



**IN THE MATTER OF** an application submitted by Windermere Properties LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. the use regulations of:
  - a. Section 22-10 (Uses Permitted As-of Right) to allow the conversion of residential floor area to commercial floor area; and
  - b. Section 32-421 (Limitation on Floors Occupied by Commercial Uses) to allow commercial use in Use Group 6 uses to be located above the first story of a building occupied by residential use on its upper stories; and
2. the bulk regulations of:
  - a. Sections 35-32 (Open Space Ratio for Residential Portions of Buildings) and 23-15 (Open Space and Floor Area Regulations in R6 through R10 Districts) to reduce the required amount of open space;
  - b. Section 33-43 (Maximum Height of Walls and Required Setbacks) to allow the building to penetrate the permitted height and setback requirements;
  - c. Section 23-86 (Minimum Distance between Legally Required Windows and Walls or Lot Lines) to reduce the minimum required distance between legally required windows and walls; and
  - d. Section 23-87 (Permitted Obstructions in Courts) to allow portions of the building to be located within the inner court;

in connection with the proposed conversion, alteration and enlargement of an existing 8-story building, on property located at 400-406 West 57<sup>th</sup> Street (Block 1066, Lot 32), in C1-8 and R8/C1-5 Districts, within the Special Clinton District, Borough of Manhattan, Community District 4.

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This application for a zoning special permit pursuant to Section 74-711 of the Zoning Resolution (ZR) was filed by Windermere Properties LLC on December 14, 2020 to modify use and bulk requirements of the Special Clinton District. The proposed action will facilitate the restoration, conversion, and enlargement of an existing vacant building for one of two alternate schemes: (1) Scheme A, with ground floor retail and hotel and residential use on the upper floors, or (2) Scheme B, with ground floor retail and office and residential use on the upper floors at 400-406 West 57<sup>th</sup> Street located in the Special Clinton District of Manhattan, Community District 4.

## **BACKGROUND**

The development site, 400-406 West 57<sup>th</sup> Street, occupies a corner lot (Block 1066, Lot 32) located on the southwest corner of Ninth Avenue and West 57<sup>th</sup> Street. Lot 32 has approximately 125 feet of frontage on Ninth Avenue and 100 feet of frontage on West 57<sup>th</sup> Street with a total lot area of 12,542 square feet. The existing eight-story vacant residential building, known as the Windermere, contains a cellar used for accessory residential use, retail use on the ground floor and 115 dwelling units on floors two through eight, for an overall floor area of 68,822 square feet.

The Windermere was originally built in 1880-81 with a brick facade as an eclectic style apartment complex consisting of three buildings designed by Theophilus G. Smith. In 2005, the Landmarks Preservation Commission (LPC) designated the building an individual New York City landmark (LP-2171), noting its historic significance as “the oldest-known large apartment complex remaining in an area that was one of Manhattan’s first apartment-house districts.”

Prior to the applicant’s acquisition, the existing building deteriorated to a state of extreme disrepair, receiving a vacate order in 2007, as it was deemed unfit for human habitation. In 2008, the City brought a legal action under the Landmarks Law against the site’s then-owner. Although the State Supreme Court issued a preliminary injunction ordering the former owner to bring the building up to a state of good repair and assessing civil penalties in excess of one million dollars, the owner did not undertake any of the ordered repairs and instead entered into an agreement to sell the development site to the applicant.

With the acquisition of the site in 2009, the applicant entered into an agreement with the City to be substituted for the previous owner as a defendant in the pending legal action and to undertake specified repairs to structural and exterior elements of the building. A substantial amount of this agreed-upon work has already been performed. The structural repairs required in order to fireproof the building resulted in the demolition and replacement of more than 75 percent of the floor area in the building, such that the building no longer retains existing legal non-compliances

pursuant to ZR Section 12-10 in the C1-8 and Northern Subarea portions of the building. The reconstruction and enlargement of this portion of the demolished building is therefore subject to certain requested waivers in this application.

The portion of the development site within 100 feet of West 57<sup>th</sup> Street, which has a lot area of 10,042 square feet, is located in a C1-8 zoning district and the Northern Subarea of the larger Special Clinton District. The Special Clinton District, generally bound by Eighth Avenue to the east, Twelfth Avenue to the west, West 58<sup>th</sup> Street to the north and West 41<sup>st</sup> Street to the south, was adopted by the City Planning Commission (CPC or Commission) in 1974 (CP-22758 and CP-22759) to preserve the residential core of the Clinton community and balance the small-scale and mixed-use character of the neighborhood. The C1-8 zoning district is a commercial district with a predominantly residential character, allowing a floor area ratio (FAR) of 7.52 for residential uses and 10.0 for community facility uses. It also permits an FAR of 2.0 for commercial uses, primarily stores that cater to the needs of the local neighborhood, to be located below residential uses. It has a residential district equivalent of R9 and buildings can be developed under Height Factor regulations.

The remainder of the development site is located within an R8 zoning district with a C1-5 commercial overlay and the Preservation Area of the Special Clinton District. The R8 zoning district allows mid-rise to high-rise apartment buildings to be developed under Height Factor or Quality Housing regulations with a maximum allowable FAR of 4.2 for residential and community facility uses and 2.0 for commercial uses. The C1-5 overlay allows a commercial FAR of 2.0, with typical retail uses including neighborhood grocery stores, restaurants, and beauty parlors. The Preservation Area includes regulations for height limits on wide and narrow streets and specific provisions for the demolition or alteration of existing buildings. This height limitation was intended to encourage the construction of buildings that matched the existing context of the neighborhood.

The surrounding area is generally characterized by high-density residential buildings with ground floor retail uses. Most of the existing buildings in the area consist of five-story walk-up

apartment buildings with some taller apartment buildings of up to 30 stories. The area also consists of a number of institutional uses, including Mt. Sinai Roosevelt Hospital, John Jay College of Criminal Justice, and the Alvin Ailey Dance Theater. Directly across the street from the development site are several five-story apartment buildings, as well as the landmarked Catholic Apostolic Church, built in 1885. There are two hotels located within the surrounding area: the Watson Hotel, located on the same block as the development site, and the Hudson New York Hotel.

The area is well served by public transit. The A, C, D, and 1 trains stop at the Columbus Circle station two blocks northeast of the development site at the intersection of Eighth Avenue, Broadway, Central Park South (West 59<sup>th</sup> Street), and Central Park West (Eighth Avenue). The N, Q, R, and W trains stop two blocks east of the proposed development at the 57<sup>th</sup> Street station. The Seventh Avenue station at 53<sup>rd</sup> Street provides access to the B, D, and E lines. The crosstown M57, M31, and M12 buses run along 57<sup>th</sup> Street and the southbound M11 bus runs along Ninth Avenue.

The proposed development is a reconstruction, enlargement and conversion of the existing landmark building into a mixed-use building with residential and commercial uses. The proposed commercial use would either be a Use Group 5 transient hotel under Scheme A or a Use Group 6 office use under Scheme B. Under both schemes, a one-story wing at the southern end of the building would be extended westward and northward. Aside from this one-story wing, the Preservation Area portion of the building would remain unchanged and would not be subject to any of the requested waivers. In the C1-8 portion, the building would be enlarged to its pre-existing configuration; the eighth floor, which runs along Ninth Avenue, would be extended across the entire building and a new ninth-floor penthouse would be constructed.

The building's central court would be divided into two smaller open areas in the center and at the southwest corner of the development site, and the light well at the western property line would be reconstructed. The previously existing inner court recess along the western lot line would also

be reconstructed. For purposes of the zoning analysis for this application, all of the proposed court conditions are treated as a single large inner court, with a dimension of 84 feet by 39 feet, with an inner court recess of 31 feet by 23 feet. The applicant seeks a waiver of ZR Section 23-861 and 23-863 to modify the 30-foot minimum distance between a legally required window in a residential dwelling and any opposite facing wall to permit legally required windows to open on all three of the open areas within the inner court. The inner court would not comply with the permitted obstruction regulations of ZR Section 23-87, as it would be obstructed by portions of the building for which this application is seeking a waiver. The applicant also seeks a waiver of ZR Section 35-32 and 23-151, which requires 4,229 square feet of open space, rather than the total of 706 square feet that is proposed.

The application seeks a waiver of ZR Section 33-432 to facilitate the proposed eight-story building with a street wall height of 91 foot at Ninth Avenue and West 57<sup>th</sup> Street without the required 15-foot initial setback. The ninth-floor penthouse would be set back at least 24 feet from the two street lines and rise an additional 12 feet above the building for a total building height of 103 feet. The new one-story infill in the southwest portion of the development site would rise to 17 feet. The proposed development would contain a total FAR of 6.38 across the zoning lot, or 80,022 square feet, including an FAR of 4.46, or 55,925 square feet, of commercial floor area and an FAR of 1.92, or 24,097 square feet, of residential floor area.

Under Scheme A, the transient hotel would have its primary entrance on Ninth Avenue and would contain 174 hotel units on floors one through eight. Under Scheme B, the office use would consist of 46,991 square feet on floors one through eight. Ground floor retail space, approximately 3,792 square feet in Scheme A and 6,400 square feet in Scheme B, would be located along the building's Ninth Avenue frontage. The ninth-floor penthouse would be occupied by a Use Group 6 enclosed restaurant under both Schemes A and B. The applicant is seeking a waiver of ZR Section 22-00 and 32-421 to permit commercial use on the upper floors.

The portion of the site within the Preservation Area of the Special Clinton District is subject to the harassment and cure provisions of ZR Section 96-110. These provisions stipulate that the Department of Buildings (DOB) may not issue a permit for a material alteration of an affected multiple dwelling unless the Department of Housing Preservation and Development (HPD) has either issued a certification of no harassment for the building or certified that there has been compliance with the harassment and cure requirements of ZR Section 96-110. The applicant has elected to voluntarily comply with the applicable harassment and cure provisions in connection with the proposed improvements to the building and has entered into a Cure Agreement with HPD, which has been recorded against the development site. Under the Cure Agreement, the applicant has committed to provide 20 units of affordable housing within the altered building at 80 percent of the Area Median Income (AMI). This new housing would represent at least 28 percent of the building's pre-existing residential floor area. The residential portion of the building would be completely separate and fire rated from the hotel or office portion, and would be located in the westernmost segment of the building on floors two through seven with an entrance on West 57<sup>th</sup> Street.

As a part of the proposed development, the applicant would preserve the historically significant features of the building, while undertaking restoration and implementing a continuing maintenance program. The restorative work approved by the LPC includes the restoration or replacement of existing and missing features at additional locations at the primary facades, and installation of cast stone portico stoops with wood doors and surrounds at the ground floor. The applicant has already performed some restoration work previously approved by the LPC, including restoring and replacing existing and missing features at the primary facades (including patterned brick, stone and decorative tile, pointing, metal cornices, decorative ironwork, portions of historic fire escapes, and wood windows), and miscellaneous repairs building wide.

To facilitate the proposed project, the applicant seeks a special permit pursuant to ZR Section 74-711 to modify Sections 33-432, 35-32, 23-151, 23-87, 23-861, 23-863, 22-00, and 32-421. In order to grant a special permit, the City Planning Commission must find that the proposed use

modification shall have minimal adverse effects on the conforming uses within the building and in the surrounding area, and that the proposed bulk modifications shall have minimal adverse effects on the structures or open space in the vicinity in terms of scale, location, or access to light and air.

## **ENVIRONMENTAL REVIEW**

This application (C 210202 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA) and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et. seq. and the New York City Environmental Quality Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 19DCP016M. The lead is the City Planning Commission.

After a study of the potential environmental impact of the proposed actions, a Negative Declaration was issued on April 5, 2021.

## **UNIFORM LAND USE REVIEW**

This application (C 210202 ZSM) was certified as complete by the Department of City Planning on April 5, 2021 and was duly referred to Manhattan Community Board 4 and the Manhattan Borough President in accordance with Title 62 of the Rules of the City of New York, Section 2-02(b).

## **Community Board Review**

Manhattan Community Board 4 held a public hearing on this application (C 210202 ZSM) on April 14, 2021. The Community Board held a vote on May 5, 2021, and by a vote of 36 in favor, none against, and none abstaining, adopted a resolution recommending approval of the application with the following conditions:

- “• Age Limits on the Affordable Units — The Cure agreement is broadened to include a range of ages, not just senior citizens.
- Community Preference for Affordable Units —The Cure housing lottery includes community preference.
- ADA Accessibility — The Owner works with the Landmarks Preservation Commission (LPC) to create an accessible ADA-compliant entryway on 57th Street that is easily accessible to the interior elevator.
- Fencing on the Roof —Fencing is installed on the roof for the security of the building to the west.
- Triple-Glazed Windows —Triple glazed windows are provided to ameliorate sound carrying through to the residential windows that face on the central court of the building.
- Rooftop Restaurant —There will be no open roof top restaurant or bar use.
- History of the Building — An effort is made to commemorate the building’s history, particularly the occupancy by women artists, in the current design.”

**Borough President Review**

This application (C 210202 ZSM) was considered by the Manhattan Borough President, who, on July 16, 2021, issued a recommendation to approve the application with the following conditions:

- “• 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.”

**City Planning Commission Public Hearing**



On June 23, 2021 (Calendar No. 10), the CPC scheduled July 14, 2021 for a public hearing on the application (C 210202 ZSM). The hearing was duly held on July 14, 2021 (Calendar No. 42). Four speakers testified in favor of the application and none in opposition.

The applicant's representative spoke in favor of the application, providing an overview of the proposed project and actions and discussing how they believe that the project meets the required special permit findings of ZR Section 74-711. The property owner discussed the intended future use. The project architect spoke in favor of the proposed development and presented the building restoration and design.

The Manhattan Borough President spoke in favor of the application, noting the building's historic significance and commending the years of effort by all involved in ensuring the building's preservation and restoration.

There were no other speakers, and the hearing was closed.

## **CONSIDERATION**

The Commission believes that this application for a special permit (C 210202 ZSM), as modified, is appropriate.

The Commission believes that the proposed bulk modifications will not have adverse effects on the structures or open space in the vicinity in terms of scale, location, or access to light and air. The Commission notes that most of the requested waivers included in this application are associated with the reconstruction and fireproofing of the existing landmarked building due to the required structural repairs. Because the demolition and replacement involve more than 75 percent of the floor area in the existing building, the building no longer retains existing legal non-compliances pursuant to ZR Section 12-10 in the C1-8 and Northern Subarea portion of the development site. While the portion of the building in C1-8 and Northern Subarea is considered a

new building for purposes of applying bulk regulations, the structure has existed since the 1880s and will remain largely unchanged.

The Commission believes that the waiver of ZR Section 33-432 requiring a maximum street wall height of 85 feet or six stories, whichever is less, is appropriate for this development. The existing building height of 91 feet at the street line will remain unchanged, except for the expansion of the eighth floor which would extend the street wall for an additional 74 feet along West 57<sup>th</sup> Street and match the existing street wall of the adjacent building. The proposed ninth-floor penthouse will be substantially setback from the street walls, which will ensure that the addition will not have a negative impact on the surrounding area. The Commission also notes that the proposed height is consistent with the scale of the buildings along Ninth Avenue and West 57<sup>th</sup> Street.

The Commission believes that the waivers of ZR Sections 35-32 and 23-151 (regarding required open space), Section 23-861 and 23-863 (regarding minimum distance between legally required windows and walls or lot lines), and ZR Section 23-87 (regarding permitted obstructions within an inner court) are appropriate given the existing conditions on the site, as the landmark building was built in 1880s. The Commission notes that the infill in the rear will have only minimal effects on scale, location and access to light and air on adjoining properties, as a similar non-compliant court condition has existed historically. The waiver of the minimum window distance and permitted obstruction regulations will be applicable only to the windows in the proposed development and not adjoining properties.

The Commission believes that the proposed use modification to ZR Section 22-00 and Section 32-421 to permit commercial use on the upper floors is appropriate and will not have adverse effects on the conforming uses within the building and in the surrounding area, provided that the proposed commercial uses are fully enclosed. The proposed development has been designed so that the proximity of the commercial uses, both the hotel under Scheme A and the commercial office under Scheme B, will have minimal adverse effect on the residential units. The two uses

have been separated internally, with the residential entrance on West 57<sup>th</sup> Street and the hotel or office lobby entrance on the furthest end on Ninth Avenue. Although not a condition of approval, in response to the comments from Community Board 4, the applicant has agreed to provide triple-glazed windows for residential windows facing the inner court, which will further mitigate any negative impacts on the residential units. The Commission notes the presence of similar non-residential uses located next to residential developments in the area, such as the Watson Hotel located on the same block on West 57<sup>th</sup> Street, the Hudson Hotel located on the block diagonally across the intersection of West 57<sup>th</sup> Street and Ninth Avenue, and the 46-story Hearst Tower at West 57<sup>th</sup> Street and Eighth Avenue. Further, the Commission believes that the restaurant in the ninth-floor penthouse should be fully enclosed in order to have minimal affects on the residential use within the building. The Commission notes that the special permit drawings have been revised so that unenclosed roof space shall not be occupied by restaurant or other commercial use. In addition, as discussed in the Environmental Assessment Statement (EAS), there will be a minimal impact from the rooftop restaurant, provided that there is no accessory outdoor use, as it would not generate a substantial number of vehicle or pedestrian trips, nor will an interior-only restaurant result in impacts related to noise, air quality, or any other environmental analysis area.

While beyond the required special permit findings, the Commission commends the applicant for addressing the concerns raised by Community Board 4 and the Manhattan Borough President's by agreeing to commemorate the building's history in the current design and clarifying that broadening the age limit for the affordable housing and including a community preference in the housing lottery are under the jurisdiction of the project's administering agent, the Metropolitan Council on Jewish Poverty, and the Department of Housing Preservation and Development, respectively.

The requested action will facilitate the restoration and preservation of the Windermere and enhance its architectural and historical features. The Commission is in receipt of a report from the LPC dated August 16, 2021, noting that it has reviewed the proposal and offered support of the application for the issuance of a Special Permit pursuant to ZR Section 74-711 modifying

Sections 33-432, 35-32, 23-151, 23-87, 23-861, 23-863, 22-00, and 32-421. The Commission notes that pursuant to the restrictive declaration signed by Windermere Properties LLC as declarant, a regular maintenance and inspection program has been established.

## **FINDINGS**

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 of the Zoning Resolution:

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

## **RESOLUTION**

**RESOLVED**, that the City Planning Commission finds that the action described herein will have no significant adverse impact on the environment; and be it further

**RESOLVED**, by the City Planning Commission, pursuant to Sections 197–c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application submitted by Windermere Properties LLC pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify:

1. the use regulations of:
  - a. Section 22-10 (Uses Permitted As-of Right) to allow the conversion of residential floor area to commercial floor area; and
  - b. Section 32-421 (Limitation on Floors Occupied by Commercial Uses) to allow commercial use in Use Group 6 uses to be located above the first story of a building occupied by residential use on its upper stories; and
2. the bulk regulations of:

- a. Sections 35-32 (Open Space Ratio for Residential Portions of Buildings) and 23-15 (Open Space and Floor Area Regulations in R6 through R10 Districts) to reduce the required amount of open space;
- b. Section 33-43 (Maximum Height of Walls and Required Setbacks) to allow the building to penetrate the permitted height and setback requirements;
- c. Section 23-86 (Minimum Distance between Legally Required Windows and Walls or Lot Lines) to reduce the minimum required distance between legally required windows and walls; and
- d. Section 23-87 (Permitted Obstructions in Courts) to allow portions of the building to be located within the inner court;

in connection with the proposed conversion, alteration and enlargement of an existing 8-story building, on property located at 400-406 West 57<sup>th</sup> Street (Block 1066, Lot 32), in C1-8 and R8/C1-5 Districts, within the Special Clinton District, Borough of Manhattan, Community District 4, is approved, subject to the following terms and conditions:

- 1. The property that is the subject of this application (C 210202 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following Scheme A and Scheme B plans, prepared by Morris Adjmi Architects, filed with this application and incorporated in this resolution:

Scheme A Plans

<u>Dwg No.</u>	<u>Title</u>	<u>Last Revised Date</u>
Z-001A	Zoning Analysis	05/24/2021
Z-006A	Site Plan	03/26/2021
Z-010A	Waiver Plan – Site Plan	03/26/2021
Z-011A	Waiver Plan – Ground Floor Plan (1 <sup>st</sup> Floor)	03/26/2021
Z-012A	Waiver Plans	03/26/2021
Z-013A	Waiver Plans	08/16/2021
Z-014A	Waiver Sections	05/24/2021

Z-015A	Waiver Sections	05/24/2021
Z-016A	Waiver Sections	05/24/2021

Scheme B Plans

<b><u>Dwg No.</u></b>	<b><u>Title</u></b>	<b><u>Last Revised Date</u></b>
Z-001B	Zoning Analysis	05/24/2021
Z-006B	Site Plan	03/26/2021
Z-010B	Waiver Plan – Site Plan	03/26/2021
Z-011B	Waiver Plan – Ground Floor Plan (1 <sup>st</sup> Floor)	03/26/2021
Z-012B	Waiver Plans	03/26/2021
Z-013B	Waiver Plans	08/16/2021
Z-014B	Waiver Sections	05/24/2021
Z-015B	Waiver Sections	05/24/2021
Z-016B	Waiver Sections	05/24/2021

- Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.
- Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
- All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
- Development pursuant to this resolution shall be allowed only after the attached restrictive declaration, executed by Windermere Properties LLC, the terms of which are

hereby incorporated in this resolution, shall have been recorded and filed in the Office of the Register of the City of New York, County of New York.

6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure or breach of any of the conditions as stated above, may constitute grounds for the City Planning Commission or City Council, as applicable, to disapprove any application for modification, renewal or extension of the special permit hereby granted or of the attached restrictive declaration.
  
7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 210202 ZSM), duly adopted by the City Planning Commission on August 18, 2021 (Calendar No. 27), is filed with the Office of the Speaker, City Council, and the Borough President, in accordance with the requirements of Section 197-d of the New York City Charter.

**MARISA LAGO**, *Chair*

**KENNETH J. KNUCKLES, Esq.**, *Vice-Chairman*

**DAVID J. BURNEY, ALLEN P. CAPPELLI, ALFRED C. CERULLO, III, JOSEPH I. DOUEK, RICHARD W. EADDY, HOPE KNIGHT, ANNA HAYES LEVIN, ORLANDO MARIN, LARISA ORTIZ, RAJ RAMPERSHAD**, *Commissioners*



**LOWELL D. KERN**  
Chair

**JESSE R. BODINE**  
District Manager

CITY OF NEW YORK

**MANHATTAN COMMUNITY BOARD FOUR**

424 West West 33 Street, Suite #580  
New York, NY 10001  
Mailing Address  
P.O. Box 2622  
New York, NY 10108  
tel: 212-736-4536  
[www.nyc.gov/mcb4](http://www.nyc.gov/mcb4)

June 2, 2021

Marisa Lago, Chair  
City Planning Commission  
120 Broadway, 31<sup>st</sup> Floor  
New York, NY 10271

**Re: 400 West 57<sup>th</sup> Street, The Windermere**

Dear Chair Lago,

On April 14, 2021, Windermere Properties LLC (“Owner”) came before Manhattan Community Board 4’s (MCB4) Clinton/Hell’s Kitchen Land Use Committee to seek a recommendation of approval for its application for a ZR 74 711 special permit to modify a series of regulations (zoning waivers) to allow the conversion and enlargement of the Windermere, a landmarked building in the Clinton Special District, for commercial use.

Through the special permit, the building would be converted to either transient hotel or office use. Both options envision ground floor retail and restaurant use on the top floor, with an outdoor component.

Under the 2012 Clinton Cure for Harassment (Cure) agreement, 20 affordable apartments will be provided in the converted building, with a separate entrance on West 57<sup>th</sup> Street. The affordable rents are not to exceed 80 percent of AMI. The Owner anticipates the affordable units would be administered as senior affordable housing by the Metropolitan Council on Jewish Poverty.

The proposed zoning waivers are:

- A. To allow commercial use above the second story.
- B. To allow use a group 6 restaurant above the second story.
- C. To allow less than the required amount of open space.
- D. To allow exceedance of the maximum streetwall height of 85 feet and an encroachment upon the sky exposure plane.
- E To allow windows that do not comply with the minimum distance between legally required windows and walls on lot lines.
- F. To allow portions of a building as permitted obstructions within an inner court.

At its regularly scheduled full Board meeting on May 5, 2021, Manhattan Community Board 4, by 36 in favor, 0 opposed, 0 abstaining, and 0 present but not eligible, voted to recommend approval of a ZR 74-711 special permit **on condition the following issues are resolved:**



- 1. Age Limits on the Affordable Units** — The Cure agreement is broadened to include a range of ages, not just senior citizens.
- 2. Community Preference for Affordable Units** —The Cure housing lottery includes community preference.
- 3. ADA Accessibility** — The Owner works with the Landmarks Preservation Commission (LPC) to create an accessible ADA-compliant entryway on 57<sup>th</sup> Street that is easily accessible to the interior elevator.
- 4. Fencing on the Roof** —Fencing is installed on the roof for the security of the building to the west.
- 5. Triple-Glazed Windows** —Triple glazed windows are provided to ameliorate sound carrying through to the residential windows that face on the central court of the building.
- 6. Rooftop Restaurant** —There will be no open roof top restaurant or bar use.
- 7. History of the Building** — An effort is made to commemorate the building’s history, particularly the occupancy by women artists, in the current design.

## **THE WINDERMERE**

The Windermere has 100 feet of frontage along West 57<sup>th</sup> Street, 125.42 feet of frontage along Ninth Avenue, and a lot area of 12,542 square feet. Most of the property, comprising approximately 10,000 square feet, is located within a C1-8 zoning district and Subarea C1 of the Special Clinton District. The southernmost portion of the property is located in an R8/C1-5 district and Preservation Area A of the Special Clinton District.

Built in the early 1880s, it is the second-oldest surviving apartment house in New York City. A pioneer in providing respectable housing for unmarried women, in 1895 it was converted into a residence for artists and writers, most of them women. It proved also to be a precursor of the Greenwich Village art scene.

### **Landmark Designation**

MCB4 was at the forefront in pushing for landmark designation and LPC designated the building a landmark in 2005. In its designation report, the Commission took note of the building’s significance as “the oldest-known large apartment complex remaining in an area that was one of Manhattan’s first apartment-house districts” and found that the building’s “exuberant display of textured, corbelled, and polychromatic brickwork” made it “a visually compelling, imposing, eclectic, and unified” complex.

The special permit, should it be approved, is subject to findings that LPC has approved a restoration program and a continuing maintenance program for the landmark, that the bulk modifications relate harmoniously to the landmark, and that the modifications have a minimal adverse effect on the surrounding area. The owner confirmed that its application addresses those findings.

### **Harassment And Cure**

In the 1970s, several floors of the Windermere were converted from large apartments to single room occupancy (SRO) units and smaller apartments, and the building was still well run. By the 1980s,

however, it was in serious disrepair and the subject of violent tenant harassment: apartment doors were cement-blocked with the tenants' belongings inside; managers issued death threats; the owners moved prostitutes and drug dealers into the building to menace the legitimate tenants.

Eventually, the owners and managers of the Windermere were indicted by former District Attorney Robert M. Morgenthau, convicted of felonies for this harassment, and jailed. The Windermere's history of violent tenant harassment led to the Clinton Cure For Harassment.

## **OWNER'S RESPONSE**

In a signed letter dated April 26, 2021, (attached) the Owner advised MCB4 of commitments it expects to make with respect to issues raised by the Board. We appreciate the Owner's willingness to address our concerns and look forward to further resolving outstanding issues. Here is a summary of the owner's proposed commitments.

**Age Limits on the Affordable Units** — The Owner will explore with The Metropolitan Council on Jewish Poverty, the administering agent for the project, whether it would be possible to include a broader age range of tenants within any of its existing programs.

**Community Preference for Affordable Units** — The Owner points out that under the Cure Agreement entered into with the Department of Housing Preservation and Development (HPD), the affordable units must be marketed in accordance with HPD's tenant selection procedures. The Owner would be happy to provide a preference to Community Board 4 residents, provided that that is consistent with HPD's procedures.

**ADA Accessibility** — While the Owner notes that there are several challenges to providing ADA accessibility directly into the residential portion of the building, it is studying the issue and will report back to the Board before ULURP is concluded on any potential solutions.

**Fencing on the Roof** — The Owner notes that even though the roofline of the Windermere building is approximately seven feet higher than the roofline of 408 West 57<sup>th</sup> Street, it nevertheless will explore whether fencing or some other form of obstruction may be provided for security, consistent with LPC's jurisdiction over the property.

**Triple-Glazed Windows** — The Owner agrees to install triple glazed windows in all residential windows that face on the central court.

**Rooftop Restaurant** — The Owner will attempt to ameliorate any disturbance arising from the open restaurant use, and has agreed to abide by Community Board 4's Rear Yard/Rooftop Policy for Liquor Licenses. The Owner anticipates that any operator of the restaurant would come before the Board's Business License & Permits Committee in connection with the liquor license application for the premises and would discuss noise and other operational issues at that time.

**History of the Building** — The Owner agrees to explore ways to include that history, particularly occupancy by women artists, in the building's lobby.

## **CONCLUSION**

The Windermere has been in front of MCB4 several times over the years, including this past

December when the board unanimously approved the scope of the building's storefront restoration work. (See attached MCB4 letters.) The history of the Windermere is coming full circle. It began as a groundbreaking New York City apartment building, suffered through years of violent tenant harassment, abandonment, and neglect, and is now being restored to take its place among one of the City's most historic buildings.

The Board congratulates the Owner for its plans to restore the building and its willingness to continue to work with the Board and the community to resolve some of the community's concerns as the application proceeds through ULURP.

We should note that one of the tenants who suffered through the abusive harassment in the building's darkest days, attended the Clinton/Hell's Kitchen Land Use Committee meeting on April 14<sup>th</sup>. She was illegally forced out of the Windermere in the spring of 1983 and watching the building ever since, wondering what would happen. She spoke approvingly of the restoration: "The building looks beautiful now."

She also said she was hoping she could go back in and "get that pair of glasses I left behind."

Her concern and her appreciation are a testament to the tenacity — and the resolve — of this Board, and the Hell's Kitchen community, to see the Windermere restored to its rightful place as one of this community's most beautiful historic buildings. And her humor is a reminder that though the past will not be forgotten, with good will, we can work together for a brighter future.

Sincerely,



Lowell D. Kern  
Chair  
Manhattan Community Board 4



Jean-Daniel  
Chair  
Clinton/Hell's Kitchen Land Use Committee

Enclosure

cc: Hon. Corey Johnson, NYC Council Speaker  
Hon. Gale Brewer, Manhattan Borough President  
Sarah Carroll, Chair, NYC Landmarks Preservation Commission  
Windermere LLC



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](http://www.manhattanbp.nyc.gov)

**Gale A. Brewer, Borough President**

July 16, 2021

**Recommendation on Non-ULURP Application No. C210202 ZSM  
The Windermere – 400 West 57<sup>th</sup> 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 57<sup>th</sup> 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 may seek modifications to 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 an upper floor 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 allowable obstructions within an inner courtyard (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:<sup>1</sup>

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<sup>1</sup> [ZR 74-711 Landmark Preservation in all districts. Last amended February 2, 2021.](#)

(1) Program for Continued Maintenance: 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) LPC Certificate of Appropriateness: 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) Number of Permitted Dwelling Units 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:<sup>2</sup>

(1) the proposed bulk modifications would 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) the proposed use modifications would have minimal adverse effects on the conforming uses within the LPC-designated building and in the surrounding area.

## **BACKGROUND**

400 West 57<sup>th</sup> 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, that owner executed a Cure Agreement with HPD, which requires affordable housing.

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.

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<sup>2</sup> *ibid*

## **PROPOSED DEVELOPMENT**

### **Area Context**

The Proposed Development is located in the Special Clinton District, which is generally bordered by West 41<sup>st</sup> and West 59<sup>th</sup> 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 59<sup>th</sup> 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 lot—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 57<sup>th</sup> 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 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 buildings. According to the Certificate of Occupancy (C of O) dated 1957, 400 West 57<sup>th</sup> Street was all Single Room Occupancy (SRO) units, with the exception of two apartments on the first floor and four apartments on the 8<sup>th</sup> floor. 406 West 57<sup>th</sup> 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 1980s Alan Weissman was the owner of the building at 400 and 406 West 57<sup>th</sup> 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 57<sup>th</sup> Street and the apartment tenants in 406 West 57<sup>th</sup> Street. His efforts included illegal lock-outs, 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 57<sup>th</sup> 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 57<sup>th</sup> Street was in the Special Clinton Zoning District and there had been serious landlord harassment in the building. The landlords’ employees had ransacked some tenants’ rooms, ripped doors out, allowed sex workers 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 New York State Senator Manfred Ohrenstein, was helpful, as was Community Board 4.

Tenants were relocated “temporarily” to a site within the Clinton Urban Renewal Area, 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 57<sup>th</sup> Street. Although a vacate order had been issued against the 406 portion of the building, those 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 57<sup>th</sup> Street.

Sarah Desmond was the Executive Director of HCC in 1995 when attorneys at her agency filed papers with the court for 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 Windemere 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<sup>th</sup> 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 personally paid 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 the Department of Housing, Preservation and Development (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 Landmarks Preservation Commission (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 twenty percent 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 2002-2013, 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 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, flowing style with a large initial 'G'.

Gale A. Brewer  
Manhattan Borough President