



OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN
THE CITY OF NEW YORK

1 Centre Street, 19th floor, New York, NY 10007
(212) 669-8300 p (212) 669-4306 f
431 West 125th Street, New York, NY 10027
(212) 531-1609 p (212) 531-4615 f
www.manhattanbp.nyc.gov

Gale A. Brewer, Borough President

July 20, 2021

**Recommendation on Non-ULURP Application No. C210202 ZSM
The Windermere – 400 West 57th Street
By Windermere Properties LLC**

PROPOSED ACTIONS

Windermere Properties LLC (the “Applicant”) seeks a special permit from the City Planning Commission (“CPC”) pursuant to Section § 74-711 of the New York City Zoning Resolution (the “ZR”) to facilitate the redevelopment of a nine story building (the “Proposed Development”) located at 400 West 57th Street (Block 1066, Lot 32) in the Clinton/Hell’s Kitchen neighborhood in Manhattan Community District 4.

ZR § 74-711 applies to zoning lots containing landmarks designated by the Landmarks Preservation Commission (“LPC”) and zoning lots with existing buildings located within Historic Districts designated by the LPC. Applicants are seeking modifications to both use and bulk regulations outlined in the Zoning Resolution. This application proposes to:

- Permit commercial use (hotel or office) on the upper floors of the Proposed Development (modification to ZR § 22-00);
- Permit restaurant use on the upper floors of the Proposed Development (modification to ZR § 32-421);
- Permit the Proposed Development to include less open space than what is required (modification to ZR § 35-32 and ZR § 23-151);
- Permit height and setback modifications (modification to ZR § 33-432);
- Permit the Proposed Development’s legally required windows to be closer to other legally required windows, walls, or lot lines than is required (modification to ZR § 23-861 and ZR § 23-863); and
- Permit portions of the Proposed Development to be permitted obstructions within an inner court (modification to ZR 23-87).

The Applicant has outlined two development scenarios. The first would be a commercial hotel, while the second would be a commercial office development. Both scenarios would include ground floor retail and the construction of 20 affordable residential units.

ZR § 74-711 lists the conditions that need to be met in order for the City Planning Commission to grant modifications:¹

¹ [ZR 74-711 Landmark preservation in all districts. Last amended February 2, 2011.](#)

- (1) Any application pursuant to this Section shall include a report from the LPC stating that a program has been established for continuing maintenance that will result in the preservation of the subject building or buildings, and that such use or bulk modifications, or restorative work required under the continuing maintenance program, contributes to a preservation purpose;
- (2) Any application pursuant to this Section shall include a Certificate of Appropriateness, other permit, or report from the LPC stating that such bulk modifications relate harmoniously to the subject landmark building or buildings in the Historic District, as applicable; and
- (3) The maximum number of dwelling units shall be as set forth in ZR § 15-111 (Number of permitted dwelling units).

Additionally, in order to grant the special permit, the CPC must find that:²

- (1) Such bulk modifications shall have minimal adverse effects on the structures or open spaces in the vicinity in terms of location, scale, and access to light and air; and
- (2) Such use modifications shall have minimal adverse effects on the conforming uses within the LPC-designated building and in the surrounding area.

BACKGROUND

400 West 57th Street was built in 1880-81 as a large apartment complex and served as a residence for women artists at the turn of the century. The building continued to operate as a rental property, including during the 1980s when its residents were subject to extensive landlord harassment. The building was designated as an individual landmark by the LPC in 2005. At the time, the Commission noted that the building was the oldest-known surviving large apartment complex in the city. While this designation recognized the building's architectural merit and significance, the landlord's decades of negligence severely compromised the structure. In 2007, the City issued a vacate order for the building.

In 2008, the owner of the site sought a Certificate of No Harassment from the Department of Housing Preservation and Development ("HPD") pursuant to ZR § 96-110. The agency confirmed that the site had been the subject of extensive landlord harassment. As such, ZR § 96-110, a tenet of the Special Clinton District, requires that any redevelopment of the site also include the provision of permanently affordable housing. The current owner of the site, which has been vacant since the 2007 vacate order, purchased it in 2009. In 2012, the owner executed a Cure Agreement with HPD. The Cure was 20 permanently affordable apartments.

On April 14, 2021, LPC granted a Certificate of Appropriateness for the Proposed Development, along with a continuing maintenance program. Manhattan Community Board 4 also supported the Landmarks application.

² *ibid*

PROPOSED DEVELOPMENT

Area Context

The Proposed Development is located in the Special Clinton District, which is generally bordered by West 41st and West 59th Streets between Eighth and Twelfth Avenues. While Eighth Avenue is characterized by mixed use buildings, the mid-blocks of the District are characterized by multifamily buildings. The special district was established in 1974. It is intended in large part to preserve the residential character of the neighborhood, which is adjacent to both Times Square and Hudson Yards.

The area is well served by public transit. The site is four blocks away from the 59th Street – Columbus Circle subway station, which provides access to the A, B, C, D, 1, and 2 lines. Bus service is also available, including north and south bound service via the M7, M5, and M104 buses. Crosstown bus service is available via the M31 and M57 buses.

Site Description

The Proposed Development sits on a 12,542 square foot lot that currently contains an eight story building with 68,822 square feet of space and 115 residential units, which have been vacant since 2007. The majority of the site—the 10,042 square feet furthest to the north—is zoned C1-8, within the C1 Northern Subarea of the Special Clinton District. The remaining 2,500 square feet are located in an R8 district with a C1-5 commercial overlay and is situated within the Preservation Area of the Special Clinton District.

Project Description

The Applicant has represented that they are considering two potential development scenarios. The first would be a Use Group 5 transient hotel with 174 rooms, 3,792 square feet of ground floor retail, a ninth floor restaurant, and 20 units of permanently affordable housing. The second development scenario would include 55,488 square feet of Use Group 6B commercial office space with 6,400 square feet of ground floor retail and 20 units of permanently affordable housing. The affordable units would be available to senior citizens at 80% of the Area Median Income and would be administered by the Met Council.

In addition to repairs to restore its historic architectural elements, the existing building would also have several extensions, including a westward and northward expansion of the one-story wing at the southern end, the extension of the eighth floor across the entire building, and the addition of a set-back, ninth story. The ninth story would rise to a height of 103 feet, while the bulk of the building which would be 8 stories tall, would rise to 91 feet in height. The building's existing courtyard would be subdivided into two courtyards, with legally-required windows facing into the space. Portions of the building would obstruct the courtyard space.

COMMUNITY BOARD RESOLUTION

At its May 5, 2021 meeting, Manhattan Community Board 4 voted to recommend approval of the Application but listed conditions under its approval, including that the Applicant:

1. Broaden the Cure of Harassment agreement to ensure that the affordable units are available to a range of ages, not just senior citizens;
2. Include a community preference in the housing lottery for the affordable units;
3. Work with the LPC to create an ADA-compliant entryway on West 57th Street that is easily accessible to the interior elevator;
4. Install fencing on the roof for the security of the building to the west;
5. Install triple glazed windows in the courtyard to reduce noise levels in the residential portion of the building;
6. Eliminate open roof top restaurant or bar use; and
7. Make an effort to commemorate the building's history, particularly its occupancy by women artists, in the Proposed Development's design.

BOROUGH PRESIDENT'S COMMENTS

I understand that the Applicant has committed to exploring ways to meet Manhattan Community Board 4's requests, including extending the population that would be able to access the affordable units, ensuring a preference for Community District 4 residents. I look forward to seeing these two goals met as part of the ULURP process. Additionally, I encourage the applicant to work closely with LPC to preserve the building's porticos while installing an accessible residential entrance.

I have a personal connection to the Windermere, as do all who worked with me to reconstruct the recent history of this building. I thank Deborah Rand, Cappy Haskin, Sarah Desmond, and Joe Restuccia for their input.

The Windermere is two (2) buildings. According to the Certificate of Occupancy (C of O) dated 1957, 400 West 57 Street was all Single Room Occupancy (SRO) units, with the exception of 2 apartments on the 1st floor and 4 apartments on the 8th floor. 406 West 57 Street was all apartments.

In summary, there was harassment of the tenants in 1980 and a lockout; and again in 1983. A later owner failed to maintain the landmark that the building had been designated as. Below are some of the details.

I was there in 1980 (as a staff member to former Council Member Ruth Messinger) when the then owner padlocked the front door and illegally locked out the tenants. In the early 1980's Alan Weissman was the owner of the building at 400 and 406 West 57th Street. After the legal services attorneys were able to get the tenants restored to their homes, the owner continued engaging in an unremitting effort to empty the buildings of the rent stabilized SRO and apartment tenants in 400 West 57th Street and the apartment tenants in 406 West 57th Street. His efforts included illegal lockouts, filing scores of eviction cases against the tenants, commencing damage actions against the tenants' attorneys, and filing cases against the City of New York seeking to compel it to issue a vacate order against 400 West 57th Street and to grant the owner's request for permits to demolish or substantially alter the building.

Cappy Haskin, one of the tenants in the 406 portion, remembers: “We were forced out by a temporary (6-month) vacate order in April, 1983, as the building was deemed ‘in danger of imminent collapse.’ We were given one week to pack – daytime only but couldn’t sleep there. At the end of the week, on an evening, police cars were at the building with flashing lights and barricades. It was awful.”

Ms. Haskin also remembers: “One tenant refused to leave, and eventually Department of Buildings Commissioner Esnard arrived to persuade her, and around midnight she relented. The Commissioner put her up at the Holiday Inn down the street, on his own credit card.”

The City had denied the alteration or demolition permits that Alan Weissman requested because 400-406 West 57th Street was in the Special Clinton Zoning District and there had been serious harassment in the building. The landlords’ employees had ransacked some tenants’ rooms, ripped doors out, allowed prostitutes to move in, and many tenants had received threats that they would be severely injured or even killed. Thankfully, the tenants were well represented. Deborah Rand from MFY Legal Services represented the SRO tenants in the “400” building and Wayne Saitta, an attorney at Housing Conservation Coordinators (HCC), represented the apartment tenants in “406.” Organizers from HCC, especially Danny Haselkorn, worked with all the tenants in the building. Yvonne Morrow, then a staff member for then NYS Senator Manfred Ohrenstein, was helpful, as was Community Board 4.

Tenants were relocated “temporarily” to the Clinton Urban Renewal Site, where Cappy Haskin remains today.

The harassment at the building was so unusually unrelenting and serious that the Manhattan District Attorney began an investigation and successfully charged and prosecuted and obtained convictions of the managing agent and his employee, on felonies. By that time, although many of the tenants had been harassed out of the building, a substantial number of the SRO tenants and a couple of apartment tenants remained in 400 West 57th Street. Although a vacate order had been issued against the 406 portion of the building, those apartment tenants were still rent stabilized tenants and they refused to give up their tenancies until years later when they received substantial compensation in exchange for surrendering their apartments. In 1986, because of the serious harassment in the building and the major repair issues, the Village Voice included the owner, Alan Weissman, in its list of the City’s worst landlords.

Few buildings surpassed the Windermere in terms of tenant harassment. I think that the criminal indictment for tenant harassment at the Windermere was the first of its kind; the managing agents were indicted by former District Attorney Robert T. Morgenthau, convicted of felonies for the harassment, and did go to jail. All the major New York newspapers covered the trials that sent the Windermere’s managers to jail.

In 1986, the building was sold to a developer based in Japan, Toa Construction Corp., and they owned it until 2009. Over the 20+ years, few, if any, repairs were done in the building, and it continued to seriously deteriorate. Many of the remaining tenants died or moved out of 400 West 57th Street.

Sarah Desmond was the Executive Director of HCC in 1995 when attorneys at her agency filed papers with the court for the lack of hot water, lack of heat and an out-of-compliance sidewalk shed.

At some point, tenants from 406 met with Mr. Yamagata, the CEO of Toa. They insisted on speaking to him directly to make a personal plea, through a translator, to return and be free of harassment. His U.S. attorney was Gary Rosenberg. These tenants had been out of the building for 10 years, and had won the right to return, but the tenants said they were told by Mr. Rosenberg that if they returned, he would immediately commence trying to get them out again.

In June 2005, the Windermere was landmarked, and I was proud as the local Council Member to testify in support. One of the tenants at the Windermere, Jane Buchanan, spearheaded the effort.

In 2007, approximately 5-7 of the original tenants were still living in 400 West 57 Street when the Fire Department came in the evening and said that the building had to be immediately vacated because of the lack of fire safety alarms and sprinklers. By that time, the building was a disaster; to enter the front door residents unlocked a chain that held the door closed through a hole in the wall. Most floors and units were abandoned except for the few in which the remaining tenants lived. Residents got water from the hydrant.

As the local Council Member, along with members of Community Board 4 and staff from HCC, we pleaded with the city agencies to let the residents remain. We were afraid that the vacated building would be torn down. However, tenants were told to leave that night. I was afraid that they would be sent to a hotel far away, so I paid personally for their hotel rooms at the near-by Skyline.

In 2008, on the tenants' behalf, an attorney from Housing Conservation Coordinators filed a case against Toa Construction and its principal officer seeking to compel him to repair the building and restore the tenants to possession. Deborah Rand, then the Assistant Commissioner for Housing Litigation at HPD, joined the litigation on behalf of the City and sought the same relief as well as penalties. After a lengthy trial, the Court granted the relief and ordered the owners to repair the building and restore the tenants to possession.

At the same time, the City filed a case against the owners seeking to compel them to restore the exterior of the landmarked building and seeking penalties for their "demolition by neglect." Virginia Waters from the NYC Law Department and John Weiss from the LPC prosecuted that case.

In 2009 developer Mark Tress bought the building for \$13,000,000 after the prior owner settled its litigation with the tenants and the penalty claims in the Landmarks case with the City. Each of the tenants received \$500,000 in exchange for surrendering their SRO units and the City was paid in excess of \$1,000,000 for the owner's failure to maintain and repair the landmark.

Since Mr. Tress bought the building, he has gradually restored the landmarked exterior of the building with oversight by the LPC, especially its Deputy General Counsel John Weiss. The interior of the building has not yet been renovated.

Because of the prior harassment in the building, the Zoning Resolution requires that 20% of the floor area must be devoted to low-income housing (“the Cure”). HPD worked with Mr. Tress and Metropolitan Council on Jewish Poverty, which is the non-profit that will manage the affordable units, to hammer out the Cure Agreement. The agreement to provide the low-income housing has been signed by the City and Mr. Tress; it was filed with the City Register in 2012.

Now, the requirements under the Landmarks law have been adhered to in terms of the façade. The building looks beautiful.

As the Council Member representing the area from 2002 to 2013, I received hundreds of calls: can I buy the building? What is the status of this beautiful but decrepit building? Remove the scaffolding as homeless individuals are living under it. Toa Construction owned the Windermere for 22 years, and during the entire time the building was falling apart. I wanted a non-profit to buy the building and convert the units into affordable housing. Most apartments had been converted to SROs. I saw some of the seven SRO units that were still occupied, and they were in great need of repair; and there were apartments which still had the size and layout of original large apartments with all of their grandeur and details, but they too were in disrepair. Over the years, I and other City officials and neighborhood groups sought to find a way to buy the building and renovate it for affordable housing; however, Toa Construction would not respond to phone calls or any correspondence. In an attempt to get a response from the owner, Rosanne Haggerty, then Founder and CEO of Common Ground Community (now Breaking Ground) even went to Japan to meet with the CEO of Toa Construction and make a deal to buy the building. Rosanne Haggerty was not successful. Other potential for-profit purchasers said that they “had spoken to a member of the Toa family” and they were making a deal to purchase, but nothing transpired.

A colleague in the City Council called me one day and said, “Do me a favor: call my friend Mark Tress, he has purchased the Windermere.” I called him, and he had in fact bought the building. The story is an amazing one. He learned that the CEO of Toa Construction, Mr. Yamagata, had been riding by the Windermere on an open-air tour bus, saw the Windermere, and bought it soon thereafter. Mark Tress was the only person in all those years who was able to get the leaders of Toa Construction to make a deal to sell the building. And it took him 6-9 months of visiting in Japan, talking history, and discussing assets with the company to convince them to sell the Windermere to him.

Mark Tress and his colleagues have restored the exterior of the building beautifully. Now, it is important to move forward with completing the low-income housing and restoring the rest of the building. Because of my long involvement with this building and its former tenants and advocates, I wanted to recount its recent history.

BOROUGH PRESIDENT’S RECOMMENDATION

I therefore recommend **approval of the application with the following modifications:**

- Broaden the Cure of Harassment agreement to ensure that the affordable units are available to a range of ages, not just senior citizens;
- Include a community preference in the housing lottery for the affordable units; and
- Commemorate the building's history as a home for women artists, in the building's design.

A handwritten signature in black ink that reads "gale A. Brewer". The signature is written in a cursive, lowercase style with a large initial 'g'.

Gale A. Brewer
Manhattan Borough President