



CITY PLANNING COMMISSION

September 24, 2008, Calendar No. 3

C 030513 ZSM

IN THE MATTER OF an application submitted by Biltmore Tower 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 60 spaces on portions of the ground floor and cellar, and to allow 1,740 square feet of floor space up to a height of 23 feet above curb level to be exempted from the definition of floor area as set forth in Section 12-10 (DEFINITIONS), of an existing mixed use building on property located at 271 West 47th Street a.k.a. 770-780 Eighth Avenue (Block 1019, Lots 1, 5, 8, 59 & 61), in a C6-4 District, within the Special Midtown District (Theatre Sub-district), Community District 5, Borough of Manhattan.

The application was filed by Biltmore Tower LLC on June 5, 2003 for a special permit pursuant to Section 13-562 and Section 74-52 of the Zoning Resolution for a 60 space public parking garage on portions of the ground floor and cellar level of an existing mixed use building and to exempt 1,740 square feet from the definition of floor area.

BACKGROUND

The subject garage is located on the north side of West 47th Street, just east of 8th Avenue. It is located in a C6-4 zoning districts within the Theater Subdistrict of the Special Midtown District. The garage is within a building that was constructed pursuant to a special permit (C 010460 ZSM) approved by the City Council on November 20, 2001 to permit bonus floor area for the substantial rehabilitation and restoration of the Biltmore Theater to apply to a new 55 story mixed use building on the zoning lot. That building contained an as of right accessory garage of 62 spaces on portions of the ground floor and cellar level. The applicant is now proposing to convert this existing 62 space

accessory parking garage to a 60 space public parking garage. The garage has been operating as a public parking garage and the Department of Buildings issued a violation on April 25, 2008.

The surrounding area has a number of Broadway theaters including the Longacre and the Barrymore which are on the same block as the garage. Other adjacent land uses include hotels and the Midtown office core further to the east. To the west of the project site is the Clinton neighborhood which has a mid rise residential character.

Because the garage is an accessory garage, 1,740 square feet of the ramp into the garage was not considered floor area. Conversion of the garage to public parking garage would require that 1,740 square feet to be counted as floor area. Since the existing building is built to the maximum zoning floor area, the applicant is also requesting, as part of the proposed special permit that the 1,740 square feet be exempted from the definition of floor area.

West 47th Street is a one way westbound street. The garage would use the existing curb cut on West 47th Street, which is approximately 23 feet in width, including two 2 foot splays to access a ramp into the garage with a width of approximately 19 feet. The ramp is a two way ramp and ten reservoir spaces would be provided: five are on the ramp and five are on the cellar level at the foot of the ramp. To enhance pedestrian safety, a

flashing light and ringing bell would be installed to notify pedestrians both visually and audibly of the presence of an exiting vehicle.

The garage is located on portions of the ground floor and cellar level building. The garage would be open 24 hours a day, seven days a week, and would be fully attended.

ENVIRONMENTAL REVIEW

This application (C 030513 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 01DCP035M. The lead is the City Planning Commission. After a study of the potential environmental impact of the proposed action, a Conditional Negative Declaration was issued on April 23, 2001.

Subsequently, the proposal was modified to seek a public parking facility containing 60 spaces and 10 reservoir spaces, rather than an accessory parking facility for 62 vehicles, and a Technical Memorandum was filed to modify the CEQR. After a study of the potential environmental impact of the proposed modification, a letter dated May 2, 2008 was issued stating that the change represents a minor modification and does not alter the conclusions of the Environmental Assessment Statement. Therefore, the Conditional Negative Declaration issued on April 23, 2001 remains valid.

UNIFORM LAND USE REVIEW

This application (C 030513 ZSM) was certified as complete by the Department of City Planning on May 5, 2008, and was duly referred to Community Board 5 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 5 held a public hearing on this application on July 10, 2008 and on that date, by a vote of 28 in favor with none opposed and 1 abstaining, adopted a resolution recommending approval of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on August 13, 2008 approving the application subject to the condition that the applicant:

updates the environmental analysis to include the proposed 60-space public parking garage, and that the analysis shows the proposed garage would not contribute to unacceptable levels of service at nearby intersections.

City Planning Commission Public Hearing

On August 11, 2008 (Calendar No. 8), the City Planning Commission scheduled August 27th 2008 (Calendar No. 34), for a public hearing on this application (C 030513 ZSM). The

hearing was duly held on August 27, 2008 (Calendar No. 34). There were two speakers on the application.

The applicant's counsel briefly described the project and explained that a public parking garage would complement the uses in the surrounding area, in particular the Broadway theaters.

The Director for Land Use from the Manhattan Borough President's office reiterated the Borough President's conditional recommendation for approval and stated that this application requires a new Environmental Assessment Statement in order to confirm that acceptable levels of service exist on the adjacent streets.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the application for this special permit (C 030513 ZSM) is appropriate.

The Commission notes that the garage's parking lot will be smaller by two spaces than the as-of-right 62 space accessory garage and that the traffic impact of the conversion from a 62 space accessory parking garage to a 60 space public parking garage will be minimal.

The Commission further believes that a public parking garage at this location will serve a variety of uses, including the adjacent and nearby Broadway theaters.

The Commission notes that zoning lot is built out to the maximum amount of floor area and the applicant could not convert to a public parking garage without exempting 1,740 square feet of space in the garage from the definition of floor area. The Commission further notes that on-street public parking is limited in the immediate vicinity surrounding the project site and therefore there is inadequate street parking to accommodate the demand.

The Commission notes that the Technical Memorandum dated May 22, 2003 prepared for the application's environmental review concludes that the vehicle trips for the public parking garage is less in two of the three peak periods than what was projected in the Environmental Assessment Statement submitted in conjunction with the application for special permit in 2001. At that time a Conditional Negative Declaration was issued finding that the proposed building with garage would have no significant impact upon the traffic conditions.

The Commission notes that pedestrian traffic on West 47th Street is relatively high, given the density of uses on the surrounding blocks. However, because there would be a relatively low volume of vehicles entering or exiting the garage at any hour conversion

of the proposed garage to a public parking garage is not expected to have a significant impact on pedestrian movement and vehicular traffic.

West 47th Street is a one way westbound street and cars will therefore enter the garage from the east which is developed with theaters and other high density commercial uses. Cars leaving the garage will predominantly use Eighth and Ninth Avenues which are not local streets in residential neighborhoods.

In addition, the Commission believes that measures designed to enhance pedestrian safety, a flashing light and ringing bell would be installed to notify pedestrians both visually and audibly of the presence of an exiting vehicle and would reduce potential conflicts between pedestrians and vehicles entering/exiting the garage.

The Commission notes that the garage will provide the required ten reservoir spaces.

FINDINGS

The City Planning Commission hereby makes the findings pursuant to Section 13-562 and 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); NA

(g) that, where any floor space is exempted from the definition of floor area, such additional floor space is needed in order to prevent excessive on-street parking demand and relieve traffic congestion.

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 Biltmore Tower 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 60 spaces on portions of the ground floor and cellar, and to allow 1,740 square feet of floor space up to a height of 23 feet above curb level to be exempted from the definition of floor area as set forth in Section 12-10 (DEFINITIONS), of an existing mixed use building on property located at 271 West 47th Street a.k.a. 770-780 Eight Avenue (Block 1019, Lots 1, 5, 8, 59 & 61), in a C6-4 District, within the Special Midtown District (Theatre Sub-district), Community District 5, Borough of Manhattan, is approved, subject to the following conditions:

- 1) The property that is the subject of this application (C 030513 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 SLCE, filed with this application and incorporated in this resolution:

<i>Drawing No.</i>	<i>Title</i>	<i>Last Date Revised</i>
Z-1	Site Plan & Zoning Calculations	3/11/2008
A-2	Cellar Plan	4/28/2008
A-3	First Floor Plan	3/11/2008

- 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 030513 ZSM), duly adopted by the City Planning Commission on September 24, 2008 (Calendar No. 3), 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 Chair
IRWIN G. CANTOR, P.E., ANGELA R. CAVALUZZI, AIA., ALFRED C. CERULLO, III, BETTY CHEN, MARIA M. DEL TORO, RICHARD, W. EADDY, NATHAN LEVENTHAL, SHIRLEY A. McRAE, JOHN MEROLO, Commissioners.

KAREN A. PHILLIPS, Commissioner, Voting No.