



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. 44<sup>th</sup> 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