



## **CITY PLANNING COMMISSION**

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July 1, 2009, Calendar No. 19

C 080088 ZSM

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IN THE MATTER OF an application submitted by 111 8th Avenue Parking 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 625 spaces on portions of the ground floor and cellar of an existing 17-story commercial building on property located at 111 8th Avenue (Block 39, Lot 1), in an M1-5 District, Community District 4, Borough of Manhattan.

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The application was filed by 111 8<sup>th</sup> Avenue Parking, LLC on September 17, 2007 for a special permit pursuant to Section 13-562 of the Zoning Resolution for a 625-space public parking garage on the ground floor and cellar levels of an existing, commercial building.

### **BACKGROUND**

The garage is located within an existing office building on a full block between West 15<sup>th</sup> and West 16<sup>th</sup> streets, and between Eighth and Ninth Avenues in an M1-5 zoning district. The office building currently holds an existing 126,677 square foot attended parking facility located on the ground and cellar levels, and operates at a 625-space capacity, which is greater than the 276 spaces permitted by the Certificate of Occupancy and the 342 spaces licensed by the Department of Consumer Affairs. The applicant is seeking a special permit to operate a 625-space public parking garage, with 50 reservoir spaces, to allow the continued operation of the garage.

The site is located between the Chelsea and Meatpacking District neighborhoods. The area is developed with a mix of uses ranging from major arts institutions, to hotels and nightclubs, to residential development. The Chelsea Market building is one block west of the site, and the newly-opened High Line park is two blocks to the west of the site.

The building was constructed in 1932 as the Port Authority Commerce Building, and was occupied by the Port Authority until the agency's relocation to the World Trade Center in 1973. Now the 17-story building contains approximately 2.8 million square feet of floor area and is occupied by 98 commercial tenants, representing a mix of advertising agencies, publishers,

telecommunication companies, internet service providers, fashion leaders, government agencies and others.

At the time the building was converted to a general office building, it was issued a Certificate of Occupancy (C of O) for 342 parking spaces on the cellar, first, and second floors of the building. In 1999, the applicant began operation of the garage. The garage began operating at its current capacity of 625 spaces within a few years after the applicant commenced operations. A Department of Buildings violation was issued to the building owner on February 3, 2009 for operating a garage that is contrary to the Certificate of Occupancy for the building.

Cars enter the garage by driving west along West 15<sup>th</sup> Street to an entrance located approximately 40 feet, 6 inches east of Ninth Avenue, or by driving east along West 16<sup>th</sup> Street to an entrance located, approximately 37 feet, 3 inches east of Ninth Avenue. The two entrance ramps merge into a single entrance lane at the cellar level. There are 50 reservoir spaces located on the entrance ramps into the garage, which are 19 more than the 31 required. There is one exit from the garage, on West 16<sup>th</sup> Street, approximately 72 feet west of Eighth Avenue. A flashing light and ringing bell will be placed at the entrance to the public parking garage to alert pedestrians of entering and exiting cars.

## **ENVIRONMENTAL REVIEW**

This application (C 080088 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 07DCP085M. 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 February 17, 2009.

## **UNIFORM LAND USE REVIEW**

This application (C 080088 ZSM) was certified as complete by the Department of City Planning on February 17, 2009, 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 April 1, 2009, and on that date, by a vote of 28 to 12 with 0 abstentions and 2 present but not eligible, adopted a resolution recommending approval of the application, with the following conditions:

- i) Clear All Outstanding Violations and Issues
  - DCA should be required to demonstrate that all outstanding fees and violations have been paid.
  - DCA should be required to explain why they issued a permit for a 342 space cellar garage when the C of O permitted 155 spaces.
  - DCA also should explain why, after a flurry of activity between October 2006 and January 2007, they chose to issue no violations over the past two years, thereby foregoing an important opportunity to continue pressure on the applicant to legalize the operation and to raise revenue for the city.
  - DOT should be required to certify that all curb cuts and sidewalks comply with the appropriate regulations and safety standards, or to issue violations and ensure that illegal conditions are rectified.
  - DOT should require Consolidated Edison to justify the retention of the curb cuts on the 15<sup>th</sup> Street side of the building that contribute to dangerous conditions for pedestrians.
  - DOB should be required to approve and issue a correct, amended C of O.
- ii) Verification of Collection and Payment of Taxes

Assuming a blended parking tax rate of 15%, the illegally parked vehicles should have generated more than \$200,000 per year in revenue for the city. The applicant should be required to verify that all NYC parking taxes on the illegally parked vehicles have been collected and paid to the city.
- iii) Department of Buildings Procedures

As we have written on numerous times, we are dependent on DOB for the enforcement of the Zoning Resolution. While we are sympathetic to the demands placed on them, the DOB failures in this case are especially unreasonable. First, why was an egregious violation of a C of O permitted to continue for so many years? Second, why did DOB require more than two months to issue a violation specifically requested by the applicant and necessary for certification of the present application by DCP?

#### iv) Applicant Agreements

The garage's illegally parked vehicles have generated significant revenue and profit for the applicant for at least the last five years. Unfortunately, the city lacks punitive mechanisms beyond modest fines which, if levied at all, constitute a minor operating expense. The applicant has agreed that in addition to seeking the special permit through the present application, they would consider creating benefits for the community. We welcome the following suggestions and encourage the applicant to continue looking for ways to enhance their standing in the community.

- We welcome the applicant's emphasis on monthly parking over transient parking; ideally we would like to see all parking spaces made available for monthly parking. Currently, more than 95% of the spaces are rented to monthly tenants; we would like the applicant to agree to maintain this level at a minimum of 90%. We also would welcome a reduction in the number of available transient spaces in order to make room for bicycle parking (see below).
- We welcome the applicant's offer to speak with the owner to address unused curb cuts and sloped sidewalks that make walking difficult. The sidewalk on the south side of the building in particular experiences very heavy pedestrian traffic, especially in the morning and evening when people are walking between the subway entrance at the corner of Eighth Avenue and 15<sup>th</sup> Street and destinations farther west. The sidewalk is narrow and is sloped along much of the block, creating difficult footing, especially during icy conditions. We would like to see the sidewalk leveled except where there are legal curb cuts that currently are being used. As noted above, we believe that ConEd should be required to justify the continued use of curb cuts for access to their installations.
- We encourage the applicant to discuss the building owner's choice of planter boxes with him. While they are attractive and work well in a wide sidewalk such as along the north side of 16<sup>th</sup> Street near Tenth Avenue, they are potentially dangerous obstructions when the sidewalk is narrow, creating unnecessary congestion and dangerous conditions when the sidewalk is slippery. We would like to see the planter boxes removed and replaced with appropriate tree protection that can be walked on, supplementing the uncomfortably narrow sidewalks.
- The applicant has said that they have considered providing bicycle parking but that there are liability issues that so far have stopped them from proceeding. We urge the applicant to reconsider the risks and to proceed towards offering significant amounts of bicycle parking. During a tour of the facility we suggested that an area close to the garage office would lessen concerns about damage and theft, and hope that the applicant will be able to find an acceptable way to offer bicycle parking. This action would reduce vehicle traffic in the neighborhood and compensate partially for the traffic the garage draws.
- We also welcome the applicant's offer to investigate providing parking needed by the community, including temporary, at-cost parking for cars displaced from the Fulton Houses parking lot if construction of that project proceeds, and truck parking for commercial vehicles that clog 16<sup>th</sup> Street between Ninth and Tenth Avenues. On the latter point, we note that the C of O under which the applicant has operated

illegally for so many years does permit an unspecified number of trucks, but the applicant has chosen to substitute more lucrative car parking.

### **Borough President Recommendation**

This application was considered by the Borough President, who issued a recommendation on May 13, 2009, approving the application subject to the condition:

that the applicant reserve no fewer than 487 spaces for monthly overnight parking, prioritizing local residents for no fewer than 382 of these spaces and local businesses with overnight parking needs for no fewer than 105 spaces, and that the applicant provide bicycle parking and related signage.

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

On May 6, 2009 (Calendar No. 7), the City Planning Commission scheduled May 20, 2009 for a public hearing on this application (C 080088 ZSM). The hearing was duly held on May 20, 2009 (Calendar No. 26). There were thirteen speakers in favor of the application and two speakers in opposition.

A representative from the Manhattan Borough President's Office reiterated the Borough President's conditional approval. He also explained the commitments made by the applicant, where the applicant will provide bicycle parking in the garage, and will reserve no fewer than 487 spaces for monthly overnight parking, prioritizing local residents for no fewer than 382 of these spaces and local businesses with overnight parking for no fewer than 105 spaces.

Two land use attorneys representing the applicant described how the applicant transformed the garage from a dangerous place into a clean, safe and useful garage that currently rents 220 monthly spaces to businesses for their parking needs. They stated there have not been complaints about the operation of the garage from neighbors. One attorney also stated that the applicant will provide bicycle parking spaces in the garage.

Another representative of the applicant expressed regret for not addressing the illegality of the garage sooner, and for not seeking a special permit at the time the garage began operating over the permitted capacity. A representative of the building's owner explained that the building management believes the garage is a benefit to the community. He also stated that he will meet

with Community Board 4 members to go over their specific concerns about the sidewalks and plantings around the perimeter of the building. He stated that he will submit to the Commission a letter outlining the changes that will be made to the streetscape, per the outcome of the meeting with the community board.

Seven garage users spoke in favor of the garage. The users included neighborhood residents who park their personal vehicles in the garage and users who operate businesses in the area and rely on the garage to park their commercial vehicles. They spoke of their appreciation for the convenience and safety the garage affords them.

A representative of Community Board 4 reiterated their conditional approval of the application, but also stated that the community board was displeased that the city did not enforce the zoning regulations when the garage first started operating illegally. He also explained that the community does not want this garage to set a precedent for operating illegally with few repercussions.

A representative of Save Chelsea spoke in opposition of the garage and stated his belief that public parking garages encourage driving in the city and increases traffic congestion. A representative of Clinton/Hell's Kitchen Coalition for Pedestrian Safety also spoke in opposition of the garage. She stated that the garage is surrounded by residential uses and zoning districts and the garage will therefore bring traffic through residential streets. She is also concerned that approving the garage will condone illegally-operating garages.

There were no other speakers and the hearing was closed.

## **CONSIDERATION**

The Commission believes that grant of this special permit (C 080088 ZSM), is appropriate.

The Commission notes that the garage is located in an M1-5 district which permits commercial and industrial development. The blocks to the north and south of the site are predominantly developed with five- and six-story walk-up residential buildings, and are zoned for residential

uses. The block to the west is also developed with a full-block commercial office building, and retail, nightlife and office uses are found in the Meatpacking District neighborhood to the southwest of the site in an M1-5 district. The Commission notes that the surrounding area is developed with residential and commercial and vehicular uses. In the southern portion of the Chelsea neighborhood, new residential and commercial developments have been built in recent years and it is expected the area will continue to thrive with a mix of uses.

The Commission understands that the Environmental Assessment Statement (EAS) prepared for the application stated that the 625-space garage would generate an additional 42 vehicles per hour in the morning peak hour, 26 vehicles per hour in the midday peak hour, and 42 vehicles per hour in the evening peak hour compared to the permitted 276-space garage. All of the projected trips fall below the 50-vehicle per hour threshold set by the CEQR Technical Manual. The Commission notes that the garage is currently operating at 625 spaces and has been operating at that capacity since approximately 1999. Accordingly, there would be no significant adverse traffic impacts caused by the garage and the streets will be adequate to address traffic generated by the garage.

The Commission notes that the garage is accessed on West 15<sup>th</sup> Street and West 16<sup>th</sup> Street. Given the existing streetscape conditions on the sidewalks abutting the building, pedestrians are most likely to walk on the opposite sidewalk on both streets. Warning signals and buzzers located on the garage ramp would 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, and from east and west by West 15<sup>th</sup> Street or West 16<sup>th</sup> Street, and that, in the surrounding area, these streets are predominately mixed-use in character. Accordingly, vehicular traffic to and through local streets in nearby residential areas would be minimal.

The Commission notes that the proposed garage contains 50 reservoir spaces, more than the required 31 reservoir spaces.

The Commission shares the concerns of the community board and the borough president regarding the prior operating history of the garage and has asked that the Department consult with the Departments of Buildings and Consumer Affairs regarding enforcement procedures for overcapacity violations. However, the Commission believes the garage meets the findings of the special permit and provides needed parking for a number of businesses, both small and large, and residents in the immediate area. The Commission is pleased the applicant has agreed to a condition set by Community Board 4 and the Manhattan Borough President by which the applicant will provide bicycle parking on the cellar level of the garage, pursuant to the regulations of the recently adopted Bicycle Parking zoning text. The Commission is also pleased Community Board 4 and the property owner have both signed a Memorandum of Understanding to resolve streetscape issues on the sidewalks around the building.

## **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. Not applicable; 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 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 625 spaces on portions of the ground floor and cellar of an existing 17-story commercial building on property located at 111 8th Avenue (Block 39, Lot 1), in an M1-5 District, Borough of Manhattan, Community District 4, is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 080088 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plan, prepared by GAGE Parking Consultants, filed with this application and incorporated in this resolution:

<u>Drawing Number</u>	<u>Title</u>	<u>Last Date Revised</u>
A-1	First Floor Plan	May 14, 2008
A-2	Cellar Floor Plan	July 1, 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 080088 ZSM), duly adopted by the City Planning Commission on July 1, 2009 (Calendar No. 19), 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., ALFRED C. CERULLO, III,**  
**BETTY Y. CHEN, MARIA M. DEL TORO, RICHARD W. EADDY,**  
**NATHAN LEVENTHAL, SHIRLEY A. McRAE, Commissioners**

**RAYANN BESSER, Commissioner, ABSTAINING**