respect to the requirements that stationary storage battery systems and stationary fuel-cell power systems must comply with to be deemed “accessory uses” within a principal zoning use group. Accessory stationary storage battery systems and stationary fuel-cell power systems may be permitted within a zoning lot as follows:

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(a) Within the Bulk Envelope

(i) May be located within a building, or on the roof of a building, provided the systems comply with all applicable bulk regulations of the zoning district. Such systems located within a building shall be considered “floor space used for mechanical equipment”.

(ii) May be located above the maximum height limit or sky exposure plane of the zoning district where the New York City Zoning Resolution allows “accessory mechanical equipment” as a permitted obstruction in any such area.

(b) Permitted Obstructions in Rear Yards and Rear Yard Equivalent

(i) May be located in required rear yards and rear yard equivalents within Flood Hazard Areas subject to Article 6 Chapter 4 of New York City Zoning Resolution.

(c) Areas Beyond or Below Required Open Spaces, Courts, and Yards

(i) May be located in open areas that are not part of open spaces, courts, and yards required by New York City Zoning Resolution.

(ii) May be located below the level of required open spaces, courts, and yards subject to Level of Yards and Location of Open Space for Residential Portion Regulations of the New York City Zoning Resolution. Footprints of such utility trenches shall only be sized to house and access proposed systems. Metal grating or other types of fall protection shall be provided in accordance with pertinent New York City Building Code.

(d) May be located in other locations where permitted by the Zoning Resolution.

Bulletin 2020-023 further provides that accessory stationary storage battery systems and stationary fuel-cell power systems may be deemed “accessory mechanical equipment” and shall be enclosed when placed outdoors. It also sets forth standards for calculating system capacity for determining the maximum electrical load of a zoning lot.

After setting forth new zoning guidelines, Bulletin 2020-023 goes on to establish an updated application and approval process. Here, Bulletin 2020-023 makes clear when review and approval is required from the New York City Fire Department (FDNY) and the Office of Technical Certification and Research (OTCR) as well as the general DOB filing and sign-off requirements for all applications.

In sum, Bulletin 2020-023 provides an interpretation of the Zoning Resolution and precise application and approval guidelines with all relevant departments that will allow for streamlined permitting and a greater deployment of energy storage systems across New York City.

As the New York City energy storage market continues to pick up steam, given the high value of such resources in such a grid-constrained environment, and the need to make Con Edison’s system more resilient in the face of storms and outages, this step by the City is an important sign of progress.

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If you have questions about zoning or other issues in placing energy storage resources please contact Noah Shaw (518.736.2924), Dan Spitzer (716.848.1420) or Mila Buckner (646.218.7658).

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