



CITY PLANNING COMMISSION

June 4, 2008/Calendar No. 13

C 070463 ZSM

IN THE MATTER of an application submitted by West 38th Street L.L.C. 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 400 spaces including 232 accessory spaces on portions of the ground floor, cellar and sub-cellar of a proposed mixed use building on property located at 310-328 West 38th Street (Block 761, Lots 10, 13, and 43) in a C6-4M District, within the Special Garment Center District (Preservation Area P-2), Borough of Manhattan, Community District 4.

The application was filed by West 38th Street L.L.C. on May 8, 2007, for 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 400 spaces on property located at 310-328 West 38th Street.

RELATED ACTION

In addition to the special permit which is the subject of this report, implementation of the proposed development also requires action by the City Planning Commission on the following application which is being considered concurrently with this application:

N 070462 ZRM Zoning Text Amendment to Section 121-32 (Height of Street Walls and
Maximum Building Height).

BACKGROUND

The project site is an approximately 49,375 square foot zoning lot located at 310-328 West 38th Street with frontages on both West 37th and West 38th Streets between Eighth and Ninth Avenues. The site is within a C6-4M district in the Special Garment Center District, in Preservation Area P-2.

The proposed parking facility would be part of a new predominantly residential mixed-use development consisting of two 24-story residential towers connected at the ground floor and basement levels with approximately 569 residential units, of which 20 percent of the residential floor area would be in dwelling units affordable to lower income households in accordance with the requirements of Section 93-23, and approximately 10,600 square feet of retail space.

The site was formerly improved with one five-story commercial building, a surface parking lot with approximately 90 spaces and a 2-story public parking garage with approximately 500 spaces. These structures have been demolished.

Preservation Area P-2 contains a mix of commercial, manufacturing, office and residential, retail parking, hotel and institutional uses. To the north and west, uses include the Port Authority Bus Terminal and the Lincoln Tunnel approaches west of Ninth Avenue. On West 38th Street, the lot directly east of the subject premises contains a 16-story office building and the lot directly west contains a 16-story light manufacturing building occupied by apparel factories and showrooms. On West 37th Street, the lot directly to the east of the subject property contains a 12-story manufacturing building occupied by small apparel factories and showrooms, and the lot directly west contains a 5-story building occupied by Fountain House, a residential community facility use.

Residential entrances in the proposed building will be located on both West 37th Street and West 38th Street. The building's retail space will front on West 38th Street to the east of the residential lobby entrance.

SPECIAL PERMIT (C 070463 ZSM)

The applicant is seeking a special permit pursuant to sections 13-562 and 74-52 for an attended public parking garage with a maximum of 400 spaces. The garage would include 232 accessory parking spaces which are permitted as-of-right. Two-way access for the garage will be located on both West 37th Street, a westbound street, and West 38th Street, an eastbound street. The curb cuts on both streets will be 22 feet wide. The two vehicular entrances are connected in the building by a through-block entry/exit.

The proposed public parking facility will be fully attended and open 24 hours a day, seven days a week. Vehicular ingress and egress to the proposed public parking garage will be by a 20-foot wide ramp. The public parking garage would provide 21 reservoir spaces as required. A flashing light and ringing bell will be placed at both entrances to the public parking garage to alert pedestrians of entering and exiting cars.

ZONING TEXT AMENDMENT (N 070462 ZRM)

To improve the pedestrian experience of the street, the proposed development includes recessed entries with a width of approximately 46 feet and a depth of approximately 12 feet on both West 37th and West 38th Streets for the first two floors, after which they both sets back to a depth of 15 feet. Approximately 63 percent of each recess area is to be planted. Under the current bulk regulations in the P-2 District, this recessed area would not be allowed because the street wall of any development or enlargement is required to be located on the street line and extend along the entire street frontage. As referred, the proposed text amendment (N 070462 ZRM) would permit recesses in the street wall up to a maximum depth of 15 feet and a length of up to 20 percent up to a maximum length of 50 feet for zoning lots with at least 200 feet of frontage, provided that a minimum of 60 percent of such recessed area be planted with any combination of grass, ground cover, shrubs, trees or other living plant material.

ENVIRONMENTAL REVIEW

This application (C 070463 ZSM), in conjunction with the application for the related action (N 070462 ZRM), 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 08DCP003M. 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 January 7, 2008.

UNIFORM LAND USE REVIEW

This application (C 070463 ZSM) was certified as complete by the Department of City Planning on January 7, 2008, 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) along with the application for the related text amendment (N 070462 ZRM) which was referred for information and review in accordance with the procedures for non-ULURP matters.

Community Board Public Hearing

Community Board 4 held a public hearing on this application on February 6, 2008, and on that date, by a vote of 35 to 1 with 0 abstentions, adopted a resolution disapproving of the application.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on March 12, 2008, approving the application with the condition that "... 232 of the spaces be reserved as accessory and another 34 be prioritized for overnight monthly parkers."

City Planning Commission Public Hearing

On April 9, 2008 (Calendar No. 3), the City Planning Commission scheduled April 23, 2008 for a public hearing on this application (C 070463 ZSM). The hearing was duly held on April 23, 2008 (Calendar No. 18) in conjunction with the hearing on the related application (N 070462 ZRM). There were 5 speakers in favor of the application and 6 speakers in opposition.

The applicant's representative described the project and the garage's operation, as well as the as-of-right parking for the site that is permitted. He further described the current land uses in the

area and the site's history as a parking facility. The applicant's architect described the massing and layout of the proposed project, and described how the text amendment would allow design flexibility and create a pedestrian amenity on the street. The applicant's traffic consultant also appeared in favor. He described how the environmental analysis for the project was done as well as the current traffic situation on surrounding streets. The Director of Land Use from the Manhattan Borough President's Office reiterated the Manhattan Borough President's conditional recommendation.

Two representatives from Community Board 4 shared their concerns that traffic congestion in the area is high, that the cumulative effects of parking facilities are not studied, that the proposed garage will contribute to air pollution and that they believe the proposed garage will negatively affect their community. Representatives from the Hell's Kitchen Neighborhood Association, the Clinton Hell's Kitchen Coalition for Pedestrian Safety, Transportation Alternatives and a local resident spoke against the public parking saying it would lead to increases in traffic congestion and worsen air quality in the surrounding area as well as inhibit pedestrian flow.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that grant of this special permit (C 070463 ZSM) and approval of the related zoning text amendment (N 070462 ZRM), each as modified herein, is appropriate. The Commission notes that the proposed garage would be located in a C6-4M district which permits high-density, mixed-use development. The Commission notes that existing uses on the block and the immediate surrounding area include a wide mix of uses: commercial, manufacturing, office, residential, retail, parking hotel and institutional uses. Development generated by the 2005 rezoning of the Preservation Area P-2 of the Special Garment Center District, is projected to result in increased residential use in the area; however, the site will continue to be situated in a mixed-use environment.

The Commission understands that the Environmental Assessment Statement prepared for the application stated that the public portion of the proposed garage would generate an additional 26 vehicles per hour in the morning peak hour, 27 vehicles per hour in the midday peak hour, and 28 vehicles per hour in the evening peak hour. All of these projected trips fall below the 50-vehicle per hour threshold set by the CEQR Technical Manual; accordingly, there would be no significant adverse traffic impacts caused by the garage. The Commission notes that 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 the west by West 37th Street and from the east by West 38th 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 will contain 21 reservoir spaces, one more than required.

The Commission notes that the proposed garage will include 232 as-of right-accessory parking spaces. In order to assure these spaces function as such, the Commission is modifying this application to require that these 232 spaces are made available only on a monthly basis. The Commission further notes that, in a letter dated May 16, 2008, the applicant has indicated his support for this added condition. Further, the applicant proposes to institute a system for the installation of non-transferable decals or stickers to identify vehicles owned by monthly customers and allow the parking garage to be open for inspection by the City at all times during hours of operation for purposes of verifying compliance with this condition.

The Commission believes that allowing entry recesses with planted areas on sites with long frontages will improve the pedestrian experience of the streets in the Preservation Area P-2 of

the Garment Center Special District. The Commission agrees with the Community Board and the Borough President that limiting the location of such recesses so as to not expose the side walls of adjacent buildings is appropriate. Therefore, the Commission modifies the related zoning text amendment so that recessed areas must be located a minimum of 20 feet from adjacent buildings.

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 City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of West 38th Street L.L.C for the grant of a special permit for an attended public parking garage with a maximum capacity of 400 spaces including 232 accessory spaces on portions of the ground floor, cellar and sub-cellar of a proposed mixed use building on property located at 310-328 West 38th Street (Block 761, Lots 10, 13, and 43) in a C6-4M District, within the Special Garment Center District (Preservation Area P-2), Borough of Manhattan, Community District 4, is approved, pursuant to Sections 13-562 and 74-52 of the Zoning Resolution, subject to the following terms and conditions:

- 1) The property that is the subject of this application (C 070463 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 The Stephen B. Jacobs Group, PC, filed with this application and incorporated in this resolution:

<u>Drawing Number</u>	<u>Title</u>	<u>Last Date Revised</u>
A-04	Site Plan and Zoning Sheet	December 5, 2007
A-05	First Floor Plan	December 5, 2007
A-06	Cellar and Sub-Cellar Floor Plans	December 19, 2007

- 2) That a minimum of 232 spaces in the garage shall be available for monthly parking only and a system shall be implemented for the installation of non-transferable decals or stickers to identify vehicles owned by monthly customers.
- 3) The applicant, or its successor(s) in interest, shall certify to the Chairperson of the City Planning Commission, in a form acceptable to the Department of City Planning and together with such supporting information as the Department shall require, on an annual

basis upon a date acceptable to the Department, that the spaces are being utilized in the manner set forth herein. The garage shall be open to inspection by the City at all times during hours of operation for purposes of verifying compliance with this condition.

- 4) 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.
- 5) Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
- 6) 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.
- 7) 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.

- 8) 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 070463 ZSM), duly adopted by the City Planning Commission on June 4, 2008, (Calendar No. 13), 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.,
ANGELA R. CAVALUZZI, R.A., ALFRED C. CERULLO, III,
MARIA M. DEL TORO, RICHARD W. EADDY, NATHAN LEVENTHAL,
SHIRLEY A. MCRAE, JOHN MEROLO, KAREN A. PHILLIPS, Commissioners