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Land Use, Housing & Zoning

December 2023, Land Use, Housing & Zoning Committee

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1 Penn Plaza, application for Certifications pursuant to ZR Section 37-73, as well as a non-ULURP modification to special permit C190273 ZSM

At the regularly scheduled monthly Community Board Five meeting on Thursday, December 14, 2023, the following resolution passed with a vote of 33 in favor; 0 opposed; 1 abstaining:

WHEREAS, One Penn Plaza LLC (The Applicant), a subsidiary of Vornado Realty Trust, is seeking approval of certifications for their proposed design changes to two of the public plazas at their 1 Penn Plaza campus, pursuant to the New York City Zoning Resolution (ZR) Section 37-73, as well as a non-ULURP modification to their Special Permit C190273 ZSM, which authorizes the operation of these same public plazas; and

WHEREAS, 1 Penn Plaza is an 57-story, 11.995 FAR, 1.867 million square-foot office tower that is 750 feet in height, was completed in 1972, and located at the center of the block bound by West 34th Street to the north, Seventh Avenue to the east, West 33rd Street to the south, and Eighth Avenue to the west; and

WHEREAS, While the footprint of 1 Penn Plaza's office tower takes up the majority of block, there are also several public plazas and a public arcade surrounding the office tower, which amounts to 1.07 acres (48,497.16 square feet) of public space, as well as two small "retail" buildings, one to the east of the tower with frontage on Seventh Avenue and one to the west with frontage on Eighth Avenue; and

WHEREAS, The developers of 1 Penn Plaza utilized 1.995 FAR of the bonus 2 FAR generated from the public plazas and arcades to build a larger tower than what is allowed As of Right for the building's location: within C6-4 and C6-6 zoning districts and within the Special Midtown District; and

WHEREAS, The Applicant is proposing to make changes to the design and use of the West Plaza and the South Plaza after making extensive design and use changes to all of 1 Penn Plaza's public plazas and public arcades in 2019, which at that time included:

- building a new public entrance to Penn Station within the office tower along with reductions to nearby public plazas to facilitate the new entrance;
- the West Plaza was reduced by 157 square feet,
- the Southwest Plaza was reduced by 21 square feet, and
- the Southern Arcade was reduced by 91 square feet, and
- in order to expand the tower's West 34th Street entrance and lobby
- the North Plaza was reduced by 3,240 square feet, and
- the 1,911 square-foot Northern Arcade was eliminated,

for a total of loss of 5,420 square feet of public space that generated a bonus of 10,840 square feet for the building in 1972; and

WHEREAS, In 1972, the bonus was calculated at two square feet of bonus development for every square foot of either public plazas and public arcades, while the current bonus is calculated at 6 square feet for every square foot of public plaza and at 3 square feet for every square foot of public arcade; and

WHEREAS, In 2019, the bonus was recalculated based on the current multiplier factors and additional square feet were allowed for the lobby and front door expansions and with the owners promising to offset

the commercial square footage of the office tower by removing 6,989 square feet of commercial space from being leased and generating income; and

WHEREAS, The Applicant is now proposing to

- create three Open Air Cafés in the West Plaza,
- install two kiosks in the West Plaza, and
- create one Open Air Café in the South Plaza; and

WHEREAS, The 23,952 square-foot West Plaza is the public plaza located to the west of the office tower and is raised between three to five feet above the West 33rd and West 34th Streets' sidewalks because it is also the roof to the office tower's parking lot entrance and exit and thus has stairs on both 72-foot frontages on West 33rd and West 34th Streets and a ADA ramp on West 34th Street;

WHEREAS, The West Plaza is sort of a squat "T" shape (turned on its side) between the office tower and the rear of the Eighth Avenue retail building: the top crossbar of the "T" is a "through block passageway" between West 33rd and West 34th Streets with 72 feet of frontage on each street and is approximately 197.5 feet in length and the stem of the "T" is the "interior portion" of the plaza that is approximately 54.5 feet in width and 99.5 feet in length and surrounded by the Eighth Avenue retail building on three sides; and

WHEREAS, The West Plaza has three restaurant retail spaces fronting the plaza: two restaurants within the Eighth Avenue retail building and one restaurant within the office tower and each restaurant will manage the open air café that is adjacent to it; and

WHEREAS, The Applicant's proposal for the West Plaza will continue to contain the 52 moveable tables, 156 moveable chairs, approximately 211 linear feet of fixed benches with backrests, approximately 123 linear feet of fixed benches without backrests, 13 litter receptacles, and a long decorative lighting sculpture that runs most of the length of the "through block passageway" that was certified in 2019; and

WHEREAS, The Applicant is proposing to add to the West Plaza three Open Air Cafés:

- Café A: to be located on the south side of the "interior portion" and continues over into a small area of the "through block passageway", occupying 1,481.9 square feet of the public plaza, and having 102 moveable chairs, 27 moveable tables, and one litter receptacle,
- Café B: to be located on the north side of the "interior portion" and continues over into a small area of the "through block passageway", occupying 1,460.4 square feet of the public plaza, having 102 moveable chairs, 27 moveable tables and one litter receptacle, and
- Café C: located on the east side of the "through block passageway", occupying 931.4 square feet of the public plaza, having 56 moveable chairs, 23 moveable tables, and one litter receptacle; and

WHEREAS, The Applicant is also proposing to add to the West Plaza two 100 square foot kiosks to be installed in the "through block passageway":

- one kiosk near the West 34th Street end of the lighting sculpture, (which Manhattan Community Board Five voted in April 2019 to recommend approval, but was not in the final plan certified by the City Planning Commission in 2019) and
- a second kiosk at the center of the "through block passageway" and near the junction point of the "T" shape of the West Plaza; and

WHEREAS, The Applicant believes these locations for the kiosks will be more visible to pedestrians on the sidewalks and will entice more people to climb the steps up and use the West Plaza than the 2019 certified locations of two kiosks in the West Plaza which was against the most western wall of the "interior portion" of the West Plaza; and

WHEREAS, The Applicant stated that the design of the kiosks are not finalized, but that the kiosks would be box shape, with customer queuing and interactions being done on three sides (north, east, and south

sides of the kiosks) in order for the west sides to be primarily an employee entrance to maintain a ten-foot wide unobstructed through block pathway through the West Plaza; and

WHEREAS, The Applicant stated that they would not install either kiosk until an operator signs a lease contract and the Applicant stated that they will work with the operator on the final design of each kiosk; and

WHEREAS, The applicant is proposing to increase the square footage of plantings in the West Plaza from 2,885 square feet to 3,024 square feet, and this would still include 20 trees; and

WHEREAS, The Applicant is also proposing a change of design and use to the South Plaza:

- create an Open Air Café located in the northwest corner of the plaza, occupying 550 square feet, and having 20 moveable tables, 50 moveable chairs, 1 litter receptacle, and
- Rearranging the layout of the existing benches, tables, and chairs; and

WHEREAS, The South Plaza is a 5,977 square foot public plaza located on the south side of the office tower with 178 feet of frontage on West 33rd Street, is raised between 2.5 and 3.75 feet above West 33rd Street's sidewalk, and so there are four sets of stairs at the center frontage of the plaza and an ADA ramp at the far east side of the plaza, and the South Plaza together with the 1,911 square foot Southern Arcade, serve as the entry way into the office tower's main lobby from south side; and

WHEREAS, The South Plaza will continue to contain the 55 linear feet of fixed benches with backrests, 42 linear feet of fixed benches without backrests, 53 moveable chairs, 17 moveable tables, and 4 litter receptacles that was certified in 2019, although the layout of these tables and chairs will be shifted to areas in the South Plaza away from the northwest corner near a retail restaurant space fronting on to the plaza; and

WHEREAS, The Applicant would not agree to the use of signs that say that the any of the seating at any of the four proposed open air catés is open to the public and no purchase is required to use the seating, a policy long advocated by Manhattan Community Board Five in order for public spaces, which developers received bonus development rights, remain public and are not privatized; and

WHEREAS, In April 2019, Manhattan Community Board Five passed a resolution on the 2019 changes to all of the public spaces at 1 Penn Plaza which contain three Resolves:

- RESOLVED, Community Board Five recommends denial of One Penn Plaza LLC's request for a Special Permit pursuant to Zoning Resolution (ZR) Section 74-761, the elimination or reduction in size of bonused public amenities for One Penn Plaza, unless the Applicant works with the Department of City Planning and the City Planning Commission to plan and construct at least one ADA accessible elevator from the One Penn Plaza lobby to the concourse of Penn Station, and the Applicant plans and constructs a public restroom within the plaza complex.
- RESOLVED, Community Board Five recommends denial of One Penn Plaza LLC's request for a Zoning Authorization pursuant to Zoning Resolution (ZR) Section 37-327, to change the hours of access for One Penn Plaza, unless the Applicant adjusts hours of operation of the West Plaza to 5AM to 10PM year round at a minimum, and the Applicant adjusts hours of operation of the refurbished Penn Station entrance in the lobby of One Penn Plaza to match those of the West Plaza.
- RESOLVED, Community Board Five recommends approval of One Penn Plaza LLC's request for a Chairperson's Certification pursuant to Zoning Resolution (ZR) Section 37-73 and 81-231(b), for One Penn Plaza, in connection with the proposed addition of kiosks near the 34th Street entry to the West Plaza and near the center of the East Plaza.

WHEREAS, In 2019, in response to the Applicant's 2019 proposal for the public plazas the then Manhattan Borough President Gale Brewer made the recommendation that their proposal be approved with the condition that public bathrooms would be installed at 1 Penn Plaza at the Long Island Railroad Concourse and not within any of the public plazas; and

WHEREAS, The Applicant stated that they are not willing to install a public bathroom in any of their public plazas, are not willing to guarantee opening to the public any of the bathrooms within the restaurants or building lobbies, and would only state they might consider a public bathroom at the LIRR concourse level in some future renovation; and

WHEREAS, In 2019, the Applicant proposed the hours of operation for the West Plaza (and also for the new Penn Station entrance) to change from 24 hour public access to 7am-7pm for security and maintenance reasons, currently the Applicant proposes to continue the hours of operation of the West Plaza and the new Penn Station entrance 7am-10pm, with the caveat that the restaurant may operate later on "game nights" at Madison Square Garden, which is located across West 33rd Street from the West Plaza; and

WHEREAS, Manhattan Community Board Five advocated in 2019, continues to advocate now, for early morning commuters to use a secure and weather-protected exit/entrance as they use Penn Station to get to/from their jobs in areas of Midtown that are north and west of Penn Station, like the Garment District along Eighth Avenue, Hell's Kitchen, and Hudson Yards, and even though there are less office workers every day since the pandemic, there are still the same amount overnight and early morning service workers that continue to work in-person everyday in Midtown and Hudson Yards and they should be able to use these public spaces and this Penn Station entrance also; and

WHEREAS, The Applicant stated that they are currently unwilling to change the hours of operations of the West Plaza and of their Penn Station entrance; and

WHEREAS, Manhattan Community Board Five has concerns about the amount of space for customer queuing at the kiosks given the existing fixed benches and lighting sculpture that are already installed as seen on the schematics and renderings that appear in the application (particularly Drawings Z-101.00 and Z-102.00 of the "Open Air Cafe & Kiosk West Plaza" list) and on the slides of the November 13, 2023 City Planning Commission Review Session presentation (particularly slides #17 and #18) to be only four to five feet between northern kiosk and one fixed bench, and a similar condition between the center kiosk and the ends of two fixed benches, thus making use of these particular benches as passive seating by the public to be undesirable and also cause a stumbling hazard for queuing kiosk customers; and

WHEREAS, Manhattan Community Board Five has treated applications for open air cafés in public spaces with the same criteria for several years now, including recommendations for signage at tables in public areas to state no purchase is necessary to use this public space, and for public bathrooms to be available; therefore be it

RESOLVED, Manhattan Community Board Five **recommends denial** of the application by One Penn Plaza LLC for Certifications pursuant to ZR Section 37-73, as well as a non-ULURP modification to special permit C190273 ZSM to facilitate four new open air cafés and two kiosks within public plazas at 1 Penn Plaza and to facilitate design changes to said plazas because we find that the bonused public plazas at 1 Penn Plaza are being increasingly privatized and increasingly reduced in size and access without a commensurate exchange of some other public benefit of comparable value, like a public bathroom or longer hours of operation, and because we believe that every square inch of a public area, at any location in the city, should be available for public use free of charge and that passive use by the public within public areas should be prioritized.



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