



CITY PLANNING COMMISSION

June 23, 2004/Calendar No. 18

C 030387 ZSM

IN THE MATTER OF an application submitted by Central Parking System of New York, Inc. pursuant to Sections 197-c and 201 of the New York City Charter **for the grant of a special permit** pursuant to Section 13-562 and 74-52 of the Zoning Resolution to allow an unattended public parking garage with a maximum capacity of 90 spaces in the cellar of an existing commercial building located at 227 Cherry Street (Block 248, Lot 1), in a C6-4 District, Borough of Manhattan, Community District 3.

The application was filed by Central Parking System on March 12, 2003, for a special permit pursuant to Sections 13-562 and 74-52 of the Zoning Resolution to allow an unattended public parking garage with a maximum capacity of 90 spaces in the cellar of an existing one-story Pathmark supermarket located at 227 Cherry Street. The property is located within a C6-4 zoning district.

BACKGROUND

Pathmark, a 45,000 square foot, one-story building was constructed in 1983 and is situated in the southern half of a lot located between South and Cherry streets in the Lower East Side. 227 Cherry Street is located on a zoning lot of 21,344 square feet in a C6-4 zoning district which allows for a commercial 10 F.A.R. Currently, there are 198 accessory off-street parking spaces for Pathmark including an on-site enclosed facility (100 spaces) in Pathmark's cellar and unenclosed off-street facility (98 spaces). To access the unenclosed and enclosed facilities, there are existing curb cuts on Cherry and South streets.

A previous special permit pursuant to Section 13-461 for 198 accessory off-street parking spaces for

Pathmark was approved in April 1984 (C840095ZSM). The special permit allows an on-site enclosed facility (100 accessory spaces) in Pathmark's cellar and unenclosed off-street facility (98 accessory spaces). Prior to the 1984 special permit, there were four related actions approved by the City Planning Commission. The actions include: 1) the second amendment to the Two Bridges Urban Renewal Area; 2) disposition of the a site within the URA for the development of Pathmark Supermarket; 3) change the location specified for the athletic field in order to designate site for commercial development (Pathmark); and 4) the lease of URA land to permit the development of an athletic field.

To the immediate west of the Pathmark site is the Manhattan Bridge and to the south is the elevated Franklin D. Roosevelt Drive located along the waterfront. To the north and east of the site are 10 to 12 story residential buildings. The block and surrounding area are predominantly residential in character, with nearby blocks having a mix of private and public housing buildings that range from 12 to 20 stories. The neighborhood to the north is typified by densely populated five- or six-story, brick buildings. Commercial and retail uses are available on East Broadway and Henry streets. The nearest subway station is located at East Broadway and Canal streets (F line). There is a shortage of on-street parking in the surrounding, dense residential neighborhood.

The application, as certified, proposed the conversion of an existing 100 space accessory parking garage to a self-park public parking garage (90 spaces and 10 reservoir spaces) in the cellar level (33,464 sq ft) of the supermarket.

Originally, the 198 accessory space Pathmark garage was built to accommodate customers that were expected to arrive by car. There were sufficient spaces to accommodate the parking demand for Pathmark customers. Spaces not used by customers in the enclosed Pathmark garage were illegally used by nearby residents and businesses.

In November 2000, in order to control the illegal parking situation, Pathmark hired the Central Parking System of New York, Inc. to operate and manage the enclosed parking facility. The lease to operate the Pathmark garage extends to October 30th, 2017. Central Parking recently established a policy of 90 minutes free parking followed by a charge to discourage prolonged free use. The applicant was cited in December 2003 (Environmental Control Board Violation No. 34408170N) by the Department of Buildings for failure to comply with the 1984 special permit for accessory parking and illegally operating a public parking garage.

The subject garage is accessed from South Street under the Franklin D. Roosevelt Drive. Parking customers will enter the garage and get a ticket from the automatic machine. This ticket and payment will be given to the attendant upon leaving. Monthly rates will be offered to nearby residents and businesses and they will be able to access the garage with a magnetic access card. It is expected that most of the customers of the proposed public garage will be local residents retaining their spots under a monthly parking contract.

An existing curb-cut and interior ramp will continue to provide access to the parking garage. The

existing entry gate will be moved further into the garage to allow for the 10 required reservoir spaces. The unenclosed and enclosed facility do not share ingress or egress: the unclosed parking facility is accessed from Cherry Street. Pathmark customers will continue to use the sufficient amount of spaces in the out door accessory parking lot adjacent to the store. There is a “No Parking” zone in front of the store. There will be no physical change to the Pathmark building.

ENVIRONMENTAL REVIEW

This application (C 030387 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 03DCP044M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed action, a Negative Declaration was issued on February 9, 2004.

UNIFORM LAND USE REVIEW

This application (C 030387 ZSM) was certified as complete by the Department of City Planning on February 9, 2004 and was duly referred to Manhattan Community Board 3 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 3 held a public hearing on this application on March 23rd, 2004 and on that date, by

a vote of 34 in favor, 0 opposed and 0 with abstentions, adopted a resolution recommending disapproval of the application, subject to the following condition:

[The Board asks] that Pathmark:

- Maintain free and accessible parking for Patmark customers and...
- Remove time limit on parking and...
- Insure safety for customers in parking area by improving lighting and increase security officers and...
- To request that DCP audit business operation for compliance with all city health and safety rules because Pathmark modified original use on indoor parking space without seeking Community Board approval and city permit and...
- To request that Pathmark improve customer service to attract more customers

Borough President Recommendation

This application was considered by the Borough President, who issued recommendation on April 29th, 2004 approving the application, subject to the following conditions:

- 1) although the description labels this parking situation as “unattended”, there will be an attendant on duty 24 hours a day and, if needed 2 attendants;
- 2) free and accessible parking for Pathmark customers will continue; and
- 3) if 90 minutes is not enough time to shop because of a disability or other reason, Central Parking will not charge for additional time

In addition, we urge Pathmark to reach out to the community, improve customer service, and develop better communication with them so that issues and concerns can be addressed expeditiously.

City Planning Commission Public Hearing

On April 28th, 2004 (Calendar No. 4), the City Planning Commission scheduled May 12th, 2004 for a public hearing on this application. On May 12th, 2004 (Calendar No. 16) the hearing was continued. The continued hearing was duly held on May 26, 2004 (Calendar No. 19). There were two speakers

in favor of the application and none in opposition.

The applicant's attorney provided a history of the previously approved accessory parking garage special permit and described the current project. A representative of Central Parking System, the current operator of the garage, described the design of the garage. He also noted that for the last two years Central Parking has been operating the garage at 227 Cherry Street.

There were not other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the granting of this special permit is appropriate. The permit would facilitate an unattended public parking garage with a maximum capacity of 90 spaces in the cellar of an existing a one-story Pathmark supermarket located at 227 Cherry Street between Pike and Cherry streets.

The Commission notes that the garage located at 227 Cherry Street is located in a predominantly residential neighborhood. The Commission believes that there is an insufficient supply of parking spaces in the immediate area. In addition, the Commission notes that only limited on-street parking is available in the area surrounding the site.

The Commission believes that the proposed garage will not create or contribute to serious traffic

congestion. The Environmental Assessment Statement prepared for the application estimates that the proposed garage would generate fewer than 50 vehicle trips in any peak hour and will therefore not result in any significant traffic impact. The Commission also notes that the garage would generate fewer vehicle trips than the parking lot previously located at the site. The Commission believes that the proposed garage will draw a minimum of vehicular traffic to and through local residential streets, primarily meet the parking demands of the immediate area. Access to the parking garage is on South Street and this is not a local residential street.

The Commission believes that the proposed garage will not unduly inhibit vehicular and pedestrian movement. The Commission notes that the converted garage would contain warning signs and signals to alert pedestrians to vehicles entering and exiting the garage. The Commission notes that the existing curb-cut and interior ramp will continue to provide access to the parking garage and that the garage will provide the ten required reservoir spaces. The unenclosed and enclosed facility do not share ingress or egress: the unclosed parking facility is accessed from Cherry Street. The Commission notes that the enclosed facility is accessed from South Street which is not heavily used by pedestrians.

The Commission believes that there is sufficient parking for Pathmark customers. According to the project's Environmental Assessment Statement, that between the surface parking and the spaces available at any given time in the garage, there are enough spaces to accommodate Pathmark customers. On Saturdays, when the surface lot is at peak utilization, that the garage is at a lower than typical utilization rate of 54%. The Commission notes that the applicant will ensure that potential

supermarket customers will know that parking is available in the garage. A sign indicating availability will be placed in the surface lot.

The Commission notes that in response to the Commission's concern that the vehicular aisles are too narrow and would prevent parking customers from being able to park their vehicles, the applicant has agreed to limit the seven spaces on the west side of the 15 foot aisle closest to South Street to compact cars. A revised application was submitted on June 11th 2004 to reflect this change. The Commission believes these compact car spaces will facilitate movement in and out of the other parking spaces.

The Commission notes that, in response to the Community Board's and Borough President's recommendations, the applicant, in a letter to the Commission dated June 2, 2004, has agreed to increase the free time for Pathmark customer parking from one and a half hours to two hours and, if necessary, will increase this time for special circumstances. The Commission also notes that the current operator has upgraded the once deteriorating garage and has also proposed additional improvements. The garage will be a resource for daytime monthly parkers who work in the area, for nighttime monthly parkers, and, if necessary, Pathmark shoppers.

FINDINGS

The City Planning Commission hereby makes the findings pursuant to Sections 74-52 (Parking Garages or Public Parking Lots in High Density Central Areas) 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;
- (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 Section 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 by Central Parking System for the grant of a special permit pursuant to Sections 13-562 and 74-52 of the Zoning Resolution to allow an unattended public parking garage with a maximum capacity of 90 spaces in the cellar of an existing commercial building located at 227 Cherry Street (Block 248, Lot 1) is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 030387 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by ADG Architecture and Design, P.C., filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
A-1	Cellar Garage Floor Plan	June 11 th , 2004

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 agreement 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 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 030387 ZSM), duly adopted by the City Planning Commission on June 23, 2004 (Calendar No 18), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, AICP, Chair
KENNETH J. KNUCKLES, Esq., Vice-Chair
ANGELA M. BATTAGLIA, IRWIN G. CANTOR, P.E.,
RICHARD EADDY, ALEXANDER GARVIN, CHRISTOPHER KUI, JANE D. GOL,
JOHN MEROLO, KAREN PHILLIPS,
DOLLY WILLIAMS, Commissioners