Rezoning Utopia Estates/Fresh Meadows, Queens

On April 5, 2006, the City Council approved the 83-block rezoning designed by City Planning for Utopia Estates, Fresh Meadows and West Cunningham Park in Queens. As older homes were replaced by newly constructed mini-mansions, residents of the three Queens neighborhoods, Borough President Helen Marshall and Council Member James F. Gennaro raised concerns to the City that the zoning was not sufficiently restrictive.

The entire 83-block area was within one zoning district, an R2 district, which restricted construction to single-family, detached homes. The larger, more restrictive R4 district was not included. Following City Planning's recommendation, the entire area was rezoned to R4, but with an exception to allow some attic and garage space to be exempt from a home’s floor area calculation.

City Planning proposed to zone the entire area to R2A, a more restrictive zoned than the R4 district.
applied for a text amendment and
District in the Bronx on April 26, 2006 after members of the Land Use Committee, Council Member Simcha Felder stated that during the designation process some opponents claimed that the designation was "being used to pre-
vent people from moving into the neighborhood, and in this case Orthodox Jewish families." Felder went on to say that numerous times he asked the opponents to prove the discrimination existed and added "there was not one occasion where anyone was able to come to me and prove to me that this was the case." Felder noted that the alle-
gation of anti-Semitism was being frivolously used and he found it extremely offensive.

The full Council approved City Planning’s proposal by a vote of 49-
6-2 with Council Members James Sanders, Jr. and Alan Gerson excused. The impacted area is
generally bounded by 64th Avenue on the north, 168th Place on the east, Union Turnpike and Juno Road to the south and on the west by Utopia Parkway.

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CITYLAND
The Center expresses appreciation to the individu-

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The text amendment, if approved by City Council, would affect two other sites as well.

CITY PLANNING PIPELINE

New Applications Filed with DCP - Apr. 1 – Apr. 30, 2006

<table>
<thead>
<tr>
<th>APPLICANT</th>
<th>PROJECT/ADDRESS</th>
<th>DESCRIPTION</th>
<th>ULURP #</th>
<th>REPRESENTATIVE</th>
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<tbody>
<tr>
<td>DCP</td>
<td>Clive B.</td>
<td>Zoning text and map amendments</td>
<td></td>
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<tr>
<td>Powell Corp.</td>
<td>121-25 129th Ave., NQ</td>
<td>Zoning text amendment (ownership in LSRD)</td>
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<tr>
<td>Armonia Dental</td>
<td>13-52 Douglaston Pl., BK</td>
<td>Transfer (512 sq. ft)</td>
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<td>SPECIAL PERMITS/OTHER ACTIONS</td>
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<tr>
<td>DCAS</td>
<td>109 Water St., MN</td>
<td>Acquire 250,000 sq. ft. (Garfield Electro)</td>
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<tr>
<td>LPC</td>
<td>2 Park Ave., MN</td>
<td>Landmark Site</td>
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<tr>
<td>LPC</td>
<td>412-414 5th Ave., MN</td>
<td>Landmark Site</td>
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<tr>
<td>Hosp. for Spinal Cord Injuries</td>
<td>700 57th Ave., BK</td>
<td>Construction (soil construction)</td>
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<tr>
<td>BDE/DCAS</td>
<td>40-09 35th St., BK</td>
<td>Bolt of Elmhurst voting machines</td>
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<tr>
<td>Pace Assn. Owner LP</td>
<td>1750 3rd Ave., MN</td>
<td>Pace Hotel (change of use)</td>
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<tr>
<td>UFF Res. 5th Ave.</td>
<td>750 8th Ave., MN</td>
<td>Building (retail)</td>
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<tr>
<td>Ashland Parks, LLC</td>
<td>2312 Ashland Ave., BK</td>
<td>Residential property</td>
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<tr>
<td>A-BORZ, LLC</td>
<td>105-17 Richmond Rd., SI</td>
<td>Retail and office space</td>
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</tbody>
</table>

CPC: 311 West Broadway (N 060201 ZRM – text amendment); (C 060202 ZSM – special permit, retail, height, rear yard); (C 060203 ZSM – special permit, garage) (April 5, 2006)
March 2006, City Planning received two other applications for parking garages in the Columbus Circle area. Element West LLC, received approval for a public parking garage at 555 West 59th Street, and the owner of 300 Central Park West sought to increase its existing garage’s capacity from 80 to 121 spaces. Neither of these applications has been certified.

15 Central Park West Garage Special Permit Application Approval Notice. 060402-154035, City Planning; New York Department of City Planning Applications Received During March 2006.

**BOARD OF STANDARDS & APPEALS**

**Vested Rights**

Clinton, Manhattan

Owner wins right to complete construction

City designated lot to become part of Hudson Boulevard and city park. Affirmation Arts Ltd. received building and demolition permits in 2004 to add an additional story and mezzanine totaling 3,206 sq.ft. to the three-story building at 523 West 37th Street. In January 2005, before Affirmation finished the work, the City approved the Hudson Yards rezoning, its massive land use initiative for Manhattan’s west side.

Under the Hudson Yards rezoning, Affirmation’s lot at West 37th Street, located between Tenth and Eleventh Avenues, was to become part of the City’s proposed new street, Hudson Boulevard, as well as new park space. The new Hudson Boulevard will extend from West 39th to West 38th Streets between Tenth and Eleventh Avenues and will have two 50-foot wide roadways separated by a linear park containing green spaces, seating, playgrounds and restaurants. **1 CityLand** 36 (Dec. 2004). The City would acquire Affirmation’s lot as part of Phase 2 of the City’s park and boulevard plan, which is planned to commence in 2012.

The Hudson Yard text prohibits all new development or building enlargements on Phase 2 lots starting on the date of the rezoning’s enactment in January 2005, but it provides a one-year window to complete work if construction started prior to the rezoning’s approval. Affirmation failed to finish the work in the one-year window so it filed two applications with BSA to continue work, arguing that it had a vested right to complete the enlargement and it satisfied the zoning resolution’s provision allowing continued construction.

Affirmation claimed that for spent $6.5 million, roughly 82 percent of the over $7.7 million construction cost and explained that the remaining work included adding stairs, finishing the roof, installing the building skin and completing carpentry. BSA asked how much of the total cost related only to construction of new floor area and Affirmation estimated that amount at $2.4 million, adding that it had already spent $2 million.

BSA granted a six-month extension, finding that Affirmation had a vested right to continue. Affirmation withdrew its second application based on the zoning resolution since it would not allow Affirmation enough time to complete its construction.

BSA: 523 West 37th Street (371-05-A)

CityLand

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After four proposals of 18,000 sq.ft. and five public hearings, BSA approved development of a 48-foot tall, four-story transient hotel in Ditmas Park, Brooklyn. The project would acquire the site and other variances to permit a meeting room, catering hall, and parking lot in the residential portion of the site.

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BSA agreed that the site created unique construction problems but raised concerns with the size of the building. Under the zoning, conforming buildings would be limited to 56,650 sq. ft. (a 5 FAR), and the proposal exceeded that limit by 16,995 sq. ft. (a 6.5 FAR). SoHo Island argued that the size was appropriate since uses included the 17-story SoHo Grand Hotel and the 16-story loft at 100 Sixth Avenue. BSA asked the developer to study a reduced, 66,733-square-foot building (a 5.89 FAR).

BSA granted the variance for the reduced development, finding that SoHo Island would gain a reasonable return on its investment with a 66,733-square-foot residential and retail building. BSA approved an eight-story, 116-foot tall building with 23 residential units and 6,685 sq. ft. of ground floor retail.

Tierney agreed to look at Busiello’s documents, and closed the hearing without further discussion.

Proponents of designation included Council Member Michael McMahon, who called the bungalow “historically and architecturally significant,” and spoke of it serving “as a bridge to Staten Island’s past.” McMahon asked Landmarks to “act now to preserve the house for future generations of New Yorkers.” Community resident Michael Morrell, who also urged swift designation, spoke of Allen’s impact on the history of Staten Island’s North Shore, and called the house a “centerpiece of the neighborhood.”


Buidlings with distinctive decorative terra cotta landmarked. On April 18, 2006, Landmarks approved 2 Park Avenue and the Stewart & Company Building, at 404 Fifth Avenue, as City landmarks. 2 Park Avenue, designed by Ely Jacques Kahn and built between 1926-28, is a significant example of Art Deco architecture. The first Americans to adopt the emergent European Art Deco style, Kahn’s work is characterized by interweaving forms and ornamental motifs around the building’s structure and facade.
LANDMARKS PRESERVATION COMMISSION

Certificate of Appropriateness

Wingate, Brooklyn

Landmarks refused to legalize home alteration

Owner demolished projecting bay and built sun deck. Without permission, George Aigen demolished a projecting bay on his home at 58 Midwood Street and built a deck in its place. Aigen’s house was built in 1896 and is part of a string of Romanesque Revival/neo-Renaissance style rowhouses within the Prospect-Lefferts Gardens Historic District.

After Landmarks issued a warning letter for the demolition, deck construction and additional demolition of a rear shed, Aigen applied to legalize the work. Landmarks denied Aigen’s request, explaining that the projecting bay was a significant feature of the Midwood Street rowhouses and its demolition substantially diminished the value of Aigen’s home within the row.

Landmarks informed Aigen that the warning letter would remain in effect and he faced a potential NOV and fines if his home remained in its current condition.

LANDMARKS ACTIONS TAKEN IN APRIL 2006

Certificate of Appropriateness

Estey Piano Company Factory receives hearing

New York’s oldest known piano factory begins landmarking process. On April 11, 2006, Landmarks held a public hearing on the Estey Piano Factory, located at 112 Lincoln Avenue in the Mott Haven area of the Bronx. The factory was built between 1885 and 1886 by the firm of A. D. Ogden and Sons. An addition was added in 1890, and further additions were built between 1895 and 1919. Though not as renowned as Astoria for Steinway Pianos’ factory, Mott Haven was once a center of piano manufacturing in the United States with more than 50 firms with factories in the area.

Currently housing studios, the Estey Piano Factory is the oldest such factory in New York, and a focal point of the Mott Haven neighborhood. Its signature seven and one-half-story clock tower is visible from the waterfront and the Harlem River, and the brick facade building is a well-preserved example of late 19th century industrial architecture in the American round arch tradition.

At the April hearing, Landmarks Chair Robert B. Tierney said, “the time is right for a fresh look,” referring to a previous 1992 hearing.

Community representative Edward Kirkland, who supported designating the Estey Piano Factory, said, “a feeling of the clock tower ‘staying intact through a century of change and decay’ in the South Bronx. Calendaring the factory for designation seemed enthusiastic-ly supported by the Commission, with Commissioner Christopher Moore asking whether there were any other piano factories that Landmarks might be interested in designating. The research subsequently conducted was that it studying other similar buildings in the area.


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Landmarks Actions Taken in April 2006

LPC: Item Nos. 4 and 5, 2 Park Avenue, 402 Fifth Avenue (April 18, 2006).

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West Village, Manhattan

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Board rejected TransGas’ application in April 2004, more than a year before the City rezoned the area in May 2005. The Board’s examiners found that TransGas’ variance would deprive the City of its jurisdiction and its effect on adjacent uses could not be mitigated and added that the City’s pending rezoning significant-ly weakened TransGas’ case.

TransGas amended its application, proposing to move the plant underground so that four to seven acres above the plant could then be used as parkland. The new design would include six to eight surface structures throughout the site that would stand up to 15 feet tall. Security needs would require TransGas to guard the entire eight acres.

The City and Brooklyn Borough President Marty Markowitz opposed the plan, questioning, among other things, the feasibility of using the site for parkland due to the need for high security, the obstructing surface structures, and the call for only a few feet of soil between the power plant and the park.

The Public Service Commission recommended dismissal of TransGas’ second application, explaining that it did not deviate enough from the first to merit a sec-ond look. The Commission also rejected the plan since it would require consents from the City for use of the City’s water for TransGas’ property to build steam and water pipes. The Commission found that denying the consents would not usurp the Siting Board’s authority.

The Board must now review the Commission’s recommendation.

Condemnation actions by both the City and a corporation related to TransGas are pending. In the City’s action to take the property for parkland, the owner must file four months time barred

Condemnation challenge

In late 2003, when 160 Imlay Street LLC received a use variance to convert a six-story industrial building in Red Hook, Brooklyn into a luxury condominium, the Red Hook-Gowanus Chamber of Commerce filed an article 78 petition challenging the variance. The Chamber, however, noted only BSA in its petition and as a result the petition has been appealed all the way to the Court of Appeals, where it was sent back to the trial court for a determination of whether the claim could proceed without Imlay. 2

Nearly 28 months after Imlay received the variance, Justice Yvonne Lewis ruled that the Chamber’s article 78 challenge could proceed without Imlay. The court found that dismissing the claim for failure

to name Imlay as a necessary party would leave BSA’s decision unchallenged and the Chamber without recourse. The court found that the Chamber would suffer the greater prejudice because it had no other remedy, while Imlay would retain its right to use the property commer-cially even if it could not built the luxury condos. Finally, Justice Lewis dismissed Imlay from the suit, but ruled that it could intervene in the proceedings if so desired.


Condemnation challenge time barred

Owner must file from months from Council’s action; challenge cannot be raised as a defense. In its response, the opposition had requested the process to condemn a 12,500-square-foot lot at 142 Grand Street in Manhattan as part of the City’s construction of the Third Water Tunnel.

The largest capital project in the City’s history, the Third Water Tunnel will triple the capacity of Manhattan’s property to build steam and water pipes. The City’s proposed condemnation was to enable construction at 142 Grand Street of a 512-foot deep shaft connecting the Third Water Tunnel to the City’s water mains and a large cham-ber, three feet below the surface, to regulate water pressure. The City esti-mated a 30-month construction period, after which, the lot could return to its original condition with the City retaining access to maintain the water shaft.

The Planning Commission approved DEP’s application to con-demn 142 Grand Street in April-2000. The City Council, which had 20 days to review the Commission’s vote, requested more time to review. Finally, in November 2004, DEP started the condemnation process and filed in court to take title from the owner, Grand Lafayet-ter Properties LLC, which operated a 95-space parking lot on the site. In its response, the owner argued that the City did not need the entire lot.

The lower court ruled that the

City proved its need for the entire lot and, on appeal, the First Depart ment agreed. 2 CityLand 109 (Aug. 15, 2005).

On April 4, 2006, the Court of Appeals denied the owner’s appeal, ruling that it failed to challenge the condemnation correctly. When the City’s ULURP process is used to sat-isfy the hearing requirement for a condemnation, an owner’s only way to challenge the taking is to file an article 78 action. The owner should have filed an action within four months from the expiration of the City Council’s 20-day right to review. It erred by raising it as a defense to the City’s court filing for the transfer of title. The lower courts, the Court of Appeals ruled, should not have considered the owner’s claim that the taking was excessive.

In re City of New York (Third Water Tunnel, Shaft 30B) (April 4, 2004) (Jack M. Weiss, for Grand Lafayette; Michael A. Cardozo, Paul T. Rephen, for City).

Condemnation process

ULURP recommendations. Borelli commented that the Borough President’s ULURP recommendations will attempt to address Manhattan’s planning issues holisti-cally, considering a proposal’s local impact as well as the borough-wide implications that could emerge from the project. Through his plan, Borelli explained to CityLand that the ULURP process, Stringer’s office will push for land use changes and rezoning initiatives.

In his first four months in office, the Borough President implemented this approach in his recommendations on spec-tacular parking garage permit at 255 Fifth Avenue. The City was asked to consider Planning with his office to set policy for parking below 110th Street. 3 CityLand 26 (March 15, 2006). Borelli explained to CityLand that the Borough President would like to see more sta-tistics, such as the number of existing spaces and the number of drivers, to address parking garage applications more comprehensively. In response, City Planning Director Amanda Burden has directed Planning staff to provide the Borough Pres ident’s office with data, including the cur-rent number of accessory and public park- ing garages in Manhattan. With this data, Borelli intends to develop guidelines for evaluating future Manhattan parking garage applications.

Borelli mentioned affordable housing as an additional target. According to Borell i, Stringer will advocate application of the inclusionary housing templates created for the Hudson Yards rezoning in other areas of Manhattan to create incentives for the increased development of affordable hous-ing. Stringer plans to use his role in the ULURP process to obtain the Planning Com-mission’s cooperation in addressing afford-able housing.

Community Board Reform. Upon tak-ing office, Stringer, a former community board appointee, formed an independent committee made up of various government watchdog groups, such as the Regional Plan Association and NYPRI, to oversee board appointments and revamp revoc-able consent agreements. The City’s bor-ough’s community boards, seeks to increase participation and depoliticize the process. Stringer’s staff presented to local churches and clubs to educate them about community boards and the land use process. So far, over 120 new members have been appointed to Manhattan’s community boards and the City’s boards.

Community Board Resources, Stringer’s office plans to be a resource for community boards, providing training sessions and planning assistance. Borelli is developing a fellowship program that will match Man-hattan Community Boards with an urban planning student who will assist in planning issues for the district, specifically in draft-ing community board bylaws. The fellow-ship would provide much needed planning expertise to the boards.

Condemnation challenge

Owner must file from months from Council’s action; challenge cannot be raised as a defense. In its response, the opposition had requested the process to condemn a 12,500-square-foot lot at 142 Grand Street in Manhattan as part of the City’s construction of the Third Water Tunnel.

The largest capital project in the City’s history, the Third Water Tunnel will triple the capacity of Manhattan’s property to build steam and water pipes. The City’s proposed condemnation was to enable construction at 142 Grand Street of a 512-foot deep shaft connecting the Third Water Tunnel to the City’s water mains and a large cham-ber, three feet below the surface, to regulate water pressure. The City esti-mated a 30-month construction period, after which, the lot could return to its original condition with the City retaining access to maintain the water shaft.

The Planning Commission approved DEP’s application to con-demn 142 Grand Street in April-2000. The City Council, which had 20 days to review the Commission’s vote, requested more time to review. Finally, in November 2004, DEP started the condemnation process and filed in court to take title from the owner, Grand Lafayet-ter Properties LLC, which operated a 95-space parking lot on the site. In its response, the owner argued that the City did not need the entire lot.

The lower court ruled that the

City proved its need for the entire lot and, on appeal, the First Depart ment agreed. 2 CityLand 109 (Aug. 15, 2005).

On April 4, 2006, the Court of Appeals denied the owner’s appeal, ruling that it failed to challenge the condemnation correctly. When the City’s ULURP process is used to sat-isfy the hearing requirement for a condemnation, an owner’s only way to challenge the taking is to file an article 78 action. The owner should have filed an action within four months from the expiration of the City Council’s 20-day right to review. It erred by raising it as a defense to the City’s court filing for the transfer of title. The lower courts, the Court of Appeals ruled, should not have considered the owner’s claim that the taking was excessive.

In re City of New York (Third Water Tunnel, Shaft 30B) (April 4, 2004) (Jack M. Weiss, for Grand Lafayette; Michael A. Cardozo, Paul T. Rephen, for City).

Condemnation process

ULURP recommendations. Borelli commented that the Borough President’s ULURP recommendations will attempt to address Manhattan’s planning issues holisti-cally, considering a proposal’s local impact as well as the borough-wide implications that could emerge from the project. Through his plan, Borelli explained to CityLand that the ULURP process, Stringer’s office will push for land use changes and rezoning initiatives.

In his first four months in office, the Borough President implemented this approach in his recommendations on spec-tacular parking garage permit at 255 Fifth Avenue. The City was asked to consider Planning with his office to set policy for parking below 110th Street. 3 CityLand 26 (March 15, 2006). Borelli explained to CityLand that the Borough President would like to see more sta-tistics, such as the number of existing spaces and the number of drivers, to address parking garage applications more comprehensively. In response, City Planning Director Amanda Burden has directed Planning staff to provide the Borough Pres ident’s office with data, including the cur-rent number of accessory and public park- ing garages in Manhattan. With this data, Borelli intends to develop guidelines for evaluating future Manhattan parking garage applications.

Borelli mentioned affordable housing as an additional target. According to Borell i, Stringer will advocate application of the inclusionary housing templates created for the Hudson Yards rezoning in other areas of Manhattan to create incentives for the increased development of affordable hous-ing. Stringer plans to use his role in the ULURP process to obtain the Planning Com-mission’s cooperation in addressing afford-able housing.

Community Board Reform. Upon tak-ing office, Stringer, a former community board appointee, formed an independent committee made up of various government watchdog groups, such as the Regional Plan Association and NYPRI, to oversee board appointments and revamp revoc-able consent agreements. The City’s bor-ough’s community boards, seeks to increase participation and depoliticize the process. Stringer’s staff presented to local churches and clubs to educate them about community boards and the land use process. So far, over 120 new members have been appointed to Manhattan’s community boards and the City’s boards.

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<table>
<thead>
<tr>
<th>ADDRESS</th>
<th>DESCRIPTION</th>
<th>ACTION</th>
<th>TODAY'S DATE</th>
</tr>
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<tbody>
<tr>
<td>425 21st Ave., BK</td>
<td>Extend relevant term (Kleenex), parking lot</td>
<td>Approv'd</td>
<td>3/29/2006</td>
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<tr>
<td>52-18 Rosseau Ave., QN</td>
<td>Extend special permit (swinging door)</td>
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<td>3/29/2006</td>
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<tr>
<td>117-27 Wood St., BK</td>
<td>Extend special permit</td>
<td>Approv'd</td>
<td>3/22/2006</td>
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<tr>
<td>54-10 Sutphin Bl., QN</td>
<td>Extend special permit (property, streets)</td>
<td>Approv'd</td>
<td>3/22/2006</td>
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<tr>
<td>39-30 Broadway, QN</td>
<td>Extend time to complete construction</td>
<td>Approv'd</td>
<td>3/20/2006</td>
</tr>
<tr>
<td>460-46 11th St., BK</td>
<td>Special permits (day-care center)</td>
<td>Approv'd</td>
<td>3/20/2006</td>
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<tr>
<td>286 W. 14th St., MN</td>
<td>Change property (parking)</td>
<td>Approv'd</td>
<td>3/20/2006</td>
</tr>
<tr>
<td>15 W. 81st St., MN</td>
<td>Extend time to complete const.</td>
<td>Approv'd</td>
<td>3/23/2006</td>
</tr>
<tr>
<td>1 N. 14th St., BK</td>
<td>Extend time to complete const.</td>
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<td>3/23/2006</td>
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<tr>
<td>1702 E. 9th St., BK</td>
<td>Construct 6-story hotel</td>
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<tr>
<td>1806 E. 23rd St., BK</td>
<td>Extend time to complete const.</td>
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<tr>
<td>245-251 Yankee Stadium, BX</td>
<td>City map amendments; acquisition of property; tennis facility</td>
<td>Approv'd</td>
<td>3/22/2006</td>
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<tr>
<td>5 67th St., QN</td>
<td>Extend time to complete construction</td>
<td>Approv'd</td>
<td>3/22/2006</td>
</tr>
<tr>
<td>311 East 58th St., MN</td>
<td>Install painted wall sign</td>
<td>Approv'd</td>
<td>3/23/2006</td>
</tr>
<tr>
<td>105 Franklin St., MN</td>
<td>Tribeca East HD</td>
<td>Approv'd</td>
<td>3/20/2006</td>
</tr>
<tr>
<td>286 Site Hancock I, BK</td>
<td>UDAAP by HPD</td>
<td>Approv'd</td>
<td>3/26/2006</td>
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<tr>
<td>840 Bergen St., BK</td>
<td>Zoning map amendment (L&amp;B)</td>
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<td>28 W. 8th St., MN</td>
<td>Legalize new infill</td>
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<td>311 West Broadway Special permits (150-space garage; use, parking)</td>
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<td>3/26/2006</td>
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<tr>
<td>686 Broadway, MN</td>
<td>NoHo HD</td>
<td>Replace facade</td>
<td>3/29/2006</td>
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<tr>
<td>59 Horatio St., MN</td>
<td>Greenwich Village HD</td>
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**Note**: The data indicates the decision is covered in this issue. The symbol * indicates that the decision was covered in a previous issue.
Moondance Diner may be demolished to make room for residential/retail development in SoHo. Story on page 55. Photo: Kevin E. Schultz.