

CITYLAND

DECEMBER 2008

CENTER FOR NEW YORK CITY LAW

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Via Verde development approved. See story on page 169. Image: Phipps Houses, Jonathan Rose Companies, Dattner Architects, and Grimshaw Architects.

CITY COUNCIL

Rezoning/Text Amendment

E. Village/Lower East Side, Manhattan

Extensive rezoning of E. Village/LES approved

Council approved plan after City agreed to work with interest groups on related zoning and development issues. On November 19, 2008, the City Council approved the City's plan to rezone 111 blocks in the East Village and Lower East Side of Manhattan. The plan calls for seven new zoning districts, including a 59-block residential area which would be rezoned to R8B, a category that limits building heights to 75ft. The area is, in general, bounded by East 13th Street, Avenue D, Delancey Street, and Third Avenue. 5 *CityLand* 123 (Sept. 15, 2008).

Prior to Council review, the City Planning Commission unanimously

voted to approve the rezoning after a contentious public hearing. The Commission found that the height, setback, and bulk controls of the new contextual districts would help preserve the low- to mid-rise tenement and rowhouse character of the area. The Commission, contrary to the views of many who spoke in opposition, favored higher density districts along Chrystie Street, Delancey Street, and Avenue D, noting that the districts were located along wide streets well-served by public transit. The Commission dismissed the idea of including Chinatown and the east side of the Bowery in the rezoning, stating that each area had a distinctive character and, as such, each required its own planning analysis. The Commission also rejected the community's call for anti-harassment provisions to be included in the proposed zoning text, noting that Local Law 7 of 2008 already affords (cont'd on page 167)

Adopt the Ravitch Commission's recommendations now

Richard Ravitch has yet again provided a major public service in sending to Governor David Paterson a sophisticated economic plan for the Metropolitan Transportation Authority. The plan deals with the MTA's management and financial accountability, as well as laying out financial recommendations capable of providing structurally sound funding sufficient to support the buses and trains essential to the mobility of the region. The report is officially that of a special commission appointed by Gov. Paterson. Besides Ravitch, the thirteen commission members deserve enormous credit for producing a report of such breadth and practicality.

The current transit system is the legacy of leaders, among whom Ravitch is most prominent, who, beginning in 1980, led the City and State in making hard choices in support of transit. The Ravitch Report reminds us that "over the last two and a half decades, six successive capital plans have invested more than \$70 billion, transforming the system and leading to soaring increases in reliability, safety and tremendous improvement to the quality of the transit experience." All those improvements could be lost if this generation of leaders does not make similarly hard choices. And hard choices there are, despite the compelling logic behind the recommended regional mobility tax and bridge tolls.

CityLand's news reports detailing new developments around the City hardly ever mention transit, but transit in fact forms the pre-condition and solid foundation for much of that new development. The Lower East Side, Washington Heights, Long Island City, Jamaica, Harlem, Hudson Yards, Tribeca, Wall Street, Downtown Brooklyn, Dumbo and Williamsburg are just a few of the booming neighborhoods that boast superb public transit. These new developments cannot be sustained without a high quality public transit system.

The Ravitch Commission lays out an essential roadmap for positioning the transit system to support the region's economic, population and environmental goals. The legislature should quickly adopt the commission's recommendations.

Ross Sandler

CITYLAND

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CITY PLANNING PIPELINE

New Applications Filed with DCP — November 1 - 30, 2008

APPLICANT	PROJECT/ADDRESS	DESCRIPTION	ULURP NO.	REPRESENTATIVE
ZONING TEXT AND MAP AMENDMENTS				
DCP	Cross access con., CW	Txt. chg. for C4-1, C8 & M districts	090185ZRR	
DCP	Bike parking amend., CW	Req. indoor parking in all districts	090191ZRY	
Brighton Dev. LLC	Oceana Brighton, BK	Rezone (R7-1 to R7-1/C2-4) to dev. 12-story bldg.; 5th mod. to restr. decl.	090179ZMK; 910478EZMK	Herrick Feinstein
DCP	E. Windsor Terrace Rez., BK	Rezone (estb. R5B, R6A/C2-4 districts)	090197ZMK	
Two Trees Mgmt.	Dock Street DUMBO, BK	Rezone (M1-2 to M1-2/R8); txt. chg. waive min. dist. btw. wind. & walls; spec. perm. to dev. pub. prk. gar.; spec. perm. mod hght., setback	090181ZMK; 090182ZRK; 090183ZSK; 090184ZSK	Wolf Block LLP
DPR	Grant Park Mapping, BX	Demap portion of Grant Ave. for park	090189MMX	
DPR	Putnam Greenway, BX	Map 2.5 mile right-of-way as greenway	090196MMX	
RG ERY LLC	Eastern Yards, MN	Txt. chgs. to facil. mixed-use dev.	090211ZRM	Fried Frank LLP
NMP-Invest LLC	176 Madison Ave., MN	Cert for pub. plz. to const. bldg.	090190ZCM	Kramer Levin
Fordham Univ.	113, 155 W. 60th, 140 W. 62nd, MN	Txt. chg. to req. auth. for curb cuts on wide sts.; spec. perm. for 265 sp. gar.; auth. for curb cut for prking gar.; auth. for curb cut for loading berth	090170ZRM; 090173ZSM; 090171ZAM; 090172ZAM	Greenberg Traurig
Brookside Amboy	4523 Amboy Road, SI	Txt. chg. to App. A, map 33c in SRSD; auth. for mod. of grp. prking	090176ZRR; 090177RAR	Rosenbaum Design
SPECIAL PERMITS/OTHER ACTIONS				
LPC	155 Bay St., BK	Landmark (Red Hook Play Cntr.)	090218HKK	
Jarican Cultur. Fdn.	Jarican Cultural Ctr., BK	Spec. perm. to allow mentoring prog.	090219ZSK	Howard Goldman
Bisram Beekman	29-37 Beekman St., MN	Cert. to const. 42-story hotel	090178ZCM	Greenberg Traurig
LPC	100 Bleecker St., MN	Landmark (Silver Towers)	090217HKM	
LPC	110 Horatio St., MN	Landmark (F.W. Devoe & Co. Bldg.)	090187HKM	
LPC	22 E. 14th St., MN	Landmark (Baumann Bros. Bldg.)	090215HKM	
LPC	144 W. 14th St., MN	Landmark (LP2315)	090216HKM	
LPC	105 E. 17th St., MN	Landmark (Guardian Life In. Co. Annex)	090214HKM	
LPC	151 E. 28th St. MN	Landmark (St. Stephen R.C. Church)	090188HKM	
LPC	304 W. 47th St., MN	Landmark (Former Fire Engine No. 54)	090213HKM	
LPC	219 E. 49th St., MN	Landmark (Morris B. Sanders Studio)	090212HKM	
MMPI Piers LLC	Pier 92 & 94, MN	Unrestr'd disp. to enlarge piers; auth. waterfront pub. acc.; perm. trade & exhib. fac. w/cap. of 2,500; spec. perm. to mod. max lgth. & hght.; cert. that no waterfront pub. acc. req'd to exp. piers	090220PPM; 090223ZAM; 090221ZSM; 090222ZSM; 090224ZSM	Fried Frank LLP
Tribanor RE Corp.	Derick Court, SI	Cert. to reconfig. lots for indust. dev.	090208RCR	Morace Architects

tenants the protection the community had sought.

At the Council's November 12th public hearing before its Zoning & Franchises Subcommittee, Council Member Rosie Mendez disagreed with the Planning Commission on the anti-harassment issue, and called for anti-harassment provisions to be included in the text amendment. Mendez, along with Council Member Alan J. Gerson, also called for a ten percent increase in the mandatory minimum percentage of floor area allocated to affordable housing units which developers

would be required to build in order to take advantage of an inclusionary housing bonus. Gerson reasoned that since landlords can charge relatively high amounts of rent for market-rate units, developers would still "flock to the area" despite a ten percent increase in the affordability requirement from 20 to 30 percent. Representatives of the Dept. of City Planning defended the 20 percent requirement, pointing out that it was a product of a "finely calibrated formula" designed to ensure that developers would take advantage of the inclusionary housing bonus. Gerson

questioned if the calibration was fine enough since the formula had been implemented borough-wide and was not specifically tailored for the Lower East Side or East Village.

When the Subcommittee reconvened a week later on November 19th, Gerson stated that an agreement had been reached with the City, and submitted a letter from Deputy Mayor for Economic Development Robert C. Leiber, which outlined the points of agreement. According to the letter, the Dept. of Housing Preservation & Development agreed to monitor the effectiveness of Local Law 7, and the Dept. of City Planning committed to work with Chinatown and Bowery interest groups in order to help formulate community-wide development plans. The Subcommittee voted to approve that day, as did the Land Use Committee and the full Council.

Review Process

Lead Agency: CPC, FEIS
Comm. Bd: MN 3, App'd, 40-0-0
Boro. Pres.: App'd
CPC: App'd, 12-0-0
Council: App'd, 42-0-10

Council: East Village/Lower East Side Rezoning (Nov. 19, 2008).

CITY COUNCIL

Rezoning/Text Amendment

Willets Point, Queens

Council approves controversial Willets Point plan

City agreed to increase affordable housing, but may still use eminent domain. On November 13, 2008, the City Council approved the City's Willets Point Redevelopment Plan. The contentious plan, impacting a 62-acre area, designates Willets Point as an Urban Renewal Area, creates the Special Willets Point District, and lays out plans to develop a mix of uses, including 5,500 residential units, commercial space, a school, hotel and convention center, and publicly accessible open space. 5 *CityLand* 154 (Nov. 15, 2008).

At the Council's October 17th hearing before its Planning, Dispositions & Concessions Subcommittee, Council Member John C. Liu questioned Deputy Mayor for Economic Development Robert C. Leiber about the City's plans to use eminent domain. Leiber responded that the City remained committed to negotiating with the remaining landowners, but would resort to eminent domain if necessary. Council Member Hiram Monserrate, whose district includes Willets Point, also raised concerns about the City's plan to designate only 20 percent of the proposed 5,500 residential units as affordable housing. The vote was laid over until November 13th.

On November 12th, after negotiations between Monserrate, Council Speaker Christine C. Quinn, and the Mayor's Office, it was agreed that 35 percent of the 5,500 residential units would be designated as affordable housing. The following day the City announced that it had agreed to purchase the properties of the three largest Willets Point landowners in exchange for allowing each to temporarily remain in the area.

The Subcommittee approved the plan when it reconvened on

November 13th, and the Land Use Committee followed suit, with only Council Members Tony Avella and Charles Barron voting no. Both Council Members objected to the City's continued invocation of eminent domain in redevelopment projects. The full Council approved the plan, with Avella and Barron as the only no votes.

Review Process

Lead Agency: Dep. Mayor's Office, Eco. Dev., FGEIS

Comm. Bd.: QN 7, App'd, 21-15-2

Boro. Pres.: App'd

CPC: App'd, 11-1-0

Council: App'd, 42-2-8

Council: Willets Point Development Plan (Nov. 13, 2008).

CITY COUNCIL

Site Selection

SoHo, Manhattan

Sanitation facility approved for SoHo's Washington St.

Council approved despite community concerns over traffic, environmental impact, and aesthetics. On November 19, 2008, the City Council approved a plan by the Dept. of San-

itation to build a five-story service and maintenance garage, a 34,000 gallon refueling station, and a 75ft. tall salt shed at 500 Washington Street in SoHo, Manhattan. The garage and salt shed would serve Community Districts 1, 2, and 5. 5 *CityLand* 137 (Oct. 15, 2008).

The plan met with strong opposition from community residents and representatives at its City Planning hearing. Community Boards 1 and 2, as well as Borough President Scott Stringer, supported service for CD1 and 2, but urged the Commission to eliminate CD5 service because the neighborhood could not absorb the additional environmental impact. They also called for elimination of employee parking, noting that it could be made available at Pier 40, and that the space could be used as reservoir space for Sanitation trucks in order to alleviate traffic congestion. Opponents were also concerned about environmental impacts of the salt shed.

The Commission, on October 7, 2008, voted to approve Sanitation's plan, noting that there were similar facilities across the boroughs which served more than one community district, and that the proposed garage facility would be one of the smallest of the multi-operational facilities. The Commission found that moving CD5's garage to SoHo was appropriate because it would provide "excellent access to District 5 via Route 9A" and that the alternate sites identified in Sanitation's study could not match the operational and cost efficiency of the final proposal.

Addressing calls to eliminate employee parking at the facility, the Commission believed it was appropriate to use the mezzanine level of the garage for employee parking, stating that the mezzanine had not been designed as a reservoir space for collection trucks, and as such, could not support their weight.

When the matter reached the Council's Landmarks, Public Siting, & Maritime Uses Subcommittee, Council Speaker Christine C. Quinn,

ULURP PIPELINE

New Applications Certified into ULURP

PROJECT	DESCRIPTION	COMM. BD.	ULURP NO.	CERTIFIED
150 Amsterdam Ave.	Rezoning (ext. C2-5 overlay)	MN 7	090132ZMM	11/17/2008
Fordham University/ Lincoln Ctr. Campus	Special permit (height & setback); special permit (3 accessory parking garages); zoning text amend.; authorizations to allow curb cuts	MN 7	050260ZSM; 050269ZSM; 050271ZSM; 090173ZSM; N090170ZRM; N090171ZAM; N090172ZAM	11/17/2008
Dock St. DUMBO Proj.	Rezoning; zoning text amend.; modify window and lot line reqs.; special permit (height, setback, yards); special permit (public parking garage)	BK 2	090181ZMK; 090182ZRK; 090183ZSK; 090184ZSK	11/17/2008
E. Windsor Terrace	Rezoning	BK 7	090197ZMK	11/17/2008
Oceana- Bldg. P	Rezoning; modify restrictive declaration	BK 13	090179ZMK; M910478(E)ZMK	11/17/2008
Clarkson Ave. Rez.	Rezoning	BK 17	070396ZMK	11/17/2008
Flatlands Site I	Dispose City prop.	BK 18	090164PPK	11/17/2008
121st Precinct	Site selection; spec. permit (police station in res. dist.)	SI 1	080106ZSR; 080107PSR	11/17/2008
Hobbs Court	Rezoning (R7A to R8A)	MN 11	090125ZMM	12/1/2008
Blue Heron Park Add.	City map amendment	SI 13	000120MMR	12/1/2008

who represents the district, testified that finding space for municipal facilities was particularly challenging in lower Manhattan and that any decision would be met with some level of opposition. Sanitation Commissioner John Doherty claimed that it would cost the City an extra \$90 million to build a separate CD5 garage. In response to questioning from Chair Jessica S. Lappin, Sanitation officials argued that the 74-space employee parking lot would be necessary during emergencies and snow storms.

When the Subcommittee reconvened on November 19th, Lappin announced that modifications were made to the original proposal, including a reduction in the number of employee parking spaces from 74 to 37, a restriction that only Sanitation vehicles would be allowed to use the refueling station, and a design change to the salt shed which would enclose the shed on all four sides. The Subcommittee and the Land Use Committee voted to approve, with only Council Member Charles Barron opposing. The full Council approved the project later that day.

ULURP Process

Lead Agency: DSNY, FEIS
 Comm. Bd.: MN 2, Den'd, 40-0-0
 Boro. Pres.: Den'd
 CPC: App'd, 11-1-0
 Council: App'd, 40-1-11

Council: Department of Sanitation Garage (Nov. 19, 2008).

CITY COUNCIL

Rezoning/Text Amendment
 Hunter's Point, Queens

EDC plan for 30-acre waterfront development approved

Council approved plan after EDC made further concessions on affordable housing. On November 13, 2008, the City Council voted to approve the NYC Economic Development Corporation's Hunter's Point South plan, a mixed-income 30-acre waterfront development in Long Island City,

Queens. The project met with controversy at Council's October 24th Zoning & Franchises Subcommittee public hearing and at the City Planning Commission's August 13th public hearing. Opponents testified that the project lacked a sufficient amount of affordable housing units, and that the already-proposed affordable units were priced beyond the reach of most Queens residents. 5 *CityLand* 125 (Sept. 15, 2008).

At the Subcommittee meeting, EDC representatives announced that 200 low-income senior housing units had been added to the plan following negotiations with Council Member Eric N. Gioia, whose district includes Hunter's Point. EDC also agreed to 330 additional on-site low-income units through inclusionary zoning, and promised to review other sites supplied by Gioia for new affordable housing in Queens.

Though the Subcommittee questioned EDC's reliance on federal funding to pay for the newly added senior housing, an EDC representative stated that it would be funded somehow, most likely by the City, if EDC failed to secure federal funding. The Subcommittee unanimously voted to recommend approval, as did the Land Use Committee. The full Council approved the project later that day.

Review Process

Lead Agency: Dep. Mayor's Office, Eco. Dev., FEIS
 Comm. Bd.: QN 2, App'd, 20-0-0
 Boro. Pres.: App'd
 CPC: App'd, 12-0-0
 Council: App'd, 45-0-7

Council: Hunter's Point South (Nov. 13, 2008).

CITY PLANNING COMMISSION

Rezoning/Text Amendment
 Melrose, Bronx

Melrose project approved

New development would provide affordable housing while incorporating green design features. On October

7, 2008, the City Planning Commission unanimously approved the Dept. of Housing Preservation and Development's plan to build a mixed-use, mixed-income development in the Melrose section of the Bronx. The proposed project, known as Via Verde/The Green Way, is a product of the New Housing New York Legacy Project competition, sponsored by HPD and the New York Chapter of the American Institute of Architects. The competition sought to inspire new forms of sustainable design for a mixed-use, mixed-income project on the irregularly shaped, City-owned parcel at East 156th St. and Brook Avenue. The winning plan, developed by Jonathan Rose Companies, Phipps Houses Group, Grimshaw Architects, and Dattner Architects, proposed a development that would range in height from three- to 20-stories and provide approximately 220 units of affordable housing, 8,532sq.ft. of retail and community space, and 27,700sq.ft. of open space.

The proposal includes three- to four-story townhouses, a six- to 14-story mid-rise building, and a 15- to 20-story tower that would wrap around two interior courtyards and an amphitheater. In addition, a series of gardens beginning in the courtyard would spiral up the structure through a series of green roofs. The Commission noted that the proposed design was sympathetic to the broad range of surrounding uses. The low-scale section of the proposed building would avoid shading the ballfields to the south, and the taller part of the building would be of similar height to an existing 18-story residential building to the east.

The Commission, in its report, noted that the proposed project would address the need to provide affordable housing for low- to middle-income families and would facilitate the development of vacant and underutilized City-owned land that has had a "blighting influence" in the neighborhood. The Commission also praised the superior overall

CLE UPDATE: ZONING AND DEVELOPMENT ANALYSIS

To an unprecedented degree, real estate professionals can now access basic zoning information and estimate development potential utilizing their personal computers.

Armed with a street address or block and lot, the first stop in cyberspace is often the Property Shark website, www.propertyshark.com. This private site offers basic information regarding existing improvements, lot size, zoning district, FAR and unused floor area.

This information should always be cross-checked and supplemented utilizing the Department of Buildings and Department of City Planning websites, both of which can be accessed through www.nyc.gov. The DOB website includes the Building Information System, which provides a Property Profile containing a summary of construction activity and filings since the late 1980's, a link to the current and prior Certificates of Occupancy, an indication of landmark status, and a history of complaints and violations. The City Planning website, besides explaining zoning and highlighting current zoning changes, includes a feature called GeoQuery, which allows access to NYC.gov CityMap. By clicking on Lot Info, information including lot dimensions, number of floors, gross building area and zoning district can be found. This site also links to the text and maps of the NYC Zoning Resolution.

Once basic information, including lot area, existing improvements and zoning district has been compiled, the Zoning Handbook, published by the Department of City Planning in 2006, may be utilized for an overview of the basic use, bulk and parking regulations. The Handbook even includes several hypothetical zoning analyses. However, for a more reliable analysis, the relevant provisions of the Zoning Resolution must be consulted.

The complexity of the Zoning Resolution should never be underestimated. While the above sources may be utilized to provide a first cut at a site and its development potential, there is no substitute for a comprehensive zoning analysis prepared by an experienced professional willing to stand behind his or her work.

— Howard Goldman

Howard Goldman presented "Land Use Due Diligence" on Nov. 6, 2008.

design of the project, including the use of sustainable building materials, photovoltaic panels, and the roof gardens.

Review Process

Lead Agency: HPD, Neg. Dec.
Comm. Bd.: BX 1, App'd, 20-0-0
Boro. Pres.: App'd
CPC: App'd, 12-0-0
Council: Pending

CPC: Via Verde (C 080522 HAX – UDAAP); (C 080517 ZMX – rezoning); (N 080518 ZRY – text amend.); (C 080519 ZSX – spec. perm., dev. over rail right-of-way); (C 080520 ZSX spec. perm. - height and setback); (C 080521 PQX – acq. of prop.); (N 080523 HCX – amend. URP) (Oct. 7, 2008).

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CITY PLANNING COMMISSION

Rezoning/Special Permit

Whitestone, Queens

Queens residential development plan approved

Commission and Council Member Avella pleased with developer's decision to reduce proposed number of units from 114 to 52. On October 29,

2008, the City Planning Commission approved 151-45 Sixth Road Whitestone Partners LLC's plan to develop 52 single-family homes in the Whitestone neighborhood of Queens, just south of the East River between the Whitestone and Throgs Neck Bridges.

Whitestone Partners originally sought to develop the 12.8 acre parcel with 114 detached, semi-detached, and attached residential units and provide 132,500sq.ft. of open space. In response to the Commission and community's concerns, Whitestone Partners reduced the number of units from 114 to 52, and modified its plan so that all units would be single-family and detached. The developer also proposed 503,000sq.ft. of open space, including 130,345sq.ft. of publicly accessible common open space guaranteed through a restrictive declaration.

Despite a reduction in the project's parameters, the development still required a zoning map amendment to change the area from M1-1 to R3-2, a City Map amendment to eliminate a portion of 152nd Street,

and a special permit to waive a distances between buildings requirement. The special permit was necessary because 38 of the 52 units would not meet the 45ft. window-to-window distance requirement.

Paul Selver of Kramer Levin, speaking on behalf of Whitestone Partners at the Planning Commission's September 24th public meeting, stated that the waivers would allow for construction of all 52 units on one zoning lot with common open space. This design would allow Whitestone Partners to place homes further away from the flood hazard zone and provide publicly accessible open space along the waterfront.

Council Member Tony Avella complimented the developer for reaching out to the community. He remarked that the revisions were significant improvements upon the original plan, and supported the new development because it would eliminate "obnoxious manufacturing uses" that create truck traffic in residential sections of Whitestone.

The Commission approved the plan without modification. The Commission found that the M1-1

district was no longer appropriate given the surrounding low-density residential neighborhoods. It also found the waivers appropriate since the proposed design maximized the amount of open space at the site, and allowed for “three acres of well-designed, publicly accessible waterfront open space.” The City Map amendment was approved as well, with the Commission noting that the portions in question were irregularly configured, unimproved, or used as vehicle storage by the developer.

ULURP Process

Lead Agency: CPC, Con. Neg. Dec.
Comm. Bd.: QN 7, App'd, 32-0-1
Boro. Pres.: App'd
CPC: App'd, 12-0-0
Council: App'd, 49-0-3

CPC: Waterpointe (C 080203 ZMQ – rezoning); (C 080204 MMQ – City Map amend.); (C 080207(A) ZSQ – spec. perm.); (N 080210 ZCQ – cert.) (Oct. 29, 2008). **CITYADMIN**

CITYLAND Comment: On Dec. 9, 2008, the City Council approved the project.

BOARD OF STANDARDS & APPEALS

Appeal

Bay Ridge, Brooklyn

Front yard parking for attached home upheld

In a three-two decision, BSA found that side lot ribbon existed even though that portion of the zoning lot was not completely open to the sky. The owners of 846 70th Street applied to Buildings for a new 10ft. curb cut that would facilitate off-street parking in the front yard of their attached home. The home is one of 19 continuously attached homes in the Bay Ridge section of Brooklyn. Buildings granted the permit, finding that, when no more than two parking spaces are required, off-street parking for a residential building in an R4-1 district is permitted within any portion of the side lot ribbon, the 8-10ft. wide area that extends along the entire length of a

side of a zoning lot. A neighbor appealed the decision to BSA.

The neighbor claimed that the Zoning Resolution expressly prohibited front yard parking for attached homes in an R4-1 district, and that Buildings incorrectly granted the permit since the parking space would be within an open area between the street line and the street wall of the attached home. The neighbor further claimed that parking was not permitted within the purported side lot ribbon, including the section that overlapped the front yard, because side lot ribbons could not exist on a zoning lot where an attached home extended the entire width of the zoning lot. Moreover, the neighbor argued that the framers of the Zoning Resolution intended to prohibit parking in front yards of attached homes in R4-1 districts since front yard parking for attached homes is prohibited in R4B and R5B districts, districts that typically produce attached rowhouses similar to those found in R4-1 districts.

In a three-two decision, BSA denied the neighbor's appeal. It ruled that parking in an R4-1 district could be located anywhere within a side lot ribbon of a zoning lot, including the portion that crosses over the front yard, irrespective of the type of house built upon the zoning lot. BSA also ruled that a side lot ribbon could exist on a zoning lot that did not have a side yard, as is the case with a rowhouse attached on both sides. As for the neighbor's original intent argument, BSA declined to look past the “four corners” of the Zoning Resolution, noting that BSA must not look beyond the plain meaning of the Resolution's text to ascertain the framer's intent. BSA concluded that the text was unambiguous on the issue: front yard parking for attached homes was expressly prohibited in R4B and R5B districts whereas parking in R4-1 districts was not.

BSA: 846 70th Street (136-08-A) (Oct. 28, 2008). **CITYADMIN**

BOARD OF STANDARDS & APPEALS

Variance

Yorkville, Manhattan

Mount Sinai wins variance for research building

Hospital's programmatic needs supported granting of variance. Mount Sinai Hospital and Mount Sinai School of Medicine of New York University, a non-profit organization, applied to BSA for a variance to construct an 11-story research facility in Manhattan. The development site included three tax lots comprising a single zoning lot. Mt. Sinai's Nurses' Residence occupied one tax lot while the other two tax lots housed three hospital buildings that Mt. Sinai intended to demolish in order to construct the research building and adjacent residential building. As proposed, the research building would not comply with zoning regulations for community facility lot coverage, height and setback, sky exposure plane, and tower coverage.

Mt. Sinai claimed that it required a new research facility in order to remain competitive among similar institutions, and that floor plates of 28,000sq.ft., not including mechanical space, were required in order to construct an efficient research facility. It further claimed that the retention of the Nurses' Residence was also necessary to meet its programmatic needs, and, as such, the Residence qualified as a unique physical condition inherent to the zoning lot which created a practical difficulty in complying with zoning requirements. Mt. Sinai provided four alternative, as-of-right site plans, but argued that none allowed for the retention of the Residence and large enough floor plates.

Manhattan Community Boards 8 and 11 opposed the variance, in part, because they believed that Mt. Sinai was not entitled to deference as to its programmatic needs since the proposed use was neither a hospital nor a school, and because the reten-

BSA PIPELINE

New Applications Filed with BSA — Nov. 1 - Dec. 2, 2008

APPLICANT	PROJECT/ADDRESS	DESCRIPTION	APP. NO.	REPRESENTATIVE
VARIANCES				
W. Broadway 330	41 Grand St., MN	Const. 9-story mixed-use bldg.	274-08-BZ	Wachtel & Masyr
Rehobeth Churches	13-61 B. Channel Dr., QN	Enlg. community facility (church)	290-08-BZ	Rothkrug Rothkrug
SPECIAL PERMITS/OTHER ACTIONS				
Kesy LLC	150 E. 55th St., MN	N/A	276-08-BZ	Alfonso Duarte
Eva Herskovic	3141 Bedford Ave., BK	Extend 1-family dwelling	291-08-BZ	Moshe Friedman
Ephraim Nierenberg	966 E. 23rd St., BK	Const. enlgmts. (front, rear)	289-08-BZ	Dennis Dell'Angelo
S. Side House LLC	98 S. 4th St., BK	Special permit (phys. cult. est.)	275-08-BZ	Eric Palatnik PC
Vincent Passarelli	2955 Veteran's Rd., SI	Permit existing martial arts school	288-08-BZ	Jeffrey Geary
APPEALS				
Robert Cunningham	123 87th St., BK	N/A	292-08-A	Robert Cunningham
KM Construction	135 N. 11th St., BK	Allow above-grade work	273-08-A	Richard Hughes
Alexandra Hladky	36-38, 36-40 166th St., QN	Build in mapped street bed	293-08-A– 295-08-A	Juan D. Reyes III
Federico Camacho	45-02 111th St., QN	Build in mapped street bed	296-08-A	Gerald J. Caliendo
EXTEND CONSTRUCTION PERIOD				
Opal Builders	23 through 63 Opal Ln., SI	Extend time to construct minor development	277-08-BZ– 287-08-BZ	Eric Palatnik PC

tion of the Nurses' Residence did not qualify as a unique condition inherent to the zoning lot.

BSA granted the variance, ruling that Mt. Sinai was entitled to deference since the research performed at the new facility would further Mt. Sinai's clinical care and medical education. Citing to a previous decision, BSA further ruled that when a major health care facility required retention of an existing building to meet its programmatic needs, the need to retain could qualify as a unique physical condition inherent to the zoning lot which created practical difficulty in complying with zoning requirements.

BSA: 3 East 101st Street (257-07-BZ) (Oct. 28, 2008) **CITYADMIN**

LANDMARKS PRESERVATION COMMISSION

Designation Hearing

Prospect Heights, Brooklyn

Designation of Prospect Hts. district widely supported

Community believes that unprotect-

ed rowhouse neighborhood faces development pressure. On October 28, 2008, Landmarks heard testimony on a proposed historic district encompassing about 870 buildings in Prospect Heights, Brooklyn. The area is generally bounded by Grand Army Plaza, Flatbush Avenue, Pacific Street, and Washington Avenue. If designated, the historic district would be Brooklyn's largest. The neighborhood includes significant structures, such as the 1887 Duryea Presbyterian Church, but its historic character lies in its residential rowhouses, spanning a variety of styles and built throughout the latter half of the 19th century. *5 CityLand 107* (Aug. 15, 2008).

Residents generally expressed support for Landmarking. Many testified that inappropriate rear yard additions, blocking neighbors' views and light, had proliferated in recent years. Gib Veconi, Chair of the Prospect Heights Neighborhood Development Council, claimed that "the character and scale of Prospect Heights is threatened today by development seeking to maximize the amount of floor area available," and that under the current zoning,

many of the area's lots were 25 percent underbuilt, and some as much as 75 percent.

Landmarks has not yet set a date to vote on designation.

LPC: Prospect Heights Historic District, Brooklyn (LP-2314) (Oct. 28, 2008).

LANDMARKS PRESERVATION COMMISSION

Binding Report

South Street Seaport, Manhattan

Mixed response to Seaport development proposal

Height and massing foremost among Commission's concerns. On November 18, 2008, Landmarks held a hearing on the redevelopment of Pier 17 to provide developer General Growth Properties (GGP) an opportunity to respond to public testimony recorded during Landmarks' October 21st meeting. At the previous meeting, GGP proposed to demolish the existing mall on the pier, relocate the Tin Building, former home of the Fulton Fish Market, and construct several retail buildings and a hotel. GGP also proposed to build a 495ft. residential/hotel tower just outside the boundaries of the historic district. Preservationists spoke in opposition to the development's scale, design, and the necessity of the Tin Building's relocation, while some residents and a representative from the Alliance for Downtown New York testified in support of the project as part of necessary revitalization of the Seaport. *5 CityLand 157* (Nov. 15, 2008).

Responses to the proposal by the Commissioners varied widely, but all concurred that modifications were necessary. Chair Robert B. Tierney found that the Tin Building's relocation was appropriate, and that the proposal was "heading in the right direction." Commissioner Pablo Vengoechea determined that the proposal "lacks cultural and maritime-related activity," and that the

new buildings would create “a tremendous juxtaposition in scale.” Commissioner Stephen Byrns stated that he had visited the site and found the existing mall to be appropriate and viable. Byrns argued that the Tin Building could be incorporated into the East River Esplanade, and that it was “a little simple-minded to just clear the slate.” Commissioner Libby Ryan found the seafaring-related design elements “faux,” and criticized the proposal as a missed opportunity, urging GGP to look at San Francisco’s Terminal Market. Commissioner Roberta Brandes Gratz stated that the relocation of a historic structure should only be undertaken as a last resort, while Commissioner Margery Perlmutter, who had called the architect’s choice of materials “shopping mall-esque,” found that the proposal required further study.

Landmarks did not vote on the proposal, permitting GGP to return with a modified plan.

LPC: 80 and 95 South Street, Manhattan (COFA# 09-3798) (Nov. 18, 2008).

LANDMARKS PRESERVATION COMMISSION

Designation

Greenwich Village, Manhattan

NYU towers landmarked

NYU’s development plans for remaining portion of the site undressed. On November 18, 2008, Landmarks voted to collectively designate University Village, also known as the Silver Towers, as an individual City landmark. Designed by James Freed and I.M. Pei, of Pei Cobb Freed & Partners Architects LLP, the landmark consists of a central plaza and three 32-story towers with concrete facades and recessed windows in a “brutalist” style influenced by le Corbusier. Built between 1964 and 1967 as part of a Robert Moses-sponsored urban renewal plan, the towers are arranged in a pinwheel configuration around the plaza which features

a sculptural interpretation of Picaso’s “Portrait of Sylvette.” Two of the towers are used by NYU for student and faculty housing, while the third houses a cooperative.

At the June 24, 2008 hearing, representatives of NYU presented a plan to add a fourth tower. While supporting designation, NYU’s agents claimed a fourth tower would complement the existing buildings and “complete the pinwheel.” In response, preservationists called for Landmarks to designate the entire superblock, not just the towers and plaza. 5 *CityLand* 94 (July 15, 2008).

At the designation hearing,

Commissioners were generally enthusiastic in their support of landmarking. Commissioner Christopher Moore called the complex a “fascinating part of our very eclectic landscape,” while Commissioner Pablo Vengoechea praised it as an excellent example of how tower-in-the-park developments can be done correctly. Commissioner Roberta Brandes Gratz endorsed designation, but also made a point of stating that the towers’ construction was “a Robert Moses mistake” that replaced a viable manufacturing area. Though Brandes Gratz believed the complex should never have been built, she

Landmarks Actions Taken in November 2008

FINAL PERMITS TO BE ISSUED AFTER LANDMARKS RECEIVES CONFORMING PLANS				
ADDRESS	LANDMARK/HISTORIC DISTRICT	DESCRIPTION	CASE NO.	APP'D
November 13, 2008				
345 Greenwich St., MN	Tribeca West HD	Est. master plan (windows)	08-7133	Yes
568 Broadway, MN	SoHo-Cast Iron HD	Replace windows	08-8125	Yes
644 Broadway, MN	NoHo HD	Install windows	09-2161	Yes
727 Washington St., MN	Greenwich Village HD	Alter facade, inst. windows	09-3639	Yes
42 Garden Pl., MN	Brooklyn Heights HD	Const. add., alt. facade	09-0409	Yes
25-04 West Dr., QN	Douglaston HD	Install A/C units	09-3550	W/Mod
November 18, 2008				
2 E. 52nd St., MN	Morton Plant House	Inst. awnings, leg. flagpoles	09-4084	Yes
200 E. 66th St., MN	Manhattan House	Replace driveways, sidewalks	09-1926	Yes
390 West End Ave., MN	Apthorp Apartments	Inst. rooftop mech. units	09-3066	Yes
89 Greene St., MN	SoHo-Cast Iron HD	Amend previous approval	09-4986	No
92 Perry St., MN	Greenwich Village HD	Create storefront openings	08-5051	Yes
335 W. 12th St., MN	Greenwich Village HD	Demo. garage, const. bldg.	08-7986	Yes
415 W. 13th St., MN	Gansevoort Market HD	Inst. infill, lifts, alt. platform	09-2521	Yes
717 Madison Ave., MN	Upper East Side HD	Repl. infill, const. rear add.	09-1536	In Part
110 E. 70th St., MN	Upper East Side HD	Alt. facade, const. additions	09-0226	W/Mod
73 W. 71st St., MN	Upper West Side/CPW HD	Inst. infill, const. rear adds.	08-7596	In Part
45 E. 78th St., MN	Upper East Side HD	Install banner	09-1020	Yes
258 W. 88th St., MN	Riverside-West End HD	Const. roof, rear additions	09-0968	Yes
610 West End Ave., MN	Riverside-West End HD	Inst. canopy, alt. courtyard	09-1519	Yes
241 Lenox Ave., MN	Mt. Morris Park HD	Const. roof add., mod. areaway	08-6586	W/Mod
20 Joralemon St., BK	Brooklyn Heights HD	Const. courtyard garage	08-6905	Yes

LANDMARKS PIPELINE

Proposed Designations – November 2008

NAME	ADDRESS	ACTION	DATE
University Village	100 Bleecker St., MN	Designated	11/18/2008
Baumann Bros. Store	22 E. 14th St., MN	Designated	11/18/2008
144 W. 14th St. Bldg.	144 W. 14th St., MN	Designated	11/18/2008
Guardian Life Annex	105 E. 17th St., MN	Designated	11/18/2008
Fire Engine Co. No. 54	304 W. 47th St., MN	Designated	11/18/2008
Morris B. Sanders Studio	219 E. 49th St., MN	Designated	11/18/2008
Mount Olive Church	308 W. 122nd St., MN	Calendared	11/18/2008
Red Hook Play Ctr.	155 Bay St., BK	Designated	11/18/2008



University Village. Image: LPC.

said that at least the City obtained “something worthwhile” from the destruction of the neighborhood.

Chair Robert B. Tierney thanked NYU for being “cooperative partners” in the designation, but did not address the issue of further development on the site. Stating the he was “delighted to be able to finally designate” the towers, Tierney called a vote, which passed unanimously.

LPC: New York University Silver Towers, 100, 110 Bleecker St., 505 LaGuardia Pl., Manhattan (LP-2300) (Nov. 18, 2008).

ADMINISTRATIVE DECISIONS

Environmental Control Board
Lenox Hill, Manhattan

Plaza violation upheld

Four-foot tall iron fence blocked access to public plaza. After the Dept. of City Planning received complaints about an obstruction to a public plaza, a Buildings inspector was sent to the site at 733 Park Avenue in Manhattan. The inspector observed a four-foot tall iron fence surrounding the entire plaza and separating the public sidewalk from the garden area and the plaza’s walkways. The inspector issued a violation to the owner, charging it with failing to comply with the terms of an as-of-right plaza bonus by not providing 24-hour public access to the plaza in violation of the City’s

Zoning Resolution.

An ALJ upheld the violation, ruling that the owner was obstructing access to the public plaza with a four-foot tall fence. The ALJ found that the owner was supposed to provide a plaza for public use in exchange for a floor area bonus that it received in connection with construction.

The owner appealed, claiming that the fence was not a prohibited obstruction because it contained openings to allow for access to the plaza’s walkways. Buildings countered that the fence obstructed free and open access to the plaza as required by the Zoning Resolution. Buildings further argued that the Zoning Resolution required that a plaza be unobstructed from its lowest level to the sky. In this case, Buildings claimed that only 15ft. of the 170ft. of the plaza’s frontage provided open and free access to the plaza.

The Environmental Control Board denied the appeal, ruling that the four-foot fence, with openings in less than ten percent of the plaza’s frontage, was a violation of the Zoning Resolution. The Board found that a wrought iron fence was not a permitted obstruction, only railings were permitted provided that they were no more than three feet and eight inches high. The fence could not be considered a trellis or arbor, but rather a barrier that impeded access from the sidewalk to the garden.

New York City v. 733 Tenants Corp., ECB Appeal No. 41202 (June 26, 2008).

CITYADMIN

COURT DECISIONS

Landmarks Preservation Commission
Citywide

Landmarks to change designation procedure

Landmarks must promulgate rules that encourage a more timely and transparent processing of landmark nominations. Upon receiving a Request for Evaluation, or an official

landmark nomination submitted by the public, Landmarks’ Request for Evaluation Committee would screen the nomination to determine if further consideration was appropriate. If further consideration was warranted, the Committee would send the nomination, a photograph, a statement of significance, and the Committee’s recommendation to each Landmarks Commissioner for comment. When all comments were received, the Chair of the Committee would, at his or her discretion, decide if the full Commission should formally consider the nomination on the record.

Citizens Emergency Committee to Preserve Preservation filed an article 78 petition, claiming that Landmarks’ handling of Requests for Evaluation required modification. Justice Marilyn Shafer granted the petition and ruled that Landmarks’ failure to make timely decisions on certain nominations was arbitrary and capricious. Shafer decided that Landmarks had an obligation to publicly consider every nomination and render a prompt decision. The court ordered that all nominations be submitted to the Committee within 120 days of receipt, and further ordered that all Committee recommendations be reported to the full Commission at a public hearing.

Citizens Emergency v. Tierney, Index No. 103373/2008 (N.Y.Cty.Sup.Ct. Nov. 21, 2008).

CITYLAND Comment: Landmarks intends to appeal, as it believes full Commission review for every Request for Evaluation amounts to an unworkable burden.

COURT DECISIONS

Bd. of Standards and Appeals
Chelsea, Manhattan

20-story hotel may be built based on 1963 variance

Court found zoning lot merger to be a technical amendment to prior BSA

resolution granting variance; new variance not required, nor is environmental impact statement. BSA granted the College of St. Francis Xavier a variance in 1963 on the condition that Xavier's proposed development conform to the site plan submitted with the original application. In 2008, Xavier agreed to merge its zoning lot with an adjacent lot owned by Clothing Workers Center Incorporated. Clothing Workers would then purchase the unused development rights on Xavier's tax lot and sell its tax lot along with the development rights to a developer who intended to construct a 20-story hotel within the merged zoning lot. Xavier and Clothing Workers applied to BSA for an amendment to the 1963 resolution so that the approved site plan would be updated to reflect the zoning lot merger. BSA approved the application, finding that the new site plan did not affect the findings made in the 1963 resolution. BSA concluded that the amendment was technical and findings for a new variance were not required.

Neighbors and a community organization filed an article 78 petition, claiming that BSA should have made findings necessary for a new variance and directed the applicants to produce an environmental impact statement. Justice Walter B. Tolub denied the petition, finding that BSA's determination that the application did not disturb any of the findings made in 1963 was rational. Tolub reasoned that since the amendment was merely technical, a new variance was not necessary.

Fisher v. NYC Bd. of Standards and Appeals, 2008 N.Y. Slip Op. 52345U (N.Y.Cty.Sup.Ct. Nov. 21, 2008).

COURT DECISIONS

City of New York

Bedford-Stuyvesant, Brooklyn

Value with variance OK'd

In eminent domain case court ruled that appraisal could be based on

assumption that variance would be granted. The City acquired title to a vacant M1-2 property, owned by Congregation Adas Yereim, through eminent domain. The property's zoning allowed light manufacturing uses as-of-right, but prohibited residential uses. Prior to condemnation, Congregation had already begun the process of applying for a special permit and variance that would have allowed it to build a five-story school and four residential buildings with 90 units. A formal application had been submitted for the special permit and hearings had been held on the matter; a variance application for the residential buildings would follow once the special permit was obtained. Though the City took title to the property before the special permit was obtained, Congregation submitted an appraisal report that valued the property as if it would be developed with the residential buildings and school.

The City attempted to preclude the appraisal report from evidence, arguing that it erroneously assumed that a variance would have been granted. The City further argued that, even if the property would have received a variance, the appraisal report should be inadmissible at trial since the method of valuation was inappropriate. The appraiser, according to the City, should have valued the property as it was zoned and then added an increment for the probability of obtaining a variance instead of valuing the property as if it received the variance.

Justice Abraham Gerges rejected the City's position, ruling that the appraisal report was admissible at trial. Gerges determined that the City failed to show that it was not reasonably probable that Congregation would obtain the special permit and variance, and thus, the appraisal report could assume as much. Turning to the valuation method, Gerges noted that when "truly" comparable sales were taken into account, as was asserted by Congregation, there was no need for an increment. Gerges

ruled that the City failed to prove that the sales were not truly comparable, and concluded that the suitability of the comparable sales was a matter of fact for the trial court to consider.

Sanitation Garage Brooklyn, District 3 and 3A, Index No. 37905/03 (Kings Cty.Sup.Ct. Nov. 10, 2008).

COURT DECISIONS

Landmarks Preservation Commission
Lower East Side, Manhattan

Designation of P.S. 64 upheld

Court upheld designation even though developer had valid permit to alter facade. 9th & 10th Street LLC owned 605 East 9th Street in Manhattan, the former Public School 64. After the owner received a permit from Buildings to alter the facade, Landmarks designated the site as an individual landmark. In reaching its decision, Landmarks found that P.S. 64 was of special architectural, historical, and cultural significance. 3 *CityLand* 93 (July 15, 2006). The owner filed an article 78 petition challenging the designation.

Justice Shirley Werner Kornreich denied the owner's petition, ruling that Landmarks had a rational basis to conclude that the building was worthy of designation. Though the owner claimed that P.S. 64 lacked sufficient architectural, historical, or cultural significance to merit designation, Kornreich found that the Commission had relied upon evidence that was adequate to refute the claim, especially since Landmarks found that P.S. 64 was the oldest extant Snyder "H-plan" school with an auditorium accessible from the street. Despite the prior legal removal of some of the decorative facade, Kornreich determined that designation was warranted since Landmarks based its decision on the remaining "special" architectural features as well as the historical and cultural qualities that

were beyond removal.

9th & 10th Street LLC v. NYC Landmarks Preservation, Index No. 115607/06 (N.Y.Cty.Sup.Ct. Nov. 12, 2008).

COURT DECISIONS

NYS Dept. of Environmental Conserv.
Murray Hill, Manhattan

Site qualifies as brownfield

DEC acted outside its authority by creating “but-for” test to deny eligibility. East River Realty Company LLC

CITYLAND PROFILES

Council Member Jessica Lappin on Landmarks, Public Siting, and Site Safety



Council Member Jessica Lappin represents Community District 5 in Manhattan, which includes parts of Mid-

town and the Upper East Side. She also chairs the Council’s Subcommittee on Landmarks, Public Siting & Maritime Uses. A New York native and graduate of Stuyvesant High School and Georgetown University, Lappin was raised in a landmarked house in Gramercy Park. Well-regarded by preservation advocates, she has garnered accolades from the Friends of the Upper East Side and the Historic Districts Council for her proactive stance towards the protection of historic neighborhoods and buildings. During her tenure as Chair, the City has designated 67 individual landmarks and 11 historic districts. She has also crafted legislation in response to recent crane collapses, mandating additional safety measures at construction sites and training for crane operators.

On the landmarking process. When fellow council members elected her to Chair, Lappin was more than happy to accept since “the budget and land use are the two big, meaty issues that the City Council deals with,” and because it provided her with an opportunity to “have a real role in terms of shaping our landscape in New York City.” While she states that not all of her predecessors at the helm of the Subcommittee could be considered landmarks advocates, Lappin believes she comes from a position of real appreciation for preservation, looking at every item before the Subcommittee fairly and objectively. Lappin states the importance of continuing to evolve and

grow as a City, but she is quick to add that we must always keep our character and history, and be mindful of our architectural jewels. When asked about whether an end to the construction boom will have an effect on the prioritization of landmark designations or protection in the City, Lappin responded that historic preservation, ideally, lies outside such considerations, and that “landmarking should not be used as an anti-development tool or as an alternative to zoning.”

While she says that the Subcommittee generally defers to the research and expertise of the Landmarks Preservation Commission, Lappin believes that the burden is on the Council to consider issues of use and politics. She also believes it is important to have a public discussion at the Council level, which is “more political and community-based” than Landmarks, and makes “property owners feel like they have more say in the process.” Lappin states that Landmarks has been understaffed and underfunded for much of its history, necessitating a greater role for Council, and points with pride to the additional \$250,000 she helped secure for the Commission in the City’s budget, which she hopes will allow Landmarks to process permits more efficiently and perform designation research.

Beyond Landmarks. While the Subcommittee is usually associated with landmarking issues, Lappin has made an effort to extend the Subcommittee’s influence over the spheres of public siting and maritime uses. She believes that an oversight hearing on the South Brooklyn Working Waterfront changed the course of the City’s vision for the area, which is shifting from luxury housing development to maritime commerce.

The siting of schools is among the most important and contentious issues with which Lappin deals with as Chair. Though new schools are generally

received positively at a macro level, community members are often leery of a new 500-seat high school in their district, and difficulties are presented in the form of legal wrangling such as the recent lawsuit filed against the School Construction Authority for allegedly failing to ensure proper remediation of a brownfield site that will house a new \$230 million school campus.

While siting is particularly difficult in Manhattan, development throughout the City has made siting public facilities more difficult than in years past. Lappin sees part of her job as publicizing these issues, bringing communities into the discussions and causing officials to rethink their approach. Lappin thinks the future of public siting will include siting schools, libraries, and senior centers in large scale developments during the planning process as opposed to after construction is complete.

Looking ahead at construction site safety. While praising the new Department of Buildings commissioner, Lappin thinks that endemic problems will require an ongoing effort since Buildings has “a long history of a corrupt culture.” Lappin is currently working on a bill that would put safety monitors on problematic job sites, but is having trouble defining the focus, because, as one of her colleagues stated, bad job sites are “like pornography, you know it when you see it.” She views construction site safety as a multipronged operation, involving unions, owners, engineers, contractors and developers, which she hopes to bring together for a common cause.

With a full plate of initiatives to see through, Lappin insists that in terms of her future, she is only looking forward to running for reelection to another term at Council.

— Jesse Denno

owned several contaminated properties in the Murray Hill neighborhood of Manhattan and in 2001 entered them into the NYS Dept. of Environmental Conservation's Voluntary Cleanup Program. The sites are former Con Edison sites, and are among the largest and most valuable development sites in the City.

Following the enactment of the State's Brownfield Cleanup Program in 2003, East River applied to DEC for a transfer of the sites from the Voluntary Cleanup Program to the Brownfield Cleanup Program. After DEC advised East River that its application was complete, the agency delivered a final Cleanup Agreement to East River, which executed the agreement and sent it back to DEC. DEC, in an apparent change of position, refused to execute the agreement, and six months later, issued a deter-

mination denying the sites' inclusion in the program.

DEC denied East River's application because it determined that environmental remediation would have occurred even if the program's benefits were not available. East River filed an article 78 petition challenging the determination, claiming that the statute did not include a "but-for" test, nor did it provide authorization to create such a test. East River further claimed that since the redevelopment of its sites would be complicated by the presence of contaminants, the sites met the program's definition of "brownfield site," and, as such, it was entitled to participate in the program as of right.

Judge Lewis Bart Stone rejected DEC's denial of East River's application, and ordered DEC to execute and deliver the Cleanup Agreement

to East River. Stone ruled that East River's sites qualified as brownfields since redevelopment of each had been complicated by "cost, time, or uncertainty." Stone also ruled that DEC exceeded its authority when it created a "but-for" eligibility test and used it as a basis to deny East River's application. In ruling that DEC exceeded its authority, Stone also considered several New York Supreme Court decisions addressing DEC's exclusion of sites from the program, including *HLP Properties LLC v. NYSDEC*, where the court ruled that DEC's self-created economic eligibility criteria amounted to an unauthorized exercise in lawmaking, 5 *CityLand* 144 (Oct. 15, 2008).

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East River Realty Co. v. NYSDEC, 866 N.Y.S.2d 537 (N.Y.Cty.Sup.Ct. Oct. 21, 2008).

*New Decisions Added to CITYADMIN www.citylaw.org – November 2008**

CITY COUNCIL			
RES. NOS.	PROJECT	DESCRIPTION	DATE
1667	1612 Park Pl., BK	UDAAP by HPD (5 lots)	10/23/2008
1668	St. Mark's Ave., BK	UDAAP by HPD (8 lots)	10/23/2008
† 1669-70	St. George Rezoning, SI	Zoning text amendment; rezoning	10/23/2008
† 1671	West Chelsea HD, MN	Historic district extension designation	10/23/2008
1672	Morningside Park, MN	Scenic landmark designation	10/23/2008
† 1673	W. 22nd St. Garage, MN	Special permit (137-space garage)	10/23/2008
1674	Tribeca North Text Amend., MN	Zoning text amendment	10/23/2008
† 1675	Delano Cafe, QN	Revocable consent (sidewalk cafe)	10/23/2008
1676	Cherry Cafe, QN	Revocable consent (sidewalk cafe)	10/23/2008
1677	390-seat school, QN	Site plan (390-seat intermediate school)	10/23/2008
1678	T Building, BK	Lease space to LIU School of Nursing	10/23/2008
1687-92	Willetts Point Development Plan, QN	City map amend.; rezoning; zoning text amend.; designation as URA; Urban Renewal Plan; disposition of City property	11/13/2008
1693-97	Hunter's Point South, QN	Zoning text amend.; acq. of property; UDAAP by HPD (6 lots); City map amendment; rezoning	11/13/2008
1708	38 Martense St., BK	UDAAP by HPD (1 lot)	11/19/2008
1709	72 Lott St., BK	UDAAP by HPD (2 lots)	11/19/2008
1710	39-22 29th St., QN	UDAAP by HPD (1 lot)	11/19/2008
1711-12	Harborview, MN	Special perm. (mod. height, setback regs.); special perm. (build in railroad right-of-way)	11/19/2008
1713	Dep't of Sanitation Garage, MN	Special perm. (mod. height, setback reqs.)	11/19/2008
† 1714	125th St. Follow-up Text, MN	Zoning text amend. (height, bulk)	11/19/2008
1715-16	East Village/Lower East Side Rezoning, MN	Rezoning; zoning text amendment (bulk regulations)	11/19/2008
1717-18	Dep't of Sanitation Garage, MN	Site selection, acq. of prop. (salt shed)	11/19/2008
1719	Banshee Pub, MN	Withdrawal of revocable consent app.	11/19/2008
1720	2950 Park Ave., BX	Partial real property tax exemption	11/19/2008

**Bold indicates the decision is covered in this issue. The symbol † indicates that the decision was covered in a previous issue. City Council decisions available in hard-copy format at the Center for New York City Law.*

New Decisions Added to **CITYADMIN** *www.citylaw.org – November 2008**

CITY PLANNING COMMISSION				
PROJECT NAME	DESCRIPTION	LOCATION	ULURP NO.	DATE
SI Ferry Terminal	Disposition of City property	MN 1, SI 1	C080507PPY	10/7/2008
Dep't. of Sanit. Garage	Site selection, acquisition of property (salt shed, garage); special permit (height, setback, yards)	MN 2	C080279PSM; C080280PCM; C080281ZSM	10/7/2008
Hudson Square BID	Form Business Improvement District	MN 2	N090020BDM	10/7/2008
E. Village/LES Rezoning	Rezoning; zoning text amendment	MN 3	C080397AZMM; N080398AZRM	10/7/2008
Harborview	Special permit (height, setback); spec. permit (build in railroad right-of-way)	MN 4	C080400ZSM; C080401ZSM	10/7/2008
125th St. Follow-Up Text	Zoning text amend. (height & bulk regs.)	MN 10	N090031ZRM	10/7/2008
Via Verde	Rezoning (M1-1 to C6-2); zoning text amend.; special permit (build in railroad right-of-way); special permit (height, setbacks, yards regs.); acq. of property; UDAAP by HPD (220 units)	BX 1	C080517ZMX; N080518ZRY; C080519ZSX; C080520ZSX; C080521PQX; C080522HAX	10/7/2008
Bd. of Elections Warehouse	Site selection, acq. of prop. (warehouse)	BX 1	C080478PCX	10/7/2008
Bush Terminal Unit D	Disposition of City property	BK 7	C080424PPK	10/7/2008
Bd. of Elections Warehouse	Site selection, acq. of prop. (warehouse)	BK 7	C080392PCK	10/7/2008
Dona Petra Santiago Apts.	UDAAP by HPD (56 units)	MN 13	C080504HAM	10/29/2008
Waterpointe	Rezoning (M1-1 to R3-2); City map amend. (close portion of 152nd St.); spec. permit (const. 52 1-fam. dwellings)	QN 7	C080203ZMQ; C080204MMQ; C080207AZSQ	10/29/2008
Edgemere URA	Amend Urban Renewal Plan	QN 14	C080455HUQ	10/29/2008
Wheatworth Factory	Landmark designation	MN 3	N090113HKM	11/19/2008
Public Nat'l Bank of N.Y.	Landmark designation	MN 3	N090114HKM	11/19/2008
W. 143rd St. Apartments	UDAAP by HPD (34 units); acquisition of property	MN 10	C080501HAM; C080502PQM	11/19/2008
Fire Engine Company 53	Landmark designation	MN 11	N090115HKM	11/19/2008
Bed-Stuy Gateway BID	Form Business Improvement District	BK 3	N090095BDK	11/19/2008
Betsy Head Play Center	Landmark designation	BK 16	N090118HKK	11/19/2008
Tompkinsville Play Center	Exterior and interior landmark designations	SI 1	N090116HKR; N090117HKR	11/19/2008
BOARD OF STANDARDS & APPEALS				
ADDRESS	DESCRIPTION	ACTION	CASE NO.	REPRESENTATIVE
408 Greenwich St., MN	Change use (res. to commercial)	W/D	340-03-BZ	Davidoff Malito
213 Madison St., MN	Permit commercial use in R7-2 dist.	App'd	24-96-BZ	Rothkrug Rothkrug
232 Mercer St., MN	Legalize PCE (NY Sports Club)	App'd	189-08-BZ	Fredrick A. Becker
600 Broadway, MN	Permit PCE (24-Hour Fitness)	App'd	179-08-BZ	Rizzo Group
515 E. 5th St., MN	Revoke enlargement of tenement bldg.	App'd	82-08-A	Harvey Epstein
514 E. 6th St., MN	Revoke enlargement of tenement bldg.	App'd	81-08-A	Harvey Epstein
420 Lexington Ave., MN	Extend PCE (Equinox Fitness)	App'd	197-00-BZ	Rothkrug Rothkrug
303 Park Ave., MN	Ext. of term (phys. cult. est.)	App'd	20-02-BZ	Fredrick A. Becker
300 E. 74th St., MN	Ext. time to complete const.	App'd	198-66-BZ	Eric Palatnik PC
3 E. 101st St., MN	Permit 11-story med. ctr.	App'd	257-07-BZ	Gordon J. Davis
170 Claremont Ave., MN	Enlg. bldg., install elevator	W/D	185-08-BZ	Slater & Beckerman
1479 Rosedale Ave., BX	Vested rt. to cont. development	W/D	168-07-A	Fredrick A. Becker
201 E. 202nd St., BX	Ext. of term (funeral home)	App'd	141-58-BZ	Kenneth H. Koons
2117 Avenue M, BK	Enlg. 1-fam. dwelling (fl. area, yards)	App'd	208-08-BZ	Fredrick A. Becker
1856 E. 24th St., BK	Enlg. 1-fam. dwelling (fl. area, yard)	App'd	35-08-BZ	Lewis E. Garfinkel
1644 48th St., BK	Permit synagogue, apartments	App'd	268-07-BZ	Eric Palatnik PC
245 Varet St., BK	Legalize res. units in indust. bldg.	App'd	39-06-BZ	Moshe M. Friedman
846 70th St., BK	Revoke front-yard parking permit	Denied	136-08-A	John Beckmann
252 Atlantic Ave., BK	Amend variance (streetwall, bulkhead)	App'd	257-04-BZ	Cozen O'Connor
2228 Gerritsen Ave., BK	Ext. time to obtain C of O	App'd	360-01-BZ	Carl A. Sulfaro
209 20th St., BK	Ext. of term (vehicle storage)	App'd	182-85-BZ	Dominick Salvati

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New Decisions Added to **CITYADMIN** *www.citylaw.org – November 2008**

BOARD OF STANDARDS & APPEALS (CONT.)					
ADDRESS	DESCRIPTION	ACTION	CASE NO.	REPRESENTATIVE	
206 20th St., BK	Ext. of term (storage yd., parking)	App'd	183-85-BZ	Dominick Salvati	
1245 E. 23rd St., BK	Enlg. 2-family dwelling, conv. to 1-family	App'd	203-08-BZ	Sheldon Lobel PC	
1855 E. 24th St., BK	Enlg. dwelling (yards, fl. area)	App'd	214-08-BZ	Harold Weinberg	
1814 E. 27th St., BK	Enlarge 1-family dwelling	App'd	158-08-BZ	Fredrick A. Becker	
8501 Flatlands Ave., BK	Ext. of term (auto repair)	App'd	170-96-BZ	Martyn & Don Weston	
2470 Bedford Ave., BK	Ext. of term (auto repair)	App'd	115-94-BZ	Martyn & Don Weston	
167 Norfolk St., BK	Legalize enlgmt. of 1-fam. dwelling	App'd	171-07-BZ	Sheldon Lobel PC	
126 First Pl., BK	Ext. time to complete const.	App'd	217-08-BZY	Bryan Cave	
131 Second Pl., BK	Vested rt. to cont. development; Ext. time to complete const.	App'd; App'd	212-08-A; 202-08-BZY	Greenberg Traurig	
67-24 Main St., QN	Special permit (auto service station)	App'd	84-08-BZ	Walter T. Gorman	
117-23 132nd St., QN	Construct 1-fam. dwelling	App'd	79-08-BZ	Fredrick A. Becker	
88-14 128th St., QN	Ext. of term (parking lot)	App'd	705-68-BZ	Rothkrug Rothkrug	
621 Beach 9th St., QN	Legalize ambulance garage	App'd	76-08-BZ	Eric Palatnik PC	
70-44 Kissena Blvd., QN	Permit 1-story retail facility	App'd	51-07-BZ	Gerald J. Callendo	
212-95 26th Ave., QN	Ext. of term (amusement arcade)	App'd	739-76-BZ	Joseph P. Morsellino	
22-55 BQE, QN	Ext. of term (Mobil station)	App'd	94-58-BZ	Walter T. Gorman	
772 Bayside, QN	Enlg. 1-fam. dwelling in mapped st. bed	App'd	192-08-A	Zygmunt Staszewski	
617 Bayside Dr., QN	Enlg. 1-fam. dwelling in mapped st. bed	App'd	174-08-A	Gary D. Lenhart	
23 Hudson Walk, QN	Enlg. dwelling not fronting mapped st.	App'd	239-08-A	Gary D. Lenhart	
26 1/2 State Rd., QN	Enlg. 1-fam. dwelling in mapped st. bed	App'd	164-08-A	Gary D. Lenhart	
206A Beach 3rd St., QN	Ext. time to complete const.	Denied	306-05-BZY	Stuart A. Klein	
137-42 Guy Bnr. Blvd., QN	Amend variance (change of use)	App'd	681-68-BZ	Gerald J. Callendo	
591 Forest Ave., SI	Permit PCE (Planet Fitness)	App'd	59-08-BZ	Sheldon Lobel PC	
120 John St., SI	Const. 3-story, 1-fam. dwelling in mapped street bed	App'd	243-07-BZ; 244-07-A	Rothkrug Rothkrug	
80 Gallant Loop, SI	Const. 12 dwellings not fronting mapped street	App'd	121-08-A– 132-08-A	Philip L. Rampulla	
LANDMARKS PRESERVATION COMMISSION					
ADDRESS	LANDMARK/HISTORIC DISTRICT	DESCRIPTION	CASE NO.	APP'D	ISSUED
CERTIFICATE OF APPROPRIATENESS					
1818 Amsterdam Ave., MN	Loth & Co. Silk Ribbon Mill	Install handrails	09-4875	Yes	10/27/2008
79 Franklin St., MN	Tribeca East HD	Replace storefront	09-4453	Yes	10/21/2008
478 Broadway, MN	SoHo-Cast Iron HD	Install dunnage, mech. equip.	09-5500	Yes	11/20/2008
53 Great Jones St., MN	NoHo HD Ext.	Replace infill, security gate	09-5020	Yes	10/28/2008
675 Hudson St., MN	Gansevoort Market HD	Construct 2 exterior stairs	09-4946	Yes	10/29/2008
160 Fifth Ave., MN	Ladies' Mile HD	Replace doors, infill, inst. signage	09-4639	Yes	10/17/2008
241 Fifth Ave., MN	Madison Sq. North HD	Demo. bldg., const. 20-story bldg.	09-4669	Yes	10/20/2008
114 E. 65th St., MN	Upper East Side HD	Enclose terrace, const. roof	09-4953	Yes	11/7/2008
177 E. 71st St., MN	Upper East Side HD	Demo. add., const. add., rear yard ext.	09-4611	Yes	10/22/2008
101 E. 81st St., MN	Upper West Side/CPW HD	Const. penthouse addition	09-4884	Yes	10/29/2008
117 W. 81st St., MN	Upper West Side/CPW HD	Remove ext., const. 4-story add.	09-4816	Yes	10/24/2008
1056 Fifth Ave., MN	Carnegie Hill HD	Remove railing, enclose terrace	09-4664	Yes	10/27/2008
157 Sixth Ave., BK	Park Slope HD	Const. bulkhead, deck, staircase	09-4789	Yes	10/23/2008
90 Park Pl., BK	Park Slope HD	Legalize fence, inst. porch	09-4357	Yes	10/14/2008
116 Greenpoint Ave., BK	Greenpoint HD	Inst. cornice, repl. bulkheads, infill	09-4655	Yes	10/17/2008
114 Greenpoint Ave., BK	Greenpoint HD	Reconstruct 3rd, 4th floors	09-4654	Yes	10/17/2008
227 Clermont Ave., BK	Fort Greene HD	Demo. rear yd. ext., const. add.	09-3378	Yes	11/20/2008
194 Sterling St., BK	Prospect Lefferts Gdns. HD	Leg. railings, balustrades, gates	09-4711	No	10/21/2008
233-41 38th Dr., QN	Douglaston HD	Move stable, const. 2-story house	09-4828	Yes	10/30/2008
35-18 87th St., QN	Jackson Heights HD	Replace roof tiles	09-4725	Yes	11/10/2008
39-85 45th St., QN	Sunnyside Gardens HD	Legalize metal door, window grille	09-3784	No	11/10/2008

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*The Center for New York City Law
New York Law School
47 Worth Street
New York NY 10013-2960*



PS, 64's landmark designation upheld. See story on page 175. Image: LPC.

CENTER FOR NEW YORK CITY LAW

UPCOMING EVENTS

CITY LAW BREAKFAST SERIES

Friday, February 6th, 2009

Mark Page

Director, New York City Office of Management & Budget
Speaking on "Budget Challenges: FY 2010"

Breakfasts begin at 8:15 a.m. at New York Law School,

47 Worth St., N.Y., N.Y. There is no charge,
but please reserve a seat at www.citylaw.org.

CITYADMIN

Decisions on www.citylaw.org

AGENCY NAME	NUMBER OF DECISIONS	YEARS AVAILABLE	Information on CITYADMIN is provided free with support from: Manatt, Phelps & Phillips, LLP Speaker Christine Quinn, New York City Council
BSA	2,950	2002-Present	Well, Gotshal & Manges LLP
Council	1,084	2003-2005	Gibson, Dunn & Crutcher LLP
CPC	941	2003-Present	Kramer, Levin, Nafalis & Frankel, LLP
DOB	68	1999-Present	
Landmarks	2,049	2002-Present	
Loft Board	1,539	1996-Present	



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