



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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Chair

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

April 6, 2009

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

Re: ULURP Application No. C 080088 ZSM – Application for a special permit for a Public Parking Garage at 111 Eighth Avenue at 15th Street

Dear Chair Burden:

After presentations to the Chelsea Preservation and Planning Committee and at a duly noticed public hearing at the regular board meeting on April 1, 2009, Manhattan Community Board 4 voted by roll call by a vote of 28 in favor, 12 opposed, 0 abstentions, and 2 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 111 Eighth Avenue, between West 15th and 16th Streets.

The applicant, 111 Eighth Avenue Parking LLC, an affiliate of Icon Parking Systems LLC, operates a 625 space public parking garage in the cellar of 111 Eighth Avenue; affiliates of the principals of Taconic Investment Partners LLC own interests in and are the General Partner of 111 Chelsea Commerce LP, which owns the building. The applicant has been operating illegally since at least 2003 and now seeks a special permit to conform their operations. In addition to our on-going concerns that the availability of parking generates automobile traffic, we are concerned that the granting of such a permit not establish a precedent whereby illegal garages face no consequences when discovered and forced to seek the required permits. Therefore, even if the applicant is found to meet the required findings, the granting of the permit should be conditioned on the applicant carrying through on their agreement to provide significant community benefits that 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.

Background

The applicant, 111 Eighth Avenue Parking LLC, has operated a public parking garage in the cellar of 111 Eighth Avenue since 1999 when the building was purchased by 111 Chelsea Commerce, LP. The applicant states that they invested more than \$1 million in cleaning, painting, lighting, security and operations, while charging low rates initially in order to build business.

The building's Certificate of Occupancy permits the following uses: cellar – auto parking for 155 cars and truck parking (unspecified number); first floor – auto parking for 66 cars; second floor – auto parking for 121 cars. According to the applicant, the 66 spaces permitted on the first floor are accessory parking for a building tenant and actually are located on the second floor, and there is no parking on the first floor. Since the garage operator cannot transfer car parking rights from the second floor to the cellar without permission of Department of Buildings via an amended Certificate of Occupancy (CofO), the legal capacity of the cellar garage is 155 cars and an unspecified number of trucks.

There are two garage entrances, one on 15th Street and one on 16th Street, each less than 50 feet from Ninth Avenue. The single exit is on 16th Street, less than 50 feet from Eighth Avenue. To our knowledge, none of these has a permit from DOB or the Board of Standards and Appeals to allow a curb cut to be sited less than 50 feet from an intersection. Despite the lack of these required curb cut permits and with a CofO permitting 155 cars in the cellar, the applicant received a license from the Department of Consumer Affairs to operate a 342 space garage.

By November 2003, however, when they were issued their first violation by DCA for operating over legal capacity, the garage was operating with 625 spaces, 400% of the legal capacity of 155 spaces. Between November 2003 and January 2007 DCA issued seven violations for operating over legal capacity with fines ranging from \$900 to \$20,810 and totaling \$99,015. The applicant states that during the period when they were operating above legal capacity, all NYC parking taxes were collected and paid to the city, but despite the continued fines they did not seek the required special permit for the garage and the building owner did not seek an amended CofO.

In its current configuration the garage has a capacity of 625 cars, including 32 stackers, room for approximately 30 vans in a back area and 50 reservoir spaces that allow it to operate without creating street congestion. All of the parking spaces are located in the cellar, and the garage operates 24 hours a day. The garage currently has 607 monthly parking tenants, including 382 local residents, 98 commercial tenants of 111 Eighth Avenue and 127 other local commercial tenants. Approximately 40 residential parkers use their cars on a daily basis. The remaining 18 spaces are used for transient parking, as are the unused commercial spaces in the evening and the unused residential spaces during the day.

The applicant and the building owner now seek to legalize their operations. The applicant seeks a special permit under ZR 13-562 and ZR 74-52 to conform the conversion and expansion of the 155 space garage begun in 1999, while the applicant states that the building owner will seek an appropriately amended CofO.

Required Special Permit Findings under ZR 74-52

- (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;”*

The applicant states that the “proposed” expansion – in fact completed more than five years ago – “supports and compliments (*sic*) the vibrant mix of uses that characterize Southern Chelsea.” While this may largely be true of the monthly parking, we believe that much of the transient parking is generated by the nearby Gansevoort district with its stores, restaurants, hotels and clubs. It is the policy of CB4 to encourage both the utilization of, and demand for, public transportation as an alternative to automobile traffic. We are especially concerned about providing large amounts of transient parking, and in particular in serving the transient parking needs of other districts.

Although more than 95% of the available parking spaces are occupied by monthly tenants, the garage generates on average 80 trips per day by the 382 residential tenants and a much greater number by the 225 commercial tenants. In addition, short term vacancies provide as many as 100 spaces for transient parking, depending on the time of day. As noted in our comments under Finding B, we ask the Department of City Planning to request an evaluation by the Department of Transportation of the impact of the garage’s spaces on the area’s traffic.

As part of the application for the special permit, the applicant submitted a table listing existing off-street parking capacity and utilization as of 2007 (Application Table 3). We noted, however, that 111 Eighth Avenue was included with its licensed capacity of 342 rather than its operating capacity of 625, and asked the applicant to provide an updated table that showed the higher figure and that also included the garages that have started operating in the past two years. These numbers are shown in the table below.

	Capacity	Change	% Change
Application (2007)	1,206	-	-
Corrected (2007)	1,489	283	23%
¼ Mile Walking (2009)	1,739	533	44%
¼ Mile Linear (2009)	2,078	589	49%

We note that by the applicant’s own numbers, the area parking capacity is nearly 50% greater than shown in the application. While the applicant also submitted data on utilization that support an argument that there is a demand for parking that 111 Eighth Avenue helps fill, we believe the data can also be interpreted to show that an increase in the availability of parking leads to an increase in utilization and traffic, and thus reduces

the reliance on and demand for public transportation. We question whether the growth in traffic that these data demonstrate is in fact not incompatible with vital and essential functions in the general area. To the extent that it exacerbates traffic congestion, we believe it is not, and that the application may not meet this finding.

Because of the magnitude of the change, we believe the applicant should be required to amend the special permit application before it is considered by the commission.

(b) “that such use will not create or contribute to serious traffic congestion and will not unduly inhibit surface traffic and pedestrian flow;”

The Environmental Impact Statement prepared in 2004 for the creation of the Special West Chelsea District found levels of service of D at the 15th Street and Ninth Avenue intersection at AM, Midday and PM, and a level of service of E at the 17th Street and Ninth Avenue intersection at Midday. The latter is relevant because 17th Street is cited as the preferred street for vehicles exiting the garage to reach the West Side Highway. Despite these concerns, since the “proposed” expansion was completed more than five years ago, we have the benefit of knowing that the actual vehicle traffic impacts on the community apparently are not severe.

However, unused curb cuts remaining from previous building uses, as well as the building owner’s misguided choice of planter boxes, have created hazardous walking conditions for pedestrians, especially on the 15th Street sidewalk which is heavily used by subway riders exiting at the Eighth Avenue corner of the building. Accordingly we ask that DCP request that DOT evaluate pedestrian traffic on the 15th Street side of the building, the contribution of the garage’s 625 parking spaces to the area’s traffic and the impact of turning vehicles from the garage on the Eighth Avenue bike lane that is being installed.

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

In their presentation on this finding, applicant states, “...there are no residential area (*sic*) in the immediate vicinity of the proposed Garage.” Examination of Zoning Maps 8b and 8d, however, confirms that the blocks immediately to the north, east and south are all zoned R8B and are in fact residential. In addition, vehicles approaching from the west must pass through areas zoned R7B, R8 and R8A between Ninth and Tenth Avenues, while those approaching from the east must pass through blocks with a variety of commercial and residential zonings.

Contrary to the applicant’s statement, it is not possible to gain access to the garage without passing through a nearby residential area – at the very least, all vehicles must pass through the residential areas on 15th and 16th Streets immediately adjacent to the garage. The applicant notes that the garage provides parking for 382 local residents, many of whom have written in support of the special permit application. The applicant’s map of the locations from which they have received such letters confirms that many of

these residential sites lie along access routes and that these residents and their neighbors are affected by garage traffic.

As we have written to you before, Community District 4 has extreme traffic conditions caused by the Lincoln Tunnel and by multiple traffic destinations, including the Javits Center, Madison Square Garden, the established West Chelsea and growing Clinton nightlife areas, and the Gansevoort nightlife and shopping area. We believe that reliance on automobiles in Manhattan must be reduced and that public transportation must grow in both capacity and convenience. We also believe that the availability of public parking encourages the use of automobiles and is contrary to both of these objectives.

In our response last year to an application for a special permit for a parking garage at 316 11th Avenue (ULURP No. C 070233 ZSM) we noted that the use of commercial zoning in the Special West Chelsea District for residential areas made it impossible for the applicant to fail to meet this same finding. Conversely, because of the zoning surrounding the location of the garage in the current application, we believe it is impossible for the applicant to meet the finding unless the commission determines that a 625 space garage draws only “a minimum of vehicular traffic,” a determination that we do not believe would be supportable.

(d) “ that such use has adequate reservoir space...”

The garage has 50 reservoir spaces, which are adequate to queuing that blocks sidewalks and streets.

(e) “that the streets providing access to such use will be adequate to handle the traffic generated thereby;”

We have received no complaints about traffic backups or queuing and do not object the applicant’s statement on this finding. We do, however, reiterate our request that DOT evaluate the impact of the garage’s 625 spaces as outlined under our comments for Finding B.

(f) “...where any floor space is exempted from the definition of floor area...”

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 our policy of seeking to reduce vehicle traffic by reducing available parking. Since the applicant’s garage has been operating at this capacity for more than five years, we do not feel that this is an appropriate recommendation. Despite operating at 225% or 400% of legal capacity, as permitted by DCA or DOB, the garage has not caused disruptions in the neighborhood and is relied upon by both residential and commercial tenants.

We are greatly disturbed, however, that only after more than five years of illegal operation are the garage operator and building owner seeking to conform their operations. We are similarly disturbed by the inaction of city agencies that allowed a very profitable business to operate illegally. The current posted monthly parking rate is \$465. Recognizing that not every tenant pays this rate, and that lower rates were in effect in the past, we estimate that the illegal monthly vehicles have generated on average between \$1 and \$2 million per year in incremental revenue. Including the highly lucrative transient parking, we estimate that the illegal vehicles generated as much as \$1 million per year in incremental income.

One of our greatest concerns is that if the commission grants the special permit as a matter of course, it will create a precedent that will encourage others to avoid complying with the law. In the context of the cash flows estimated above, \$100,000 in DCA fines over the course of five years is a minor cost of doing business. We sincerely hope that the commission will decide to do otherwise.

As discussed above, we believe that the applicant meets each of the findings except for Findings A and C, and perhaps B. 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. We recommend that the commission consider the following conditions to the granting of the special permit.

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 CofO 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 15th Street side of the building that contribute to dangerous conditions for pedestrians.
- DOB should be required to approve and issue a correct, amended CofO.

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 CofO 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 15th 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 16th 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 16th Street between Ninth and Tenth Avenues. On the latter point, we note that the CofO 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.

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.

Although we are recommending conditional approval of the present application, it is the most egregious abuse of the parking regulations we have encountered, spurring a lively debate on the merits of both the application and parking in general. We again ask to meet with DCP personnel you designate to discuss how the parking regulations might be improved to improve the quality of life in our district.

Sincerely,



Jean-Daniel Noland, Chair
Manhattan Community Board 4



J. Lee Compton, Chair
Chelsea Preservation and Planning

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

Assembly Member Richard Gottfried
Assembly Member Deborah Glick
Randall Minor, representing Applicant
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NYC Department of Consumer Affairs
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