

Chris Rizzo and Karen Meara Publish “Stadium Controversies and Special Permits” in New York Law Journal

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By Christopher Rizzo and Karen E. Meara. Published in the *New York Law Journal*.

Readers do not need another lesson on the tragic history of Penn Station—including the Pennsylvania Railroad Company’s decision to demolish the Beaux Arts masterpiece in 1963 in favor of a subterranean train station covered by a new stadium and office tower. The decision sparked public outcry and New York City’s adoption of its Landmarks Preservation Law in 1965. Public interest in restoring the station (and getting rid of the stadium—now called Madison Square Garden [MSG]) has never died down.

It has reached a fever pitch in the past decade. The state’s opening of the acclaimed Moynihan Station across the street in 2021, serving mostly Amtrak riders, has only served to underscore just how unacceptable the underground Penn Station is.

The public may not understand, however, that what keeps MSG in place and in the way of a new above-grade station is a New York City-issued special permit, first issued in 1963 for a term of 50 years, and renewed for 10 years in 2013. In early 2023, the stadium owner applied to the City Planning Commission for a “forever” permit. The community and many commuters vehemently opposed such a permanent extension.

This summer, the commission approved only a 10-year renewal, and imposed new conditions on the stadium’s operation. The City Council cut that time to five years explicitly so that planning for a better Penn Station could take place without limitations. It is therefore worth a deeper look at this unique stadium special permit.

New York City Rigorously Regulates Stadiums Under the Zoning Resolution

The New York City Zoning Resolution does not allow stadiums and other arena-type uses seating 2,500 people or more as an as-of-right use in any zoning district in the city. The City Planning Commission “may” permit such uses via special permit in denser commercial districts and in all manufacturing districts, but only if the applicant can meet specific conditions. (See Zoning Resolution Section 74-41). Those conditions all relate to mitigating the adverse impacts that large event venues can have on neighborhoods.

For example, Section 74-41 requires that any such facility be at least 200 feet from any residential district, be served by an arterial road, a major road or a secondary road within a quarter mile of an arterial highway (to keep traffic off of local residential streets), and have “adequate reservoir space” at vehicle entry areas to reduce on-road backups. It also requires the commission to give “due consideration” to the proximity of mass transit.

Even assuming a permit applicant meets all these conditions, the Zoning Resolution does not guarantee the result the applicant seeks. The commission and City Council (if it exercises its discretionary power to “call up” a special permit application) have further discretion to impose conditions and limit terms, as they did when they rejected MSG’s request for a permit term “in perpetuity.”

In fact, the city could have rejected the renewal altogether; the Zoning Resolution provides that, in addition to considering whether an applicant meets the conditions specified in section 74-41, the commission must find, for example, that the “disadvantages to the community” of a use are outweighed by its advantages. See ZR 74-31. One could imagine the commission rationally concluding that MSG’s continued operations will interfere with the transit needs of over 600,000 people and have myriad adverse spillover effects on New York City’s businesses, traffic congestion, tax base, etc.

Commission and City Council Actions Indicate Growing Unease With the Presence of MSG in Midtown

Public agencies and elected officials continue to be divided on whether to work around the existing stadium or seek its removal to facilitate an entirely new Penn Station. The Metropolitan Transportation Authority, Amtrak and New Jersey Transit remain committed to the Penn Station Master Plan, an ongoing planning process intended to dramatically improve Penn Station while allowing the stadium to remain in place.

Many elected officials and the community oppose an upgrade and want an entirely new station. The City Planning Commission arguably stayed neutral, keeping both options open and focusing primarily on improvements to current conditions.

Specifically, in its July 12, 2023, resolutions adopting amendments to Zoning Resolution 74-41 and approving the special permit, the commission rejected a “forever” term in favor of a 10-year term. It required use of the arena to be “consistent and compatible” with adjacent transit facilities, and obligated the special permit holder to negotiate with transit agencies if a new Penn station plan advances. The commission stated: “it is of paramount importance that MSG act in good faith in its collaboration with the [rail agencies] to further their design process and future construction of Penn Station improvements.”

At the same time, the commission lamented the inadequacy of current basic safeguards given MSG’s location above the nation’s busiest rail station, and therefore required substantial public realm improvements. These included major upgrades to the stadium’s loading zones to keep trucks and “back of house” operations off the streets and sidewalks, and improvements to “public spaces” and “pedestrian flow.”

The City Council, taking its lead from the heavy community opposition to renewal of the special permit, substantially modified both the language of the text amendment and the conditions of the special permit. First, it reduced the permit term from 10 to 5 years, stating: the “Council at this time cannot determine the long-term viability of an arena use at the Site and the Arena use should not take precedence over public access to Penn Station.”

The council also struck many of the requirements for public realm improvements as if to say—do not bother upgrading the public spaces around the stadium until the city makes a decision about whether and how to allow it to remain beyond 2028.

Displacing the stadium is as straightforward as allowing the special permit to expire. But redeveloping the site with a new Penn Station requires unraveling complex ownership issues. National Railroad Passenger Corporation (Amtrak) generally owns everything that sits below street level, including the station. Madison Square Garden Entertainment Corporation (owned by James Dolan) owns the air rights above the station where the stadium sits, about two-thirds of the site. Vornado Realty Trust owns Two Penn Plaza, which occupies the other one-third of the site.

Nevertheless, the special permit is the linchpin in the 70-year effort to restore what was lost in 1963.

Other Stadium Controversies Continue Around the City

Stadium controversies are not new in New York City. Mayor Michael Bloomberg faced explosive controversy and litigation over his stadium proposals, including the 2004 proposal to build a new Jets Stadium over the Hudson Railyards (withdrawn), construction of Yankee Stadium on Macombs Dam Park (completed in 2009) and the 2013 proposal to build a Major League Soccer Stadium in Flushing Meadows-Corona Park (withdrawn).

This year has had its share of new controversies. The administration of Mayor Eric Adams proposed and quickly withdrew a proposal for a 34,000-seat “temporary” cricket stadium in Van Cortlandt Park in the Bronx after a public outcry over the city’s attempts to bypass public review under the State and City Environmental Quality Review Acts (SEQRA and CEQR, respectively) and the Uniform Land Use Review Procedure (ULURP).

Separately, litigation has erupted over the conversion of a former 12,000-seat tennis stadium in Forest Hills, Queens, into a commercial music venue without the requisite special permit, SEQRA and ULURP processes (among other issues).

Major League Soccer’s proposal to build a new soccer stadium at Willets Point, Queens, is likely to fare much better. On Oct. 16, 2023, the commission certified an application by the New York City Economic Development Corporation for “Willets Point II,” a collection of new residential buildings, retail and a 25,000-seat soccer stadium. The application includes a special permit for the soccer stadium, which would be well-integrated into a high-density new community across the street from the Mets’ Citifield and the subway. Public opposition appears to be minimal.

The ULURP process is just getting underway, and release of the second supplemental environmental impact statement marks a major milestone in the environmental review of potential adverse impacts, including noise, traffic and air quality.

NYC leaders often love high-profile stadium projects. But the public, particularly those who will live with the impacts, often disagree. The special permit process is meant to help the city navigate and balance those interests.

What sets the present MSG controversy apart from all these other stadium proposals is that the city’s decision over the special permit for MSG will impact the busiest transit hub in the country. The decision has ramifications for not only the 600,000 people who pass daily through its dismal corridors, but also for the entire economy of New York City and the region.

No other stadium special permit has ever had such high stakes.

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