



Legislation Text

File #: Res 1888-2013, **Version:** *

THE COUNCIL OF THE CITY OF NEW YORK RESOLUTION NO. 1888

Resolution approving with modifications the decision of the City Planning Commission on ULURP No. C 130139 ZSM (L.U. No. 848), for the grant of a special permit pursuant to Section 74-41 of the Zoning Resolution of the City of New York to allow an arena with a maximum capacity of 22,000 seats within an existing 10-story building on property located at 3-10 Penn Plaza (Block 781, Lots 1, 2 and 10), in C6-4 and C6-6 Districts, partially within the Special Hudson Yards District (Pennsylvania Station Subarea B4) and partially within the Special Midtown District, Borough of Manhattan.

By Council Members Comrie and Weprin

WHEREAS, the City Planning Commission filed with the Council on May 28, 2013 its decision dated May 22, 2013 (the "Decision"), on the application submitted by MSG Holdings, L.P., pursuant to Sections 197-c and 201 of the New York City Charter, for the grant of a special permit pursuant to Sections 74-41 of the Zoning Resolution to allow an arena with a maximum capacity of 22,000 seats within an existing 10-story building (the "Arena") on property located at 3-10 Penn Plaza (Blocks 781, Lots 1, 2 and 10) in C6-4 and C6-6 Districts, partially within the Special Hudson Yards District (Pennsylvania Station Subarea B4) and partially within the Special Midtown District (ULURP No. C 130139 ZSM), Community District 5, Borough of Manhattan (the "Application");

WHEREAS, the Application is related to applications N 130137 ZRM (L.U. No. 847), a zoning text amendment to Sections 37-625 and 74-41 regarding pedestrian-accessible open areas, and Section 93-17 to create a special permit pursuant to new Section 93-171 by which sign regulations applicable within Pennsylvania Station Subarea B4 of the Special Hudson Yards District may be modified; and C 130140 ZSM (L.U. No. 849), a special permit pursuant to Section 93-171, as proposed, to modify the sign regulations applicable to the Arena;

WHEREAS, the Decision is subject to review and action by the Council pursuant to Section 197-d(b)(3) of the City Charter;

WHEREAS, the City Planning Commission has made the findings required pursuant to Sections 74-41 and 74-31(a) of the Zoning Resolution of the City of New York;

WHEREAS, upon due notice, the Council held a public hearing on the Decision and Application on June 19, 2013;

WHEREAS, the Council has considered the land use implications and other policy issues relating to the Decision and Application; and

WHEREAS, the Council has considered the relevant environmental issues including the revised

negative declaration (CEQR No. 13DCP053M) dated May 22, 2013 and further revised as of July 3, 2013 (the “Revised Negative Declaration”) and the CEQR Technical Memorandum dated July 2, 2013 (the “CEQR Technical Memorandum”);

RESOLVED:

The Council finds that the action described herein will have no significant impact on the environment as set forth in the Revised Negative Declaration and the CEQR Technical Memorandum.

Pursuant to Sections 197-d and 200 of the City Charter and on the basis of the Decision and Application, and based on the environmental determination and consideration described in this report, C 130139 ZSM, and incorporated by reference herein, the Council approves the Decision with modifications and subject to the following conditions:

Matter in ~~strikeout~~ is deleted by the City Council;
Matter in **bold double underlined** is added by the City Council.

1. The property that is the subject of this application (C 130139 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 Brisbin Brook Beynon, Architects and Matthews Nielsen Landscape Architects, PC filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
Z-1	Zoning Computations	May 22, 2013
Z-2	Site Plan	May 22, 2013
Z-3	Level 1/Street Level Plan	May 22, 2013
Z-4	Level 2/MSG Lobby Level Plan	May 22, 2013
Z-5	Level 3/Mezzanine Level Plan	December 11, 2012
Z-6	Level 4/Technical Level Plan	December 11, 2012
Z-7	Level 5/Event Level Plan	December 11, 2012
Z-8	Level 6/Lower Concourse Level Plan	December 11, 2012
Z-9	Level 7/Lower Level Suite Plan	December 11, 2012
Z-10	Level 8/Upper Concourse Plan	December 11, 2012
Z-11	Level 9/Upper Suite Plan	December 11, 2012
Z-12	Level 10/Upper Bowl Plan	December 11, 2012
Z-13	Longitudinal Section	May 22, 2013
Z-14	Plaza Computations	December 11, 2012
L-1	Open Area Subject to Special Permit	May 22, 2013
L-2	Open Area Plan	May 22, 2013 <u>June 24, 2013</u>

L-3	Open Space Details	May 22, 2013 June 24, 2013
L-4	Open Space Details	May 22, 2013 June 24, 2013

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, sub-lessee 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.

7. This permit shall expire ~~fifteen (15)~~ **ten (10)** years following the effective date hereof. ~~(the "Expiration Date"):~~

A. ~~PROVIDED, that the Expiration Date shall not apply if:~~

~~(i) Relevant City, State and Federal agencies and instrumentalities thereof and MSG Holdings, LP, or a successor entity thereto ("MSG") (collectively, the "Parties"), have entered into agreements providing for the implementation of a plan for the redevelopment of Penn Station and, in connection therewith, the relocation of Madison Square Garden; and~~

~~(ii) the Parties, prior to the Expiration Date , have jointly advised the Director of the Department of City Planning (the "Director") that, pursuant to an agreed-upon timetable for implementation of such agreements, the relocation of Madison Square Garden to a new location is anticipated to be completed upon a date subsequent to the Expiration Date, in which event this permit shall continue in effect and shall not expire until a date jointly identified by the Parties to the Director as necessary to facilitate such relocation (the "Relocation Date").~~

~~In the event that Madison Square Garden has not relocated to another location by the Relocation Date,~~

this permit shall expire unless the Parties have, prior to the Relocation Date, certified to the Director that relocation of Madison Square Garden remains reasonably foreseeable pursuant to agreements entered into for such purpose, in which case this permit shall continue in effect and shall not expire until a further date determined by the Director ; in consultation with the Parties, as necessary to facilitate such Relocation (the “Adjusted Relocation Date”). In the event that Madison Square Garden is not relocated by the Adjusted Relocation Date, this permit shall expire as of such date; and

B. PROVIDED FURTHER, that in the event Subparagraph (A) does not apply, the Expiration Date shall not apply if:

(i) prior to such Expiration Date, AMTRAK, Long Island Railroad, and New Jersey Transit, or successor entities thereto, as such parties may be necessary for the purpose hereof (the “Railroad Entities”) and MSG have entered into an agreement (the “Improvement Agreement”) which: (a) is entered into for the purpose of facilitating the construction, maintenance and operation of at-grade transit improvements by the Railroad Entities, such as new stairways, elevators, and escalators, having points of entry and exit located in and around the Subject Property, and which (xx) enhance public access to Penn Station, as well as the visual identity of the Subject Property as the site of Penn Station; (yy) add forms of ADA-access to Penn Station; and (zz) promote greater achievement of National Fire Protection Association Standards governing the safe evacuation of passengers from platforms and stations(the “Improvements”); (b) provides for the grant of easements and/or other user rights to the Railroad Entities as and to the extent necessary for the Improvements; (c) provides members of the public with a right of passage to and from the Improvements ; (d) includes a site plan and description of the potential type(s) of Improvement(s) at each location on the Subject Property; and (e) includes provisions requiring notification to and the consent of the City of New York for the termination of the Improvement Agreement or any waiver of surrender of an easement or right or user provided for therein. Nothing herein shall be construed as requiring that the Improvement Agreement include provisions by which easements or other user rights shall be offered by MSG at less than fair market value, or that MSG shall be responsible for the costs of constructing, operating or maintaining the Improvements. No later than the fifth, tenth, and thirteenth anniversaries of the effective date of this permit, MSG shall advise the Department, in writing, of the status of discussions regarding an Improvement Agreement, provided that this shall not apply in the event that the Parties are actively pursuing agreements pursuant to Subparagraph (A). The Department may thereupon request further information from MSG and may seek comparable information from the Railroad entities;

(ii) duly authorized officers or employees of the Railroad Entities and MSG jointly certify to the Director in writing, that : (a) the Improvement Agreement facilitates the purpose set forth in Subparagraph (i)(a) above and includes all provisions described in Subparagraph (i)(b)(c)(d) and (e) above; (b) the Railroad Entities have obtained all public approvals required pursuant to statute or regulation for the Improvement Agreement to be implemented; (c) the Improvement Agreement has been duly authorized by authorized representatives of all signatory parties and has been fully executed and delivered; (d) the Improvement Agreement provided to the Director is a true, correct and complete copy thereof; and (e) the grants of easements and/or other user rights set forth in the Improvement Agreement are binding and enforceable in all respects, subject only to conditions pertaining to the exercise thereof by the Railroad Entities and provided that such grants may be made effective upon receipt of notification from the Director pursuant to Subparagraph (iv) below. Such certification shall be accompanied by statements by the Railroad Entities: (xx) describing the benefits to passenger access to and egress from Penn Station expected to be achieved through the Improvements, the amount of funding currently authorized for the Improvements, as well as future amounts required and requested, and the

anticipated construction timetable; and (yy) summarizing the content of public comments received during the public approval process, and any modifications to plans or agreement made in response thereto;

(iii) MSG has submitted amended special permit site plan drawings in a form acceptable to the Department that show (a) easement areas or areas for exercise of similar user rights provided to the Railroad Entities for the purpose of the Improvements pursuant to the Improvement Agreement; and (b) a permanent loading arrangement for the arena and theater that (xx) does not require use of the easement areas or areas for exercise of similar user rights; (yy) eliminates or significantly reduces the loading and unloading of trucks for the theater at the plaza located on 8th Avenue and 31st Street, and does not impede the potential for Improvements in and around that location; and (zz) eliminates the loading and unloading of trucks upon all or part of West 33rd Street, between Seventh and Eighth Avenues or, if loading operations are relocated such that truck entry is at 31st Street or a proximate location, provides that the loading and unloading of trucks will not take place on West 31st Street, between Seventh and Eighth Avenues. Such site plan drawings shall be accompanied by a statement by MSG describing the loading sequence under the permanent loading arrangement, thereby committing MSG to implementation of the revised loading arrangements; and

(iv) The Director notifies the Parties in writing that the conditions of Subparagraphs (ii) and (iii) above have been satisfied. Within thirty (30) days following receipt of a submission made by the Parties to satisfy the requirements of Subparagraphs (ii) and (iii) above, the Director shall either: (a) provide such notification; or (b) identify, in writing, the provisions of Subparagraph (ii) or (iii) which are not satisfied. The Director shall review any revised submission pursuant to the provisions of this Subparagraph (iv). The determination of the Director shall be final, and no other reviews, determinations or approvals shall be required. The Director shall provide copies of a notification made pursuant to the provisions of this Subparagraph that the conditions of Subparagraphs (ii) and (iii) above have been satisfied, together with copies of all documents submitted by the Parties upon which such notification is based, to the Commission, the Office of the Mayor, and the Speaker of the Council.

(v) Notwithstanding the provisions of Subparagraphs (ii) and (iii) to the contrary, in the event that, as of the Expiration Date, the Improvement Agreement remains subject to a public approval required pursuant to statute or regulation in order for it to become effective and be implemented by a Railroad Entity, the Railroad Entities and MSG may, prior to the Expiration Date, jointly request to the Director that the Expiration Date be extended for a period not to exceed two (2) years in order to allow for completion of the public approval process, in which event this permit shall continue in effect and shall not expire until the date jointly identified to the Director (the "Adjusted Expiration Date").

In the event this permit expires at the Expiration Date, the Adjusted Relocation Date, or the Adjusted Expiration Date, a new special permit shall be required. The review of any application for a new special permit shall be for the purpose of a reappraisal, based on the facts and circumstances as they exist as at the time of application, of whether the findings applicable to use of the Subject Premises as an Arena under the Zoning Resolution are met and to consider the imposition of conditions upon such permit as the Commission may deem necessary or appropriate for such purpose. In order to satisfy the findings of Section 74-31(a) of the Zoning Resolution or any successor provision thereto, such conditions may include a requirement to: (i) offer easements and/or other user rights to the Railroad Entities for the purpose of facilitating the construction, maintenance and operation of at-grade transit improvements by the Railroad Entities, such as new stairways, elevators, and escalators, having points of entry and exit located in and around the Subject Property, and which (a) enhance public access to Penn Station; (b) add

forms of ADA-access to Penn Station; and (e) promote greater achievement of National Fire Protection Association Standards, or successor standards thereto, governing the safe evacuation of passengers from platforms and stations; and (ii) provide a permanent loading arrangement for the arena and theater that: (a) does not require use of the easement areas or areas for exercise of similar user rights; (b) eliminates or significantly reduces the loading and unloading of trucks for the theater at the plaza located on 8th Avenue and 31st Street, and does not impede the potential for at grade transit improvements in and around that location; and (c) eliminates the loading and unloading of trucks upon public streets, provided that nothing herein shall be construed as requiring that such easements or other user rights be provided at less than fair market value, as determined by a method acceptable to the Commission, or that MSG shall be responsible for the costs of constructing, operating or maintaining at-grade transit improvements. Nothing herein shall be construed to preclude or limit the Commission, in granting a new special permit pursuant to the provisions of the Zoning Resolution following the Expiration Date, the Adjusted Relocation Date, or the Adjusted Expiration Date, from granting such permit subject to a term of years in accordance with the provisions of Section 74-31(e), or any successor provision thereto, in order to allow for a further reappraisal of whether the findings applicable to use of the Subject Premises as an Arena under the Zoning Resolution are met or to impose such conditions upon such permit as the Commission may deem necessary or appropriate for such purpose.

Adopted.

Office of the City Clerk, }
The City of New York, } ss.:

I hereby certify that the foregoing is a true copy of a Resolution passed by The Council of The City of New York on July 24, 2013, on file in this office.

City Clerk, Clerk of The Council