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Land Use, Housing & Zoning

March 2023, Land Use, Housing & Zoning Committee



1345 Avenue of the Americas, located at 1345 Avenue of the Americas between 54-55th streets. Modification of special permit for Privately Owned Public Spaces (POPS). Re-certification and expansion of outdoor café seating.

At the regularly scheduled monthly Community Board Five meeting on Thursday, March 09, 2023, the following resolution passed with a vote of 33 in favor; 0 opposed; 1 abstaining:

WHEREAS, 1345 Avenue of the Americas, located at 1345 Avenue of the Americas between West 54th and West 55th Streets seeks modifications to a Special Permit for the re-certifications of an existing public Plaza and for the expansion of existing open air café in the Plaza; and

WHEREAS, The site of 1345 Avenue of the Americas is located at 1345 Avenue of the Americas, between West 54th Street and West 55th Street between 6th and 7th Avenues, which is tax lot 29 of Block 1007; and

WHEREAS, 1345 Avenue of the Americas was constructed in 1968 on a 90,364 sf zoning lot, pursuant to a City Planning Commission ("CPC") special permit (CP-19615) granting height and setback waivers; and that special permit allowed 1345 to rise on the narrow street frontages without setbacks; and

WHEREAS, At the time of construction, the entire Premises were zoned C6-6, with a base floor area ratio ("FAR") of 15.0, bonusable to 18.0 with a plaza bonus, and the Premises were developed at 18.0 FAR utilizing the plaza bonus; and

WHEREAS, The Special Midtown District (MiD) (C 820214 ZMM) was enacted and encompasses the area between Third and Eighth Avenues, 31st Street and 61st Street, and imposed a FAR differential between avenues and wide streets and midblocks, with higher FARs allowed along the avenues and wide streets; and

WHEREAS, In conjunction with the adoption of the MiD in 1982 (C 8202214 ZMM), 1345 Avenue of the Americas was split into two zoning districts: C6-6 (15.0-18.0 FAR) along Avenue of the Americas; and C6-6.5 (12.0 FAR) in the midblock, rendering the building non-compliant as to floor area; and

WHEREAS, The project area includes both 1345 Avenue of the Americas and the three-story Ziegfeld Theater, the wrap-around Plaza and below-grade parking with a total floor area developed of approximately 1.57 million sf in 1345 Avenue of the Americas, and 25,000 sf in the Ziegfeld Theater; and

WHEREAS, 1345 Avenue of the Americas is surrounded by a single, wrap-around plaza on all four sides: a 4,182.3 sf portion along West 55th Street (the "North Plaza"); a 10,783.5 sf portion along Avenue of the Americas (the "East Plaza"); a 4,173.7 sf portion along West 54th Street (the "South Plaza"); and a 9,678.5 sf portion extending through-block from West 54th Street to West 55th Street (the "West Plaza," also known as Fisher Park); and

WHEREAS, From 1990 until recently, an open-air café was located in the westerly portion of the North Plaza. Six café certifications were issued pursuant to Section 37-624 or Section 37-73: (i) N 900564 ZCM in 1990; (ii) N 960555 ZCM in 1996; (iii) N 990613 ZCM in 1999; (iv) N 020693 ZCM in 2002; (v) N 060024 ZCM in 2005; and (vi) N 190096 ZCM in 2013. The 2013 certification expired in January of 2022; and

WHEREAS, In 2018, two Chairperson's certifications were approved for the Premises: a certification pursuant to Section 81-231(e) to eliminate an existing open area for which a floor area bonus had not been

utilized (N 190086 ZCM, December 13, 2018); and a certification pursuant to Section 37-625 for plaza design changes (N 190082 ZCM, December 13, 2018); and in 2019, another Chairperson's certification was granted pursuant to Section 37-73 for an open-air café (N 020693 ZCM, March 11, 2019), subject to an expiration date of January 30, 2022; and

WHEREAS, In 2019 and 2020, the Plaza was renovated and reopened in 2021; and

WHEREAS, On June 27, 2020, Emergency Executive Order No. 128 ("EEO 128") permitted certain temporary uses within POPS throughout the City to provide relief for food and beverage establishments and allow temporary facilities related to COVID screening and testing; EEO 128 expired one year and four days later, on July 1, 2021; the Applicant interpreted EEO 128 as suspending the expiration date of the 2002 café certification from January 30, 2022 to February 3, 2023, but the Department of City Planning did not agree with this interpretation and therefore, the 2002 certification expired on January 30, 2022; and

WHEREAS, The applicant seeks to enlarge the outdoor restaurant seating in the previously occupied northern portion of the Plaza the North Plaza (W. 55th Street) to consists of three sections corresponding to tenant spaces on the ground floor of 1345: "Café Area 1," to the far west is approximately 427 sf with 12 tables and 30 chairs; "Café Area 2," the middle section is approximately 382 sf with 12 tables and 30 chairs; and "Café Area 3," to the far east is approximately 427 sf with 13 tables and 32 chairs; and

WHEREAS, The Open-Air Cafés total 1,236 sf (4.3% of the area of the Plaza) and has a total seating capacity of 92 and has aggregate frontage along W. 55th Street is 72'-9", which is less than the maximum 108'-4" permitted; and

WHEREAS, In addition to the enlarged Open-Air Cafés, public (non-café) seating areas will continue to be provided in the West Plaza and to the west of Café Area 1, a cluster of public seating will provide 8 movable tables and 16 movable chairs east of Café Area 3; and

WHEREAS, The area already contains one large planter with perimeter bench seating along its circumference; a back-to-back fixed bench for public use is situated between proposed Café Areas 2 and Café Area 3; and the northern portion of the West Plaza provides 4 movable tables and 8 chairs; and

WHEREAS, The current restaurants adjacent to the proposed expanded Café Areas are "Wagamama," at 100 West 55th Street and "Quality Bistro," at 120 West 55th Street; and

WHEREAS, The restrooms provided at both restaurants are privately located and not available for public use; and

WHEREAS, Numerous noise complaints have been filed with 311 and CB5 regarding loud, amplified music over the summer and fall of 2022 from residents of the West 55th Street block; and

WHEREAS, Representatives for the owners of 1345 Avenue of the Americas stated the owners are not amenable to usage of the "Café Area" tables for the general public when not in use by restaurant customers, or signage encouraging such usage; and

WHEREAS, Representative for the owners of 1345 Avenue of the Americas could not give specific clearance distance between the proposed seating areas, the trees on surrounding sidewalks and the outdoor dining shed, which occupies the entire length of the proposed outdoor dining expansion; and

WHEREAS, the dining shed is separated from the curb by a heavily used bike lane, rendering any traffic between the restaurant, the open air café, and the shed very congested and potentially dangerous; and

WHEREAS, Representative for the owners of 1345 Avenue of the Americas were not aware of the noise complaints and did not agree to concrete mitigation steps that may be included in the lease; and

WHEREAS, Community Board Five has long been frustrated by non-compliance issues in multiple POPS throughout our district; and

WHEREAS, Community Board Five does not generally support applications for expanded private seating, which does not allow public members to utilize such seating when unoccupied by restaurant customers, therefore be it

RESOLVED, Community Board Five **recommends denial** of the application for a Chairperson's certification under Section 37-73 to expand outdoor seating at the 1345 Avenue of the Americas POPS.



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