



**James P. Power**

Partner  
T 212.715.7839  
F 212.715.8000  
jpower@kramerlevin.com

1177 Avenue of the Americas  
New York, NY 10036  
T 212.715.9100  
F 212.715.8000

November 15, 2023

Michelle Craven  
Assistant Commissioner  
Office of Cityscape and Franchises  
New York City Department of Transportation  
55 Water Street, 9<sup>th</sup> Floor  
New York, NY 10041

Re: Proposed Rules, Dining Out NYC Program

Dear Assistant Commissioner Craven:

We represent Ogden CAP Properties LLC, as agent for 20 West 64th Street Associates, which is the building at One Lincoln Plaza (the "Property"), and we are writing to comment on the Proposed Rules published by the Department of Transportation ("DOT") for DOT's Dining Out NYC program. In particular, we are writing to request that the Proposed Rules be modified as to the "clear path" requirements as they relate to the Property and other similarly situated properties (we are aware of two others) that already provide a clear path through an arcade adjacent to the sidewalk. In particular, we believe that that the full 12-foot clear path at the curb that the Proposed Rules would mandate for the Property is excessive because the Property already provides an additional six-foot clear path through an arcade adjacent to the sidewalk. This request is supported by the Lincoln Square Business Improvement District (the "BID").

The Property

The Property is located along the east side of Broadway between West 63rd and West 64th Streets, directly across Broadway and Columbus Avenue from Lincoln Center. It occupies the entire block frontage along Broadway and is improved with a 42-story commercial and residential building (the "Building"). The Property is located in the Special Lincoln Square District (the "SLSD") established under the New York City Zoning Resolution (the "ZR") and, consistent with the SLSD regulations, the Building contains an arcade which provides a minimum of six feet of clear pedestrian path running parallel to Broadway for the full length of the block. The Building contains three restaurants along its Broadway frontage, and each of those restaurants includes a sidewalk cafe along Broadway. (See attached Illustrative Café Seating Diagram.) Two of the cafes have been in operation since at least the 1980s and currently, and historically, have been located so as to maintain a clear path of 8 feet from the curb along Broadway, which is consistent with both prior regulations and the requirements of the City's Open Restaurants program. The three restaurants and the adjacent cafes are an essential part of the fabric of the Lincoln Square area, and serve both as an attraction themselves and



as an important amenity for visitors to the other uses in the area, most notably the constituent members of Lincoln Center for the Performing Arts.

### The SLSD

Among the purposes of the SLSD are the following:

- (b) to improve circulation patterns in the area in order to avoid congestion arising from the movements of large numbers of people; improvement of subway stations and public access thereto; including convenient transportation to, from and within the district; and provision of arcades, open spaces, and subsurface concourses;
- (c) to help attract a useful cluster of shops, restaurants and related amusement activities which will complement and enhance the area as presently existing.

In furtherance thereof, ZR Section 82-11 of the SLSD regulations provides that buildings along the east side of Broadway between West 61st and West 65th Streets may contain an arcade, provided that, inter alia, the arcade had a minimum depth of 15 feet and a minimum, unobstructed clear path of 6 feet. In particular, the regulations provide that no obstructions are permitted within such arcades "except for unenclosed cafes, provided that there is at least a six foot wide unobstructed pedestrian way ."

At the time the Building was constructed (in 1970), the SLSD mandated that arcades be provided along the east side of Broadway, and the arcades generated a floor area bonus. Although mandatory arcade requirements were eliminated by zoning text amendment in 1994, the City Planning Commission (the "CPC") acknowledged in its report making that change the importance of the existing arcades and the outdoor dining that they facilitated: "since 1969, three arcades have been constructed along Broadway ... They have provided an expanded and protected area for pedestrians along the length of Broadway opposite Lincoln Center and extra space for outdoor seating for the area's eating places which support the district's entertainment uses." CPC Report and Resolution N940127(A)ZRM.

### The Proposed Rules

Proposed Section 5-11(a)(1)(A) provides that a clear path shall remain on the sidewalk after installation of a sidewalk café, which clear path shall be the greater of the width provided in the chart in that Section or 50 percent of the width of the sidewalk. The chart references DOT's NYC Pedestrian Mobility Plan, which identifies Broadway in this location as a "Global Corridor", and the chart indicates that along Global Corridors, the required clear path is 12 feet. We believe that this requirement would impose an undue hardship on the Property, and is unnecessary in light of the existing built condition.

The existing condition, with eight feet of clear path on the sidewalk and six feet in the arcade, provides a total of 14 feet of clear pedestrian path, in excess of the 12 feet that the Proposed Rules seek to establish. The existing condition has been in place for many years and proven to be sufficient for pedestrian circulation. (The BID has independently concluded that much of the pedestrian traffic in the area is to and from Lincoln Center and does not utilize the sidewalks on the east side of Broadway.)



Requested Modification

We request that the Proposed Rules be amended to provide for a reduction in the minimum clear path to eight feet in situations where a second mandatory clear path is provided in an arcade, consistent with ZR 82-11. In particular, we suggest that Proposed Rule Section 5-11 (a)(i)(A) be amended by adding a new subsection as follows:

3. The minimum clear path required along a Global Corridor may be reduced to eight feet for cafes adjacent to an arcade where such arcade provides a minimum clear path of six feet for the length of the block pursuant to the Zoning Resolution.

We note that this proposed change is supported by the Lincoln Square Business Improvement District. Further, there are two other properties in the Special Lincoln Square District that have arcades where this exception might apply, but neither of those two properties currently have sidewalk cafes.

In conclusion, the existing condition, with the provision of a second clear path through the arcade in the Building pursuant to the SLSD regulations, has been in place for many years and proven to be sufficient for pedestrian circulation. The requested change to the Proposed Rules, to allow an exception to the 12-foot pedestrian path requirement where a secondary path is provided through an arcade, is consistent with the purpose and intent of the SLSD regulations and the Proposed Rules to both encourage active restaurant uses and provide for adequate circulation.

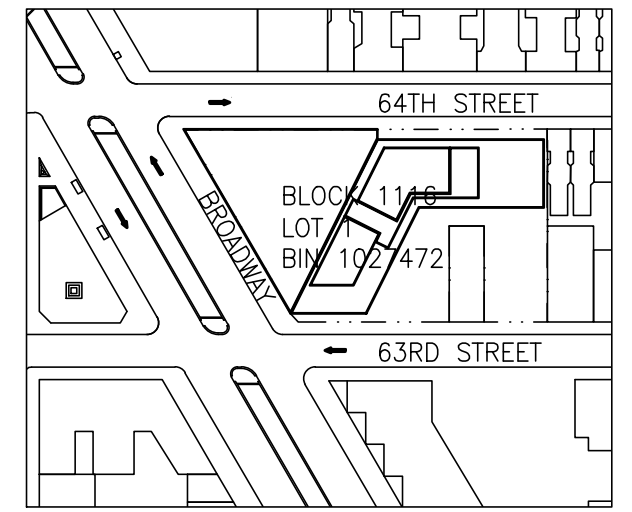
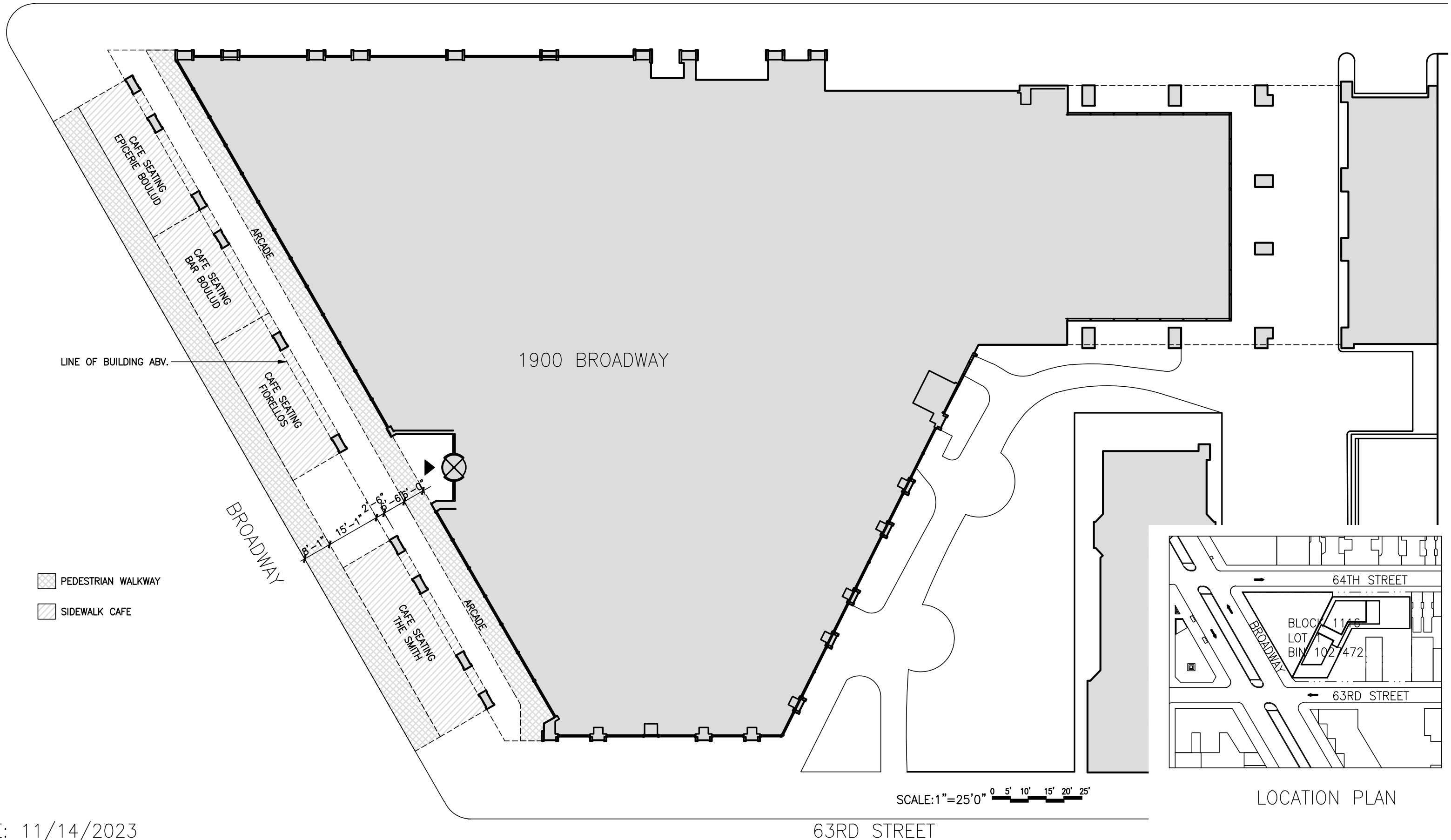
Very truly yours,

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: \_\_\_\_\_  
James P. Power

cc: Lincoln Square Business Improvement District

64TH STREET



LOCATION PLAN

SCALE: 1"=25'0" 0 5' 10' 15' 20' 25'

63RD STREET

DATE: 11/14/2023

PROJECT NAME: 1 LINCOLN PLAZA - CAFE SEATING DIAGRAM  
PROJECT NUMBER: 23005.L06  
CAD FILE:

ILLUSTRATIVE CAFE SEATING DIAGRAM