



The legal nuances surrounding MSG's plea for permanent residence - by Christine Varghese

May 30, 2023 - Spotlights



Christine Varghese

Madison Square Garden (MSG) has played host to some of the most memorable entertainment events in history, from the unforgettable moment when Joe Frazier was awarded the heavyweight title against Muhammad Ali, to John Lennon's last major concert performance, and the exhilarating victory of the New York Rangers over the Vancouver Canucks in the Stanley Cup. It is undeniable that MSG has established itself as one of the world's most iconic entertainment venues and has been a staple of New York City's landscape for over a century. Timing can be crucial when delivering an effective hook, seamlessly blending various chords to create musical classes, and split-second goals. The same could be said about MSG, as it informed city officials earlier this year about its plans to obtain a permanent permit to host major events and games at its location above Penn Station.

With the venue's permit set to expire in July 2023, the debate surrounding its renewal has stirred up a number of legal issues. The issue at hand is the fact that MSG has a special operating permit that allows it to sit atop Penn Station, a transportation hub that sees over 600,000 daily commuters. Advocates for the renewal of the permit argue that MSG is a vital economic and cultural asset to the city, while opponents argue that the venue's location above Penn Station contributes to overcrowding and impedes the station's ability to expand and modernize.

The issue of the permit renewal has become a legal matter due to the complex web of regulations and zoning laws that surround the use of land in New York City. Section 74-41 of the New York City zoning law requires arenas with more than 2,500 seats to get special permits to operate. Though land-use peculiarities have exempted many city venues from those requirements, including Yankee Stadium and Barclays Center. Both Yankee Stadium and Barclays Center sit atop city-owned land and neither team pays rent or property taxes. However, unlike MSG, both Yankee Stadium and Barclays Center are subject to eminent domain which may explain the differential treatment.

MSG was built on top of Penn Station in the early 1960s for several reasons including the fact that at the time, the Pennsylvania Railroad which owned Penn Station was facing financial difficulties and was looking for a way to generate revenue. Building a new arena above Penn Station was seen as a way to capitalize on the valuable real estate in Manhattan. Further, the original Penn Station was an architectural masterpiece, but had become outdated and in need of significant renovations. By building MSG on top of Penn Station, the railroad company was able to demolish the old station and replace it with a new, modern transportation hub that better met the needs of a growing city.

However, the decision to build MSG on top of Penn Station has been controversial as it meant that the historic station was destroyed and replaced with a much smaller facility. In recent years, there have been calls to rebuild a new, larger Penn Station that better reflects the importance of the transportation hub to the city. MSG's first permit was approved in 1963 for 50 years. Though the arena sought a permanent permit in 2013, the New York City Council only granted it 10 years. At that time, lawmakers urged MSG's owners to use the time to find a new home for the arena. That never happened.

The special permit's journey towards approval begins with Community Board 5. Community Board 5 is made up of members of the neighborhood appointed by the Manhattan borough president and local city council members. The city charter designates community boards with an advisory role on matters such as land use and zoning. In April, Community Board 5 voted against a permit allowing MSG to operate permanently above Penn Station and instead the board backed a permit that gives MSG another three years. The vote is advisory in nature. The community board's recommendation is only an initial step in the city's extensive Uniform Land Use Review procedure, and the final decision on MSG's permit situation and related stipulations about a relocation plan would ultimately rest with the city council.

If the permit is not renewed, MSG will be required to relocate within a set amount of years or face penalties for violating the zoning regulations. However, it is worth noting that MSG has been granted multiple permit extensions in the past, and it remains to be seen how the review process will play out.

From a legal standpoint, the permit renewal process of MSG highlights the importance of balancing competing interests and complying with complex zoning regulations. It also underscores the need for a transparent and democratic review process that takes into account the views and concerns of all those involved.

Christine Varghese is an associate attorney with Ingram Yuzek Gainen Carroll & Bertolotti LLP, New York, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540