

June 6, 2002

Hon. Amanda M. Burden
Director
Department of City Planning
22 Reade Street
New York, NY 10007

**Re: N 020526 ZCM and M 860305 (B) ZSM
Worldwide Plaza
825 Eighth Avenue between West 49th Street and West 50th Street
Block 1040, Lot 29**

Dear Chair Burden:

In his letter dated May 2, 2002, which was received in the Board's office on May 7, 2002, Mr. Laurence Parnes requested this Board's comments or recommendations on the captioned applications within 30 days. Our response, which is set forth below, was approved by Manhattan Community Board No. 4 at its regularly scheduled full board meeting held on June 5, 2002 (37 in favor, 1 opposed, 2 abstaining, and 0 present but not eligible to vote).

Application M 860305 (B) ZSM seeks a modification of the approved plan for the existing public plaza (the Plaza) within the Worldwide Plaza mixed use complex. The proposed modifications include repaving the entire Plaza, alteration of the existing seat walls and fountain seating, relocation of the bicycle racks and drinking fountain, a seasonal planting program, repairing the tree pits and installing a new irrigation system, replacing all of the trees, replacing and increasing existing light fixtures and modifying the central fountain.

We have reviewed the proposed modifications and agree that they will address some of the Plaza's shortcomings, solve some on-going maintenance problems and generally improve the Plaza for all users.

Application N 020526 ZCM seeks a certification pursuant to Section 37-05 of the Zoning Resolution to authorize the use of portions of the Plaza as an open air café. This application is much more problematic. It would permit the western halves of the two pavilion areas adjacent to the existing restaurants to be used exclusively by patrons of the restaurants. The eastern halves of both pavilion areas would remain public seating areas. This represents a reduction of the Plaza's public area of 2,700 square feet, or 10% of the total plaza area, and is at odds with the finely calibrated plan that was established with the community for the Worldwide Plaza complex in 1986 prior to its construction.

In 1986, a number of land use actions were approved upon application by the developer, which was an affiliate of the Zeckendorf Company. (The current owner, which is an affiliate of Equity Office Properties Trust, acquired the complex in 1998 and was not a party to those actions.) The actions included a substantial upzoning of the entire site, and special permits for a subway improvement bonus, height and setback modifications and a 450-space public parking garage. In addition, the developer received an urban plaza bonus of 6 square feet for each square foot in the Plaza totaling a bonus of 160,836 square feet of Class-A office space. Members of the community and this Board had serious concerns about the adverse impact that the development would have on the Clinton community. After discussion, the developer and this Board reached an understanding that that adverse impact would be mitigated by the developer making modifications in the project as proposed and providing further resources, facilities and services to the Clinton community and its residents. At that time the developer had proposed and the community had resolutely opposed open air café certification for the pavilion areas. In the end, the final construction plans reviewed and conditionally approved by this Board for the Plaza retained the entire pavilion areas as public seating areas.

Over time, the developer encouraged and even required its restaurant tenants in the Plaza to operate open air cafes in the entire pavilion areas. After the study that resulted in the publication in 2000 of Privately Owned Public Space by Jerold S. Kayden, the Department of City Planning and the Municipal Art Society, the City sued the owner of Worldwide Plaza for, among other things, failure to maintain the plaza in compliance with the applicable special permit and restrictive declaration and the Zoning Resolution. The modifications and open air café certification for which approval is now sought represent the actions that have been agreed to between the Department of City Planning and the owner to resolve that litigation. Pending approval of the open air café certification, the restaurants have been allowed to provide waiter service to patrons in the western halves of the pavilion areas.

The findings required by Section 37-05 of the Zoning Resolution for certification of an open air café are that (a) the use promotes public use and enjoyment of the urban plaza, (b) the use complements and stabilizes desirable uses in the surrounding area, (c) the use is proposed as part of a general improvement of the plaza . . . including as much landscaping and free public seating as possible, (d) the use is provided in accordance with the requirements set forth in Section 37-04(g)(3) of the Zoning Resolution, and (e) the owner will maintain the use in accordance with Section 37-04 (q) and (r) of the Zoning Resolution.

Based on the commitments in the application, the last two requirements appear to be satisfied.

For satisfaction of the third requirement, the applicant cites its entire capital improvement program. However, a substantial portion of that program is clearly required independent of the open air café use to address existing infrastructure and maintenance problems. More generally, the applicant proposes a 40% increase in the amount of public seating, what promises to be a genuinely improved landscaping program, and a program of live entertainment in the central Plaza area. We agree that the proposed seating plan and landscaping represent real improvements to the Plaza. The applicant has represented to the Board that the entertainment program will not extend into evening hours and has agreed to work with the Board's Quality of Life Committee to address any noise complaints that the entertainment program may create. On that basis, we agree that the entertainment program will enhance the experience of many Plaza users.

The Plaza's restaurants are heavily used by workers in the Worldwide Plaza office tower and surrounding buildings, as well as by local residents. For many of those patrons, the proposed open air café use is a welcomed amenity. For the restaurant owners it may be a financial necessity.

For others in the community, however, open air café use represents a diminution of public uses in the Plaza, namely open seating, and an unwelcomed and unnecessary privatization of open public space. Most importantly, it represents a unilateral change in the carefully calibrated agreement that was reached with the community back in 1986.

In the last two months the Board's Clinton Land Use and Zoning Committee has had a series of discussions with the applicant about ways in which the adverse effects of that change could be mitigated with the creation of new public open space in the area with a nexus to the Plaza. Specifically, the Committee has sought the applicant's support for two community gardens in the Clinton Urban Renewal Area on West 52nd and West 53rd Streets. Land for these gardens is adjacent to sites where affordable residential development is underway. These developments are in the process of being approved by HPD and will use funding from private and public sources. Funding for building the gardens, which are also a part of HPD's approval process, has yet to be secured.

The applicant has indicated that it has a strong commitment to the neighborhood surrounding Worldwide Plaza, that it wants to be a good neighbor, and that it may indeed be able to support projects to enhance the community, such as the community garden project. This Board appreciates those comments and, regardless of the outcome of these applications, looks forward to working with the applicant on such projects in the future.

However, the applicant has not been willing to make any commitment at this time for the creation of new public open space in the area. In the absence of such a commitment, this Board believes that the first two requirements for open air café certification have not been satisfied. Therefore, the Board does not approve the application for open air café certification.

Sincerely,



Simone Sardin
Chair
Manhattan Community Board No. 4

Anna Hayes Levin
Chair
Clinton Land Use & Zoning Committee

cc: Hon. Michael Bloomberg, Mayor
Hon. C. Virginia Fields, Manhattan Borough President
Hon. Jerrold Nadler, United States Representative
Hon. Eric Schneiderman, State Senator
Hon. Richard Gottfried, State Assemblymember
Hon. Scott Stringer, State Assemblymember
Hon. Gale Brewer, City Councilmember
Hon. Christine Quinn, City Councilmember
Kate Schmidt, MBPO
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Paul Selver