



CITY PLANNING COMMISSION

March 2, 2011, Calendar No. 14

C 090377 ZSM

IN THE MATTER OF an application submitted by Central Parking Systems 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, 13-562 and 74-52 of the Zoning Resolution to allow an increase from 260 parking spaces to a maximum capacity of 350 spaces, and to allow some of such spaces to be located on the roof, of an existing 3-story attended public parking garage, on property located at 332 West 44th Street (Block 1034, Lot 48), in a C6-2 District within the Special Clinton District (Preservation Area), Borough of Manhattan, Community District 4.

The application was filed by Central Parking Systems on April 6, 2009 for a special permit pursuant to Sections 13-562, 74-52, and 96-111 of the Zoning Resolution for a 350-space public parking garage on the ground floor through roof levels of an existing, three-story parking structure.

BACKGROUND

The applicant, Central Parking Systems, is seeking a special permit to allow a 350-space public parking garage on the ground floor through roof levels of an existing, three-story parking structure located at 332 West 44th Street (Block 1034, Lot 48), in Manhattan's Theater District. The site is located on the south side of West 44th Street between Eighth and Ninth Avenues, in Community District 4, Manhattan. A small portion of the site extends through the block to West 43rd Street. The site is zoned C6-2, and is in the Preservation Area of the Special Clinton District. The area contains a mix of uses, with West 44th Street being predominantly commercial, with some residential, walk-up buildings. West 43rd Street is more residential in nature, and a private grade-school is located across the street from the garage's West 43rd Street exit. A park is also located to the west of the garage on West 43rd Street. To the east of the garage is Times Square, which is predominantly commercial, and is a major local, regional, national and international destination.

The subject garage was originally granted a special permit (CP-14060) from the City Planning Commission on July 16, 1958, with a capacity of 230 parking spaces and reservoir space for 20 cars. The garage increased in size in 1959 when the CPC granted a new special permit (CP-

15838) for a larger garage building that held 260 parking spaces and room for 20 reservoir spaces. In 1961 the CPC approved an amendment (CP-16906) to the second special permit that added two new lots to the public parking garage site on West 43rd Street, and increased the number of reservoir spaces to 60.

In 1964 the CPC approved another amendment (CP-16906) to the special permit to allow egress through the two new lots onto West 43rd Street, but restricted the time the vehicles may use the exit on West 43rd Street to the hours between 6pm and 8am. On May 16, 1990 the CPC (C 840878 ZSM) approved a 10-year extension to the previous special permit and also modified the special permit (M 891058 ZSM) to reduce the number of reservoir spaces to 13, and remove one of the two lots added to the parcel in 1961. Finally, in January of 2001 the garage was granted a renewal (C 000626 ZSM) for 10 years for a public parking garage with a capacity of 260 cars and 13 reservoir spaces.

On June 30, 2010, a Department of Buildings violation was issued to the building owner for operating a garage that is contrary to its Certificate of Occupancy. The proposed special permit would legalize the current operation of the garage by increasing the number of permitted parking spaces from 260 to 350, and increasing the number of reservoir spaces to 16, to reflect the current operating capacity. The new special permit will also reflect the removal of one tax lot (Block 1034, Lot 7) from the project site, and reflect the use of car stackers on the roof. A

Cars enter the garage by driving east along West 44th Street to an entrance located in the middle of the block between Eighth Avenue and Ninth Avenue. There are 16 reservoir spaces located on the ground level of the garage. Cars exit the garage on West 44th Street in a dedicated curb-cut approximately 60 feet east of the garage entrance. Between the hours of 6pm and 8am, cars can exit the garage on West 43rd Street, which is a one-way, west-bound street. The West 43rd Street exit is controlled by a traffic light. In addition, a flashing light and ringing bell would be placed at both exits to the public parking garage to alert pedestrians of exiting cars.

ENVIRONMENTAL REVIEW

This application (C 090377 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 09DCP067M. 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 25, 2010.

UNIFORM LAND USE REVIEW

This application (C 090377 ZSM) was certified as complete by the Department of City Planning on October 25, 2010, 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 1, 2010, and on that date, by a vote of 35 to 4 with 0 abstentions, adopted a resolution recommending approval of the application, with the following conditions:

- i) Increase legal spaces to 310, including increased reservoir spaces;
- ii) Clear All Outstanding Violations and Issues
 - DCA should be required to demonstrate that all outstanding fees and violations have been paid; and
 - DOT should be required to certify that all curb cuts and sidewalks comply with the appropriate regulations and safety standards, or must issue violations and ensure that illegal conditions are rectified.
- iii) Verification of Collection and Payment of Taxes.
- iv) Applicant Agreements
 - Reduce the double width curb cut at the West 43rd Street exit from 25 feet to 11 feet and ensure ADA compliance;
 - Eliminate the pedestrian walkway along the West 43rd Street exit and install lighting and greenery on both sides of the single lane exit, including tree and tree guard;
 - Establish signage at 43rd Street exit (e.g., no right on red, must wait for green light, etc.);

- Install electronic gate at 43rd Street exit to ensure compliance with this agreement;
- Further limit hours of operation for 43rd Street exit (e.g., 8 p.m. - 6 a.m.);
- Eliminate unnecessary “stackers” from the property to ensure that the total number of available space does not exceed the permitted number,
- Provide 14 foot screening on roof for remaining “stackers;”
- No use of “stackers” after midnight;
- Reservoir spaces should be based upon 20% total spaces, not the requested increase;
- Plant four trees along West 44th Street and put in nine bicycle spots;
- Remove middle curb cut on West 44th Street; and.
- Operate the 43rd Street exit legally and safely.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on January 7, 2011, approving the application.

City Planning Commission Public Hearing

On January 5, 2011 (Calendar No. 15), the City Planning Commission scheduled January 26, 2011 for a public hearing on this application (C 090377 ZSM). The hearing was duly held on January 26, 2011 (Calendar No. 28). There were seven speakers in favor of the application and three speakers in opposition.

Two representatives of Community Board 4 reiterated the board’s conditional approval, including the condition that the number of parking spaces in the garage be limited to 310. They also discussed the commitments the applicant made to the board in a letter dated January 5, 2011.

A representative from the Manhattan Borough President’s Office reiterated the Borough President’s approval of the application and explained that the community board requested two more reservoir spaces be added to the garage, and that the applicant agreed to add two reservoir spaces.

A land use attorney representing the applicant explained that the garage operates at a capacity of 350 cars seven percent of the year. He also stated that the applicant sent two letters of agreement

to the community board listing items the applicant would provide in response to the community board's conditions.

Three other representatives of the applicant were present to answer questions.

A nearby resident and member of the West 44th Street Block Association spoke in opposition to the garage, and requested that the West 43rd Street garage exit be closed, and that the stackers be removed from the roof of the building, as she can now smell car exhaust from the garage in her apartment.

The Chair of Clinton Hell's Kitchen Coalition for Pedestrian Safety (CHEKPEDS) spoke in opposition to the garage and stated that the garage was operating above legal capacity and should not be rewarded with a new special permit. She also stated that many new parking spaces have been created in garages nearby, and that the West 43rd Street exit to the garage should be closed.

The Chair of the Hell's Kitchen Neighborhood Association also spoke in opposition to the garage and stated that the West 43rd Street exit is dangerous to children and other pedestrians.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that grant of this special permit (C 090377 ZSM), is appropriate.

The Commission notes that the garage is located in a C6-2 zoning district in the Preservation Area of the Special Clinton District, which permits commercial and residential development. The area contains a mix of uses, with West 44th Street being predominantly commercial, with some residential, walk-up buildings. West 43rd Street is more residential in nature, and a private grade-school is located across the street from the garage's West 43rd Street exit. A park is also located to the west of the garage on West 43rd Street. The Commission also notes that Times Square is located one block east of the garage, and is predominantly commercial, and is a major

local, regional, national and international destination. The Commission believes that the parking garage is an appropriate land use in this area.

The Commission notes that, pursuant to the Environmental Assessment Statement (EAS) prepared for the application, the garage is most heavily used on Wednesdays and Saturdays in November and December and that the proposed increase in the garage's capacity would generate an additional 24 vehicle trips per hour in the Wednesday evening peak hour in November and December, 32 vehicle trips per hour in the Saturday midday peak hour in November, and 25 vehicle trips per hour in the Saturday afternoon peak hour in December. The Commission concurs with the conclusions of the EAS, that this modest increase in street traffic would not create a significant adverse impact.

The Commission notes that the garage is accessed on West 44th Street, and cars can exit the garage on both West 43rd Street and West 44th Street. West 44th Street is predominantly commercial in nature. West 43rd Street is more residential. An existing, midblock traffic light exists on West 43rd Street at the garage exit. Cars are not allowed to turn right out of the garage when the light is red. In addition, the Commission is please to note that the applicant has agreed to install a gate on West 43rd Street that would prevent cars from exiting the garage when the light is red, or during hours when exit is prohibited. The Commission also notes that the applicant has limited the hours during which cars may exit the garage to between the hours of 8:00pm and 8:00am. Warning signals and buzzers would be located at both the West 43rd Street and West 44th Street exits to alert pedestrians to the presence of a vehicle exiting the garage. Therefore, the Commission believes that the vehicles using the garage would not unduly inhibit traffic and pedestrian flow.

The Commission understands that cars would approach the garage from the north and south by way of Eighth and Ninth avenues, from the by west by West 44th Street, and from the east by West 43rd Street or West 42nd Street, and that, in the surrounding area, these streets are predominately mixed-use in character. Therefore, the Commission believes that vehicular traffic to and through local streets in nearby residential areas would be minimal.

The Commission notes that the proposed garage contains 16 reservoir spaces. The number of reservoir spaces provided is based on the increase in 90 spaces from 260 to 350, which requires only 10 reservoir spaces. The Commission is pleased that the applicant has agreed to increase the number of reservoir spaces to 18, which is the minimum number required for a 350 space garage.

The Commission notes that the stackers on the roof will be oriented parallel to West 44th Street, and that the applicant will install a ten-foot tall screen on the perimeter of the roof. The applicant has also agreed that the stackers will not be used between midnight and 6:00am.

The Commission is aware that the applicant has agreed to a number of conditions stated by the community board. In letters dated January 5, 2011 and January 25, 2011 to Manhattan Community Board 4, the applicant agreed to modify the West 43rd Street exit by narrowing the driveway and curb cut, providing signage prohibiting a right turn from the driveway when the traffic light is red, installing a gate to prevent cars from entering or exiting from West 43rd Street when prohibited, eliminating the pedestrian path, allowing exit at West 43rd Street only between the hours of 8:00pm and 6:00am and adding plantings. The applicant also agreed to not use the stackers on the roof of the garage between the hours of 12:00am and 6:00am, increase the number of reservoir spaces to 18, remove the middle curb cut on West 44th Street and add nine bicycle spaces to the garage. The Commission is pleased to note that all of these items are included on a drawing entitled "Ground Level" dated February 23, 2011 and approved by the Commission.

The Commission also notes that the applicant, in the January 5, 2011 letter to Manhattan Community Board 4, did not agree with the community board that the number of parking spaces requested to be permitted in the garage should be reduced from 350 to 310, and that the car stackers should be removed from the roof. The applicant stated that the stackers are needed to reach the requested 350 spaces, and that the garage only reaches the 350 car capacity on Wednesdays and Saturdays and the December holiday season.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-52 (Parking Garages or Public Parking Lots in High Density Central Areas) of the Zoning Resolution:

1. 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;
2. That such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface and pedestrian flow;
3. That such use is so located as to draw a minimum of vehicular traffic to and through local streets in nearby residential areas;
4. 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;
5. That the streets providing access to such use will be adequate to handle the traffic generated thereby;
6. That roof parking is so located as not to impair the essential character or future use or development of adjacent areas; and
7. 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 Charter, that based on the environmental determination and the consideration and findings described in this report, the application submitted by Central Parking Systems 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, 13-562 and 74-52 of the Zoning Resolution to allow an increase from 260 parking spaces to a maximum capacity of 350 spaces, and to allow some of such spaces to be located on the roof, of an existing 3-story attended public parking garage, on property located at 332 West 44th Street (Block 1034, Lot 48), in a C6-2 District within the Special Clinton District

(Preservation Area), Borough of Manhattan, Community District 4, is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 090377 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 Sam Schwartz Engineering, filed with this application and incorporated in this resolution:

<u>Drawing Number</u>	<u>Title</u>	<u>Last Date Revised</u>
Drawing 1	Ground Level	February 23, 2011
Drawing 2	Typical Level	November 20, 2009
Drawing 3	Roof Level	November 20, 2009
Drawing 4	Typical Rooftop Section	November 20, 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 090377 ZSM), duly adopted by the City Planning Commission on March 2, 2011 (Calendar No. 14), 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, RAYANN BESSER, IRWIN G. CANTOR, P.E.,
ALFRED C. CERULLO, III, BETTY Y. CHEN, MARIA M. DEL TORO,
RICHARD W. EADDY, ANNA HAYES LEVIN, SHIRLEY A. McRAE,
KAREN A. PHILLIPS, Commissioners



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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JOHN WEIS
Chair

ROBERT J. BENFATTO, JR., ESQ.
District Manager

December 7, 2010

Hon. Amanda M. Burden, Director
New York City Department of City Planning
22 Reade Street
New York, NY 10007-1216

Re: Special Permit for Public Parking at 342 W. 44th Street, ULURP # 090377 ZSM

Dear Chair Burden:

After presentations to the Clinton/Hell's Kitchen Land Use Committee and at a duly noticed public hearing at the regular board meeting on December 1, 2010, Manhattan Community Board 4 voted by roll call by a vote of 35 in favor, 4 opposed, 0 abstentions, and 0 present but not eligible, to recommend, subject to certain conditions and to a favorable determination by the City Planning Commission on the required findings under ZR 74-52, the approval of the application for a special permit for a Public Parking Garage at 322 West 44th Street.

The applicant, Central Parking System, operates a 260 space public parking garage including 13 reservoir spaces on a C6-2 zoned block in the Preservation Area of the Special Clinton District that has had a special permit since 1958. However, for some time now the garage has been operating illegally (beyond capacity and one illegal entrance). This garage, together with approximately 400 other garages throughout New York City, was purchased by the current owner / applicant approximately three years ago. The applicant now seeks a new special permit to conform their operations. In addition to our on-going concerns that the availability of parking generates automobile traffic, we are also concerned that the granting of such a permit may establish a precedent whereby illegally operated garages face no consequences when discovered and are only then forced to come into compliance with the law. Therefore, even if the applicant is found to meet the required findings, the granting of the permit should be conditioned on the applicant executing upon their agreement to provide significant community benefits. We believe this would serve as a deterrent to others.

We are equally concerned by the appallingly low level of enforcement of applicable laws and regulations by the city agencies with jurisdiction over the operation and the property. Our recommendation therefore also is conditioned on certification by these agencies that

all deficiencies have been rectified, and that all fees, fines and taxes have been assessed and collected.

The Proposal:

The applicant proposes to increase the existing garage from 260 parking spaces to 350 spaces and increase the reservoir from 13 to 16 spaces. The garage is three stories with roof parking, and uses “stackers” on the roof. There are ramps on the ground level to facilitate car movement off the street and into the garage. The garage has two entrances on West 44th Street, one of which is also used as an exit. There is also an exit on West 43rd Street. During the overnight hours between 6 p.m. and 8 a.m. the West 43rd Street exit is utilized. This is helpful to traffic flow because 44th Street has eastbound traffic and 43rd Street has westbound traffic. This garage is on the periphery of the theater district and its peak utilization corresponds more with theater hours as opposed to normal business hours.

Required Special Permit Findings under ZR 74-52:

(a) “[T]hat 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;”

The applicant states that the garage “provides parking for one of the most important tourist and entertainment areas in the city” – the Theater District and Times Square. In particular, that its location “provides parking for the area tourist and theatergoers from the metropolitan area who may lack mass transit opportunities.”

This would appear to be a correct understanding of who the majority of users are.

(b) “[T]hat such #use# will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow;”

The applicant states that because it is currently operating the extra spaces without a permit, legalizing it would not increase the traffic since the number of spots will not be increased. In addition, the applicant did an analysis during peak times and found that it increased peak hour vehicles trip by no more than 32. CEQR requires that if a proposed action results in fewer than 50 peak hour vehicle trips then a detailed traffic analysis is not needed.

While this may be technically correct, the Board Office has received complaints over the years of queuing cars by the garage, resulting in backed up traffic and impeded pedestrian flow (see attached letter from West 44th Street better Block Association). Accordingly, we request a traffic analysis of the area.

The applicant was aware of a 1964 amendment to allow the operation of an ‘exit only’ onto West 43rd Street, within limited hours (6 p.m. to 8 a.m. only), yet the applicant

allows entrance to the parking garage from this exit. Today, this exit is marked with painted lanes and directional arrows to allow incoming traffic, is advertised with large signs and a schedule of fees is posted. Unfortunately, we believe that this “exit” is regularly used for both ingress and egress throughout the day. This is of particular importance since The Holy Cross School is located at 332 West 43rd Street, right across the 43rd Street garage entrance. This is a safety concern for our school children. As you may already know, the DOT ranked this school as the most dangerous school to walk to in Manhattan. As a result, we now find West 43rd Street to be one of a handful of blocks that has a mid-block traffic light in Manhattan on West 43rd between 8th and 9th Avenues to slow traffic in an attempt to provide some safety to the children attending the school

(c) “[T]hat such #use# is so located to draw a minimum of vehicular traffic to and through local streets in nearby #residential# areas;”

During their presentation to the C/HKLU committee on this finding, the applicant stated that since the garage is located on a predominantly commercial block and since access to the garage is from Ninth Avenue and there are exits towards both Eighth and Ninth Avenues, that vehicular traffic through the local streets is minimal.

This is all true. However, the applicant did not state that the egress on West 43rd Street is adjacent to a residential building nor mention the high density residential population on 43rd and 44th Streets.

(d) “[T]hat such #use# has adequate reservoir space at the vehicular entrances to accommodate automobiles equivalent in number to 20% 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;”

The existing permit requires 13 reservoir spaces. The proposed increase of 90 spaces means only 10 are required (since the garage has been around prior to 1961 and thus the present 260 spaces requires no reservoir space). The applicant has agreed to include not less than 18 reservoir spaces. As detailed below, the Board supports additional reservoir spaces.

(e) “[T]hat the #streets# providing access to such #use# will be adequate to handle the traffic generated thereby;”

The Applicant believes that no analysis is required. We disagree. The queuing of cars and sidewalk back-up has been a common complaint in the neighboring area (see attached letter from the West 44th Street Better Block Association) already mentioned above.

(f) “[T]hat where roof parking is permitted, such roof parking is so located as not to impair the essential character or future use of development of adjacent areas;”

The applicant states that “stackers” are primarily near a commercial area and that a screen will be used to shield the adjacent residential building on West 43rd Street. Residents in the area have complained repeatedly about the “stackers”, headlights glaring through residential windows, horns beeping at all hours and would like the “stackers” removed as much as possible (see attached letter from West 44th Street Better Block Association).

As for the finding under subsection (g) we agree with the applicant that this finding is not applicable.

Conditions to Recommendation of Approval:

Were this an application for a new public parking garage we would recommend a reduction in the number of spaces based on the scale of the operation and pursuant to our policy of seeking to reduce vehicle traffic by reducing available parking. However, since the applicant’s garage has been operating around this capacity for some time now we do not think that this would be an appropriate recommendation.

What continues to greatly trouble the Board is that while we are thankful that the new owner is working to come into compliance with the law, the previous owner was out of compliance for years and the new owner did not apply for this special permit for three years. This inaction by city agencies, specifically, the failure to enforce land use regulations, has allowed a very profitable business to operate illegally. As a result, we are very concerned that should the Commission grant special permits such as this, as a matter of course, it will create a precedent that will encourage others to avoid complying with the law.

As discussed above, we believe that the applicant meets each of the findings except for Findings D and F. Even if the Commission determines that the applicant meets these findings, we believe that the special circumstances surrounding the application warrant further conditions on approval.

Therefore, we recommend that the commission consider the following conditions to the granting of the special permit.

- i) Increase legal spaces to 310, including increased reservoir spaces;
- ii) Clear All Outstanding Violations and Issues
 - DCA should be required to demonstrate that all outstanding fees and violations have been paid; and
 - DOT should be required to certify that all curb cuts and sidewalks comply with the appropriate regulations and safety standards, or must issue violations and ensure that illegal conditions are rectified.
- iii) Verification of Collection and Payment of Taxes.

iv) Applicant Agreements

- Reduce the double width curb cut at the West 43rd Street exit from 25 feet to 11 feet and ensure ADA compliance;
- Eliminate the pedestrian walkway along the West 43rd Street exit and install lighting and greenery on both sides of the single lane exit, including tree and tree guard;
- Establish signage at 43rd Street exit (e.g., no right on red, must wait for green light, etc.);
- Install electronic gate at 43rd Street exit to ensure compliance with this agreement;
- Further limit hours of operation for 43rd Street exit (e.g., 8 p.m. - 6 a.m.);
- Eliminate unnecessary “stackers” from the property to ensure that the total number of available space does not exceed the permitted number,
- Provide 14 foot screening on roof for remaining “stackers;”
- No use of “stackers” after midnight;
- Reservoir spaces should be based upon 20% total spaces, not the requested increase;
- Plant four trees along West 44th Street and put in nine bicycle spots;
- Remove middle curb cut on West 44th Street; and.
- Operate the 43rd Street exit legally and safely.

As you know, we take our responsibility to participate in the special permit process for public parking garages seriously. The present application again highlights, though in reverse, our belief that the findings required under ZR 74-72 are ill-suited to the mixed use conditions of mid-Manhattan where individual and adjacent blocks can contain significant residential populations among a variety of other uses. This application also highlights the need for better enforcement of laws and regulations, a concern we have expressed in the past as well.

Sincerely,



John Weis, Chair
Manhattan Community Board 4



Elisa Gerontianos, Co-Chair
Clinton/Hell's Kitchen Land Use Committee



Sarah Desmond, Co-Chair
Clinton/Hell's Kitchen Land Use Committee

cc: DCP Calendar Office
NYC Council Speaker Christine Quinn
Manhattan Borough President Scott Stringer
NYS Senator Thomas Duane

Assembly Member Richard Gottfried
Howard Zipser, Minor, representing Applicant
Central Parking System, Applicant
NYC Department of Consumer Affairs
NYC Department of Buildings
NYC Department of Transportation
West 44th Street Better Block Association



THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

January 7, 2011

**Recommendation on
ULURP Application No. C 090377 ZSM – 332 West 44th Street Garage
by Central Parking Systems**

PROPOSED ACTION

Central Parking Systems¹ seeks approval of a **special permit pursuant to Sections 74-52, 96-111, and 13-562 of the Zoning Resolution (“ZR”)** to increase the capacity of a public parking garage from 260 parking spaces to a maximum capacity of 350 parking spaces for an existing structure located at 332 West 44th Street (Block 1034, Lot 48) in Manhattan Community District 4. The garage is located within a C6-2 zoning district in the Preservation Area of the Special Clinton District.

In order for a special permit to be granted, the City Planning Commission (“CPC”) must find that the garage will not adversely impact or affect the growth or development of other uses in the area; will not create or contribute to serious traffic congestion or pedestrian flow; will not draw traffic through areas which are primarily residential; contains adequate reservoir space; is surrounded by streets that are adequate for generated traffic; and, where rooftop parking is permitted, is so located as not to impair the essential character, future use or development of adjacent areas.

PROJECT DESCRIPTION

The applicant seeks a special permit to enlarge an existing public parking garage from 260 spaces to 350 spaces. The garage is located on the south side of West 44th Street between Eighth and Ninth avenues on a flag-shaped lot with 172 feet of frontage on West 44th Street and 25 feet of frontage on West 43rd Street. The 44,564-SF parking facility occupies the entirety of a three-story structure.

¹ Central Parking Systems is the operator of the garage facility and is partially owned by World Wide Holdings, a partial investor and managing agent for a consortium of owners.



The facility has three levels of parking above grade, including the rooftop, and reservoir parking on the ground floor. The structure was constructed in 1958 and has a special permit to contain a public parking facility with a capacity of 260 parking spaces. The garage, however, currently operates at an illegal capacity of 350 spaces by using stackers on the rooftop. Under its current operation, ingress and egress to the garage is separated via three curb cuts on West 44th Street. In addition, the garage contains a 20-foot curb cut on West 43rd Street that is primarily used for egress during limited evening hours. While the West 43rd Street curb cut is primarily used for egress, vehicles still use the curb cut throughout the day to enter the garage.

World Wide Holdings acquired Central Parking Systems and this garage in 2007. The garage has been operating at its illegal capacity since prior to the applicant's acquisition. The applicant seeks to legalize the garage's current operational capacity and proposes several modifications to the garage's current operation to accommodate the increase in its permitted capacity. Ingress would be via a single 20-foot curb cut on the western portion of the garage's West 44th Street frontage. Egress would be through an 11-foot curb cut on the eastern side of the garage's West 44th Street frontage as well as via the 20-foot curb cut on West 43rd Street during limited evening hours. The applicant proposes to eliminate an existing curb cut on West 44th Street, normalize the sidewalk condition, and plant two street trees. The garage would contain 16 reservoir spaces.

The garage is at the edge of the Times Square Theatre District in Community District 4. Adjacent land uses on West 44th Street are diverse and include industrial, commercial, residential, and institutional uses. Residential buildings directly abut the garage to the south (331-337 West 43rd Street) and to the east (328 West 44th Street) and are between five and six stories in height. In total, 37 windows overlook the roof of the garage; none of these windows are lot-line windows. A commercial building (346 West 44th Street) is immediately adjacent to the west. There are two other public parking facilities and several commercial buildings, including the Intercontinental Hotel, located on the project site block. The block to the north has a mix of residential and commercial uses, including public parking facilities, fronting on West 44th Street.

The uses of buildings on West 43rd Street, like West 44th Street, are diverse. The balance of uses, however, is different with almost half of the buildings being used as residences. The Holy Cross School is located at 332 West 43rd Street. The West 43rd Street Playground is located immediately southwest of the garage on the same block. There are public parking facilities on both the north and south sides of West 43rd Street. Eighth Avenue is predominately commercial in character; whereas, Ninth Avenue has a mix of residential and commercial uses.

COMMUNITY BOARD'S RECOMMENDATION

At its Full Board meeting on December 1, 2010, Community Board 4 ("CB4") recommended conditional approval of this ULURP application by a vote of 35 in favor, 0 abstentions, and 4 in opposition.

CB4's recommendation included the following conditions for the garage's design and operation:

Design Conditions

- Adjustments to the design and operation of the West 43rd Street curb cut, including:
 - reduction in the width of the ramp and curb cut;
 - elimination of the pedestrian walkway;
 - installation of greenery and lighting;
 - installation of signage; and
 - installation of an electronic gate;
- Elimination of unnecessary rooftop stackers;
- Installation of screening on rooftop to mitigate the stackers;
- Protection of proposed trees with tree guards on West 44th Street; and
- Planting of one tree with a tree guard on West 43rd Street.

Operational Conditions

- Reduction of requested capacity to 310, including increased reservoir spaces;
- Operation of the West 43rd Street curb cut as an egress only and such operation be limited to the hours between 8:00 PM and 6:00 AM;
- Limitation of the operational hours of rooftop stackers so that they are not used after midnight;
- Elimination of unnecessary stackers from the property to ensure that the total number of available spaces does not exceed the permitted number;
- Provision of reservoir spaces based upon 20 percent of total spaces (18 spaces) rather than the proposed 16; and
- That the applicant clears all outstanding violations.

BOROUGH PRESIDENT’S COMMENTS

The public purpose of ZR § 13 is to control traffic congestion and ensure compliance with environmental standards by requiring a special permit for certain parking facilities, including public garages, in the Manhattan core. With increasing public concern about traffic congestion and pollution and recent City initiatives to discourage automobile use in the Manhattan core, this policy has never been more relevant. Given the importance of this public purpose, applicants should satisfy the findings required by ZR § 74-52 under a very strict interpretation.

Case law establishes that applicants for a special permit are generally entitled to favorable consideration of their applications if they have demonstrated that they have met the specific findings identified in statute. However, given the important public purpose behind the special permit requirement and the importance of encouraging transit-oriented development instead of automobile use in Manhattan, applicants should satisfy the findings under as strict an interpretation as is reasonable.

The CPC issued a negative declaration for this application, suggesting that the garage would have minimal adverse impact on the environment. This garage is one of several garages on the project block, and its peak utilization periods suggest it services visitors to the nearby Times Square Theatre District. Therefore, the proposed garage is compatible with the surrounding uses in the area. In addition, the nearby streets, some of which are major City arterials, can adequately handle traffic generated by the garage.

43rd Street Curb Cut

While the garage generally meets the finding regarding traffic congestion and pedestrian flow, unique conditions on West 43rd Street merit closer consideration. West 43rd Street has a larger residential population than West 44th Street, and there is significant pedestrian flow to the Holy Cross School and the 43rd Street Playground. The existing curb cut on West 43rd Street, used as an exit, improves the efficiency of the garage's overall operation. The garage's connection to both westbound and eastbound routes allows drivers to disperse efficiently and reduces unnecessary vehicle miles through congested areas in Midtown. CB4, however, has raised concern regarding the operation of this curb cut as an ingress.

In response, the applicant has proposed changes to improve the operation and design of the West 43rd Street curb cut including providing plantings on the 43rd Street driveway; operating the egress during limited hours (between 6:00 PM and 8:00 AM seven days a week); installing a gate, warning signals and signage; and narrowing the curb cut and driveway. The applicant describes these additional safety measures in a letter submitted to CB4 on January 5, 2011. The applicant's proposed adjustments to the curb cut's operation and design should minimize traffic on this street, and the limitations in its hours of operation should minimize and/or eliminate pedestrian-vehicular conflicts during peak hours.

Reservoir Spaces

The special permit requires that the applicant provide an adequate number of reservoir spaces. The existing garage, however, was built prior to the existing off-street parking regulations and is grandfathered with fewer reservoir spaces than would be required under current regulations. The application proposes 16 reservoir spaces, which includes the grandfathered reservoir spaces and new reservoir spaces for the garage's expanded capacity. Nevertheless, if the garage were constructed as a new facility rather than as an expansion, it would be required to have an additional two reservoir spaces.

Having a reduced number of reservoir spaces could be problematic given the size of the garage, the nearby pedestrian-intensive uses, and the general congestion in the area. As such, the applicant has agreed to provide 18 reservoir spaces. As modified, the garage would include an adequate number of reservoir spaces.

Rooftop Parking

The special permit specifies that the rooftop parking be located so as not to impair the essential character, future use, or development of adjacent areas. The use of stackers on the rooftop has both a visual and auditory impact on adjacent residential properties. Additionally, nighttime lighting, necessary for a safe rooftop parking environment, has the potential to diminish the quality of residential apartments by shining light into the windows overlooking the rooftop parking area.

Currently, the roof has a four-foot parapet to shield adjacent uses from the rooftop parking. The applicant has agreed, in response to community concerns, to install a 10-foot opaque fence on the parapet, and not to use the rooftop stackers between midnight and 6:00 AM. The proposed modification to the rooftop fence, however, may require adjustments to the proposed lighting scheme as much of the lighting is located along the property's edge. As part of any reconsideration of the fence, the applicant should explore the rooftop lighting configuration to ensure that the illumination is directed away from adjacent properties. Based on the overnight parking accumulation and times of vehicles exiting the garage, the applicant's EAS suggests that weekly and monthly parkers may not be accessing their vehicles on a daily basis. During the Borough President's review period, the applicant has committed to explore prioritizing rooftop stackers for weekly and monthly parkers as it may reduce the number of times stackers are utilized on a daily basis. The applicant also committed to investigate adjusting the location of the stackers in order to minimize their impact on abutting residential buildings.

These mitigations are both warranted to protect existing adjacent uses and appropriate to limit any potential impairment future uses should adjacent sites be redeveloped.

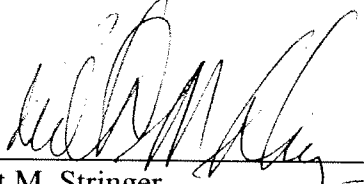
Conclusion

The proposed garage, with the above-mentioned modifications, satisfies the required findings. The applicant's commitments made during this review process should be included as a part of the special permit approval process.

BOROUGH PRESIDENT'S RECOMMENDATION

The applicant should be commended for addressing many of the community's concerns. With these commitments, the proposed application meets the findings of the special permit.

Therefore, the Borough President recommends approval of ULURP Application No. C 090377 ZSM.



Scott M. Stringer
Manhattan Borough President