



## **CITY PLANNING COMMISSION**

March 4, 2009, Calendar No. 12

C 070305 ZSM

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**IN THE MATTER OF** an application submitted by 405 West 53rd Development Group, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit\* pursuant to Sections 96-111 and 13-561 of the Zoning Resolution to allow an unattended accessory off-street parking garage with a maximum capacity of 37 spaces on portions of the ground floor and cellar of a proposed residential building on property located at 405-427 West 53rd Street (Block 1063, Lot 17), in a C6-2 District, within the Special Clinton District, Community District 4, Borough of Manhattan.

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\* 197-d (2)(b) eligible

The application was filed by 405 West 53<sup>rd</sup> Development Group, LLC on January 23, 2007, for a special permit pursuant to Sections 96-111 and 13-561 of the Zoning Resolution for a 37-space, unattended accessory parking garage in an as-of-right residential building located at 405 West 53<sup>rd</sup> Street.

### **BACKGROUND**

The project site is an approximately 34,780 square foot through-lot between West 53<sup>rd</sup> Street and West 54<sup>th</sup> Street, and Ninth Avenue and Tenth Avenue. The site was formally occupied by 225-space public parking lot. The proposed garage would be located on portions of the ground level and cellar level of an as-of-right, 84 unit residential building. The project site is located within the Preservation Area of the Special Clinton District, in a C6-2 zoning district.

Land uses within the area include residential, commercial, institutional, and media studio uses. The project block includes television and recording studios, residential uses, and a vacant building that recently received a special permit from the Board of Standards and Appeals to operate an 81-space public parking garage. An as-of-right, 95-unit residential building is

currently under construction on one-half of the Tenth Avenue frontage of the block. The block to the south of the site is divided between residential uses, which occupy the eastern portion of the block, and P.S. 11 which occupies the western portion of the block. The block to the north of the site is also a mixed-use block, containing residential uses, storage facilities, several commercial uses, and a church.

The applicant is requesting a special permit pursuant to Sections 96-111 and 13-561 of the Zoning Resolution to facilitate construction of a 37-space, unattended, accessory parking garage. Pursuant to Section 96-111 of the Zoning Resolution, no accessory off-street parking spaces are permitted within the Preservation Area of the Special Clinton District except by special permit as pursuant to Section 13-561. The development is thus not permitted any as-of-right accessory parking spaces.

Vehicular ingress to and egress from the garage would be located on the western end of the building via a new, 20-foot curb cut on West 53rd Street a westbound street. The main residential entrance to the building would be approximately 48 feet east of the garage entrance and there will be additional residential entrances to nine individual townhouses along the West 53rd Street frontage. The 19,902-square-foot accessory parking area for 37 cars will be located within the cellar of the building, and there would be direct access from the garage level in the cellar to the building's main elevator, as well as direct access to cellar entrances of the nine townhouse units. Eight reservoir spaces are provided. A flashing light and ringing bell would be placed at the entrance/exit to the garage to alert pedestrians of entering and exiting cars.

## **ENVIRONMENTAL REVIEW**

This application (C 070305 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 08DCP050M. The lead agency is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on October 27, 2008.

## **UNIFORM LAND USE REVIEW**

This application (C 070305 ZSM) was certified as complete by the Department of City Planning on October 27, 2008, and was duly referred to Community Board 4 and the Borough President, in accordance with Title 62 of the Rules of the City of New York, Section 2-02 (b).

## **Community Board Public Hearing**

Community Board 4 held a public hearing on this application on December 3, 2008, and on that date, by a vote of 38 to 0 with 0 abstentions, adopted a resolution recommending conditional disapproval of the application "...unless the number of parking spaces is limited to 17 spaces (20% of the units), consistent with ZR Section 13-12."

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation on January 12, 2009, disapproving the application, because “the applicant has not demonstrated that there are insufficient parking spaces within the vicinity of the site, as is required by ZR Section 13-561(b).”

### **City Planning Commission Public Hearing**

On January 7, 2009 (Calendar No. 6), the City Planning Commission scheduled January 21, 2009 for a public hearing on this application (C 070305 ZSM). The hearing was duly held on January 21, 2009 (Calendar No. 25). There were three speakers in favor of the application and two speakers in opposition.

The applicant’s representative briefly described the project and the garage’s operation. He also further explained the information provided to the Commission in letters dated January 15, 2009 and January 27, 2009. As discussed in the letters, he explained that the proposed parking spaces would be sold to the building residents in conjunction with their apartment purchases. The representative went on to explain that the building will have 31 units with three-, four- and five-bedrooms, which would generate a greater demand for parking. He stated the high average household size will generate a need for 52 spaces for the building’s residents. Finally, he argued that the vicinity of the area should, for purposes of Section 13-561(b), be smaller than the ¼ mile distance used for the project’s environmental review.

The building’s developer and architect also appeared in favor.

The Co-chair of the Clinton/Hell's Kitchen Land Use Committee of Community Board 4 reiterated the board's position that the findings relating to the need of the parking spaces, the availability of parking in the vicinity and the creation of congestion in the area are not met. She pointed to an 81-space public parking garage at the north-east corner of Tenth Avenue and West 53<sup>rd</sup> Street that received a BSA approval in January 2009, after the subject application was certified, to resume operations on the same block as the proposed garage.

The Director of Land Use for the Manhattan Borough President reiterated the Borough President's recommendation of disapproval of the application due to his belief that the applicant did not demonstrate a lack of parking spaces in the vicinity.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

The Commission believes that the application for this special permit (C 070305 ZSM), as modified herein, is appropriate.

The Commission understands that, based on data from the 2006 American Community Survey for average number of cars per household in Community Districts 4 and 5, the 84 units in the as-of-right building would generate a demand for approximately 39 parking spaces. The Commission therefore believes that the proposed garage would serve the needs of the residents of the residential building.

The Commission believes that, in determining whether sufficient parking spaces are available in the vicinity of the residential building, it is appropriate to consider conditions in a smaller area than the ¼ mile radius utilized for purposes of determining the potential for potential significant impacts under CEQR analysis and notes that the Commission has done so in considering prior applications for accessory parking garages under Section 13-561(b). Here, consideration of conditions in the vicinity of the residential building must take account of the fact that, while there is currently no off-street parking available in immediate vicinity, in January 2009 the Board of Standards and Appeals approved the extension of the term of a variance for an existing public parking garage facility with 81 spaces located at 792 Tenth Avenue, at the western end of the block occupied by the residential building (196-08-BZ). Under the terms of the BSA resolution, 31 rooftop spaces at this facility must be reserved for monthly parking, with the remainder available for transient or monthly parking. This garage, once reopened for use, could satisfy the demand for some vehicles from the proposed residential building, although it cannot be assumed that all or most of the vehicles owned by residents of the proposed residential building would find monthly spaces there, particularly as an as-of-right residential development is currently under construction on an adjacent site on the same block. Accordingly, the Commission believes that the size of the proposed accessory garage should be reduced, to a maximum number of 30 accessory parking spaces.

The Commission notes that the Environmental Assessment Statement prepared for the application indicated that the proposed garage would likely result in a minimal increase in traffic. The Commission believes that the small increase would not unduly inhibit traffic and pedestrian flow.

The Commission understands that stop signs and visual and audible warning devices will be placed at the West 53<sup>rd</sup> Street entrance/exit to the garage to reduce potential vehicle and pedestrian conflicts. The Commission notes that the required number of reservoir spaces (8 spaces) will be provided on the ground floor and cellar level of the building.

## **FINDINGS**

The City Planning Commission hereby makes the findings pursuant to Section 13-561 (Accessory off-street parking spaces) of the Zoning Resolution.

1. That such parking spaces are needed for, and will be used by, the occupants, visitors, customers or employees of the use to which they are accessory;
2. That, within the vicinity of the site, there are insufficient parking spaces available;
3. That the facility will not create or contribute to serious traffic congestion nor will unduly inhibit vehicular and pedestrian movement;
4. That the facility is so located as to draw a minimum of vehicular traffic to and through local residential streets; and
5. That adequate reservoir space is provided at the vehicular entrance to accommodate vehicles equivalent in number to 20 percent of the total number of parking spaces, up to 50 parking spaces, and five percent of any spaces in excess of 200 parking spaces.

**RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant impact on the environment; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197-c and 201 of the New York Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by 405 West 53rd Development Group, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 96-111 and 13-561 of the Zoning Resolution to allow an unattended accessory off-street parking garage on portions of the ground floor and cellar of a proposed residential building on property located at 405-427 West 53rd Street (Block 1063, Lot 17), in a C6-2 District, within the Special Clinton District, Community District 4, Borough of Manhattan is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 070305 ZSM) shall be developed in size and arrangement with accessory parking of no more than 30 spaces, substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plan, prepared by Smith-Miller + Hawkinson Architects, filed with this application and incorporated in this resolution:

<i>Drawing No.</i>	<i>Title</i>	<i>Last Date Revised</i>
A100	W 53 <sup>rd</sup> Street Cellar Floor Plan	March 4, 2009
A101	W 53 <sup>rd</sup> Street 1 <sup>st</sup> Floor Plan	March 4, 2009



- 2) Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
- 3) Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
- 4) All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
- 5) Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City

Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted.

- 6) Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 070305 ZSM), duly adopted by the City Planning Commission on March 4, 2009 (Calendar No. 12), is filed with the Office of the Speaker, City Council, and the Borough President in accordance with the requirements of Section 197-d of the New York City Charter.

**AMANDA M. BURDEN, FAICP, Chair**  
**KENNETH J. KNUCKLES, Esq., Vice Chairman**  
**ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E.,**  
**ANGELA R. CAVALUZZI, AIA, ALFRED C. CERULLO, III, BETTY Y. CHEN,**  
**MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,**  
**SHIRLEY A. McRAE, KAREN PHILLIPS, Commissioners**