

Real Estate Alan S. Oser

Seeking Compliance In Zoning

WHEN Olympic Tower was built on Fifth Avenue in the early 1970's it was given a floor-area bonus because the design allowed for retail space along an "enclosed plaza." But though the building has been open for five years, the retail space has never been rented out.

The Department of City Planning sees this as part of a pattern of breakdown in compliance with zoning statutes, particularly troubling when it occurs in special districts where builders are entitled to density bonuses for providing amenities sought by the city. The level of noncompliance in the special districts is "very significant," said Robert F. Wagner Jr., the Planning Commission chairman.

Accordingly, the Planning Depart-

ment wants to fashion an enforcement stick that is more menacing than a fine, and it may seek the authority to be the enforcement agency. It is preparing to ask the Planning Commission and Board of Estimate for the power to revoke certificates of occupancies from buildings that fail to comply with the terms of a special permit and also the power to withhold them from new buildings until the terms of special permits are met.

Permanent financing is generally granted only after a certificate of occupancy is issued. To make this financing contingent on leasing would greatly increase the risk both to the developer and the construction lender and might well make it more difficult to obtain construction financing.

The special-permit issue is only a part of the entire zoning enforcement issue, said Norman Marcus, Planning Commission counsel. The Planning Department is seeking a Law Enforcement Assistance Administration grant to study methods of strengthening zoning compliance in the city.

Zoning enforcement is the province of the Buildings Department. There are "thousands" of zoning violations

around the city, said Mr. Marcus, but violators are content to risk a belated and probably mild court fine should the Buildings Department file an action after an inspection.

The problem is aggravated in the special-incentive zoning districts when bonuses are given for uncollected benefits or benefits that have not worked out as planners expected. With vigilant community boards taking a role in the development process, the Planning Department has felt growing discomfort with its historic, purposely intended aloofness from the enforcement. "Why should the community knock itself out if in the end it will be disregarded by the Buildings Department, the builder and the courts?" Mr. Marcus asked.

In one instance, leasing conditions have already been written into a special permit. At the mixed-use apartment tower going into construction at 61 West 62d Street, in the Lincoln Square special district, the builder, Joseph Giffuni, is obliged to lease out 50 percent of the 28,000 square feet of commercial space in an enclosed plaza before a certificate of occupancy will be granted.

One development consultant asserted

nevertheless that most commercial projects could not be financed if the certificate of occupancy depended on leasing success. "You can't make a certificate of occupancy depend on a market that no one knows about," he said.

Another example cited by Mr. Marcus was the mixed-use Galleria, at 115 East 57th Street. Its office condominium — in ownership separate from the Galleria apartments — has an architecturally spectacular midblock covered plaza lined with roughly 12,000 square feet of still-unleased commercial space.

However, Edwin G. Roos of Williams & Company, the leasing agent since the fall, said that several leasing prospects were pending. In covered plazas, he insisted, it is necessary to find tenants so well known to the public that they can succeed without the direct access to heavy street traffic that most stores need.

Other leasing specialists, speaking of Olympic Tower, suggested that the planning of that plaza might not have been adequate to attract the level of tenancy necessary for the prestige of the structure.

Without enforcement power, the chairman of the Planning Commission is thrown back on indirect techniques. For example, a Planning Department staff member went over to the new 800 Fifth Avenue building, on the former Dodge site in the Special Park Improvement District, after an informal complaint and found the words "Pierre Cardin Evolution" inscribed on the window of a yet unopened store.

Section 92-09 of the special district permits only "medical offices and commercial and noncommercial art galleries" on the ground floor, a letter by Mr. Marcus to the Buildings Department observed. But "the doorman advised that the activity carried on therein was that of a furniture showroom by appointment to the trade."

The leasing agent for Cushman & Wakefield, Nicholas Dana, said the space had been leased to Pierre Cardin as a "gallery of original design," exclusively for "unique and artistic creations." These will be quality furnishings such as lamps, table and chairs, a Pierre Cardin spokesman said. There will be no purchasing from the floor, he said.