



CITY PLANNING COMMISSION

August 24, 2011/Calendar No. 18

C 100064 ZSM

IN THE MATTER OF an application submitted by 249 W 28th Street Properties, LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Sections 13-562 and 74-52 of the Zoning Resolution to allow an attended Public Parking Garage with a maximum capacity of 325 spaces on portions of the ground floor, cellar level and sub-cellar level of a proposed mixed-use development on property located at 241-251 West 28th Street a.k.a. 240-250 West 29th Street (Block 778, Lots 13, 16, 18 & 66), in an M1-6D District, Borough of Manhattan, Community District 5.

This application for a special permit pursuant to Sections 13-562 (Public Parking Garages and Public Parking Lots) and 74-52 (Parking Garages or Public Parking Lots in High Density Central Areas) was filed by 249 W 28th Street Properties, LLC on August 6, 2009. The application would allow the construction of an attended public parking garage with 325 spaces on portions of the ground floor, cellar and sub-cellar levels of a proposed mixed-use development to be located on the midblock portions of two blocks bounded by West 28th Street, Eighth Avenue, West 30th Street, and Seventh Avenue in Community District 5 in Manhattan.

RELATED ACTION

In addition to the application for a special permit which is the subject of this report (C 100064 ZSM), implementation of the proposed project also requires action by the City Planning Commission on the following applications which are considered concurrently with this application:

C 100063 ZMM **Zoning Map Amendment** by 249 W 28th Street Properties, LLC, to rezone the midblock portion of two blocks bounded by West 28th Street, West 30th Street, Seventh Avenue and Eighth Avenue from M1-5 to M1-6D

BACKGROUND

A full background discussion and description of this application appears in the related report for a zoning map amendment (C 100063 ZMM).

ENVIRONMENTAL REVIEW

This application (C 100064 ZSM), in conjunction with the applications for the related actions (N 110285 ZRY and C 100063 ZMM), 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 lead agency is the City Planning Commission. The designated CEQR number is 10DCP004M.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on April 25, 2011.

UNIFORM LAND USE REVIEW

This application (C 100064 ZSM), in conjunction with the applications for the related action (N C 100063 ZMM), was certified as complete by the Department of City Planning on April 25, 2011, and was duly referred to Manhattan Community Board 5 and the Manhattan Borough President in accordance with Title 62 of the rules of the City of New York, Section 2-02(b).

Community Board Review

Community Board 5 held a public hearing on this application (C 100064 ZSM) on June 9, 2011, and on that date, by a vote of 36 to 0 with 1 abstention, adopted a resolution recommending approval of this application and the application for a zoning map amendment (C 100063 ZMM).

A summary of the recommendations of Community Board 5 appears in the related report for a zoning map amendment (C 100063 ZMM).

Borough President Recommendation

This application (C 100064 ZSM) was considered by the Office of the Manhattan Borough President, which issued a recommendation approving the application with conditions on July 13, 2011.

A discussion of the Borough President's conditions, which relate to the zoning text amendment (N 110285 ZRY), appears in the related report for a zoning map amendment (C 100063 ZMM).

City Planning Commission Public Hearing

On July 13, 2011 (Calendar No. 9), the City Planning Commission scheduled July 27, 2011 for a public hearing on this application (C 100064 ZSM) in conjunction with the hearings on the related applications (C 100063 ZMM). The hearing was duly held on July 27, 2011 (Calendar No. 13).

There were a number of speakers, as described in the report on the related zoning map amendment application (C 100063 ZMM), and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of a special permit (C 100064 ZSM) is appropriate.

A full consideration and analysis of the issues, and reasons for approving this application, appears in the related report for a zoning map amendment (C 100063 ZMM).

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-52 of the Zoning Resolution:

- (a) that such use will not be incompatible with, or adversely affect the growth and development of, uses comprising vital and essential functions in the general area within which such use is to be located;
- (b) that such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow;
- (c) that such use is so located as to draw a minimum of vehicular traffic to and through local streets in nearby residential areas;
- (d) that such use has adequate reservoir space at the vehicular entrances to accommodate automobiles equivalent in number to 20 percent of the total number of spaces up to 50 and five percent of any spaces in excess of 200, but in no event shall such reservoir space be required for more than 50 automobiles;
- (e) that the streets providing access to such use will be adequate to handle the traffic generated thereby;
- (f) not applicable; and
- (g) not applicable.

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 200 of the New

York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of 249 W 28th Street Properties, LLC, pursuant to Sections 197-c and 201 of the New York City Charter, for the grant of a special permit pursuant to Sections 13-562 and 74-52 of the Zoning Resolution to allow for an attended public parking garage with a maximum capacity of 325 spaces on portions of the ground floor, cellar level and sub-cellar level of a proposed mixed-use development on property located at 241-251 West 28th Street a.k.a. 240-250 West 29th Street (Block 778, Lots 13, 16, 18 & 66), in an M1-6D District, Borough of Manhattan, Community District 5, is approved, subject to the following conditions:

1. The development that is the subject of this application (C 100064 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following approved plans prepared by Philip Habib & Associates , filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
2 of 3	Parking Plan	07/26/11
3 of 3	Parking Plan	07/26/11

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 100064 ZSM), duly adopted by the City Planning Commission on August 24, 2011 (Calendar No. 18), 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
RICHARD W. EADDY, Vice Chairman
ANGELA M. BATTAGLIA, RAYANNE BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, NATHAN LEVENTHAL, ANNA HAYES LEVIN,
SHIRLEY A. MCRAE, KAREN A. PHILLIPS, Commissioners

ORLANDO MARIN, Commissioner, ABSTAINED