

**143-11-A thru 146-11-A**

APPLICANT – Philip L. Rampulla, for Joseph LiBassi, owner.

SUBJECT – Application September 16, 2011 – Appeal challenging the Fire Department’s determination that the grade of the fire apparatus road shall not exceed 10 percent, per NYC Fire Code Section FC 503.2.7. R2 zoning district.

PREMISES AFFECTED – 20, 25, 35, 40 Harborlights Court, east side of Harborlights Court, east of Howard Avenue, Block 615, Lot 36, 25, 35, 40, Borough of Staten Island.

**COMMUNITY BOARD #1SI**

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an appeal of a final determination, issued by the Chief of Operations of the New York City Fire Department (“Fire Department”) on August 18, 2011, in response to a request for a variance (the “Final Determination”), which states, in pertinent part that:

[t]he Fire Department, Bureau of Operations has reviewed the variance request and the revised site plan dated May 21, 2009 for the above site in the Borough of Staten Island and must reject your request . . .

The grade of the fire apparatus access road shall not exceed ten percent under New York City Fire Code Section FC 503.2.7. This requirement is necessary for Fire Department ladder companies to properly ladder the building. This is seen as a potentially dangerous obstruction to response for our fire operation units; and

WHEREAS, this appeal seeks to reverse a Fire Department determination denying a request for a variance of FC § 503.2.7, which, provides that “[t]he grade of the fire apparatus access road shall not exceed ten percent unless approved by the commissioner”; and

WHEREAS, a public hearing was held on this appeal on June 11, 2013, after due notice by publication in *The City Record*, with continued hearings on August 20, 2013, September 24, 2013, October 29, 2013, and February 25, 2014, and then to decision on April 29, 2014; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, declined to make a recommendation regarding this application; and

WHEREAS, the Fire Department provided testimony in opposition to the application; and

WHEREAS, certain members of the surrounding

community, including a neighborhood group known as the Serpentine Art and Nature Commons, Inc., provided testimony in opposition to the application (the “Opposition”), citing concerns about the Fire Department’s ability to access the proposed homes, the widening of the access road to 30 feet (and its effect on a nearby existing building), the safety of the proposed embankments along the access road, and the overall effect of the development on the neighboring topography, vegetation, soil, property values, sightlines, and drainage; in addition, the Opposition expressed its preference for a ten-percent access road slope and three homes at the site instead of the proposed four; and

WHEREAS, the subject site is located east of Howard Avenue, within an R2 zoning district within the Special Hillside Preservation District; and

WHEREAS, the site has 75,357 sq. ft. of lot area and an average site slope of 19.5 percent, making it a Tier II site pursuant to ZR § 119-01; and

WHEREAS, the site is vacant, does not front on any mapped streets, and is accessible via easement agreement with the owner of the lot directly west of the site (Block 615, Lot 40); the easement also provides for the installation of underground utilities; and

WHEREAS, the site has been under the Board’s jurisdiction since September 22, 1992, when, under BSA Cal. Nos. 54-92-A through 58-92-A, the Board waived General City Law § 36 to permit the construction of five homes without frontage on a mapped street; instead, the homes fronted on Harborlights Court, an access road with a width of 30’-0” and an average slope of 14 percent; and

WHEREAS, the proposed site plan for BSA Cal. Nos. 54-92-A through 58-92-A was reviewed and approved by the Fire Department by letter dated September 4, 1992; and

WHEREAS, construction pursuant to the 1992 Board grants was also subject to City Planning Commission (“CPC”) authorization under ZR §§ 119-316 and 119-317, due to the sloping nature of the site itself and of Harborlights Court; on April 20, 1994, CPC issued the authorization, however, the development was never constructed and in 1999, CPC adopted amendments to the Special Hillside Preservation District, which invalidated the 1994 approval; and

WHEREAS, by letter dated April 17, 2006, the Board authorized a reduction in the number of homes permitted under BSA Cal. Nos. 54-92-A through 58-92-A from five to four and a change in the roadway terminus from a hammerhead to a cul-de-sac; the slope remained as originally at 14 percent; and

WHEREAS, on July 26, 2006, CPC authorized the revised plan pursuant to ZR §§ 119-316 and 119-317, and by letter dated August 17, 2007, the Fire Department approved the site plan as well; and

WHEREAS, subsequently, the site was redesigned to provide a slope of 17 percent, which the Fire Department disapproved by letter dated July 7, 2009, citing FC § 503.2.7; and

WHEREAS, on January 4, 2010, the Appellant filed a variance application with the Fire Department, which, on August 18, 2011 denied the request and issued

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the Final Determination that forms the basis for this appeal; and

WHEREAS, through the hearing process and in response to comments by the Board and recommendations from CPC, the Appellant reduced the proposed access road slope from 17 percent to 13.59 percent; and

WHEREAS, nevertheless, the Fire Department maintained its position that it would not approve an access road slope in excess of ten percent; and

WHEREAS, accordingly, the appellant requests that the Board grant the subject appeal waiving the ten percent slope required under FC § 503.2.7 and approving, in the alternative, a slope of 13.59 percent; and

WHEREAS, the Board notes that, pursuant to New York City Charter § 666(6)(b), it has the power to review an appeal of a Fire Department determination by reversing or affirming in whole or in part, or modifying the requirement set forth in the determination; and

WHEREAS, in addition, pursuant to Charter § 666(7), in reviewing an appeal of a Fire Department determination, the Board may vary the underlying requirement if it finds that: (1) there is a practical difficulty or unnecessary hardship in complying with the strict letter of the law; (2) the alternative is within the spirit of the law and secures public safety; and (3) substantial justice is done; and

WHEREAS, the Appellant asserts that there exists a practical difficulty in complying with a maximum access road slope of ten percent due to the existing slope of the site, which, from the west side of the access road abutting Howard Avenue to the easternmost portion of the site, has a grade change of 116 feet and, as noted above, an average site slope of 19.5 percent; and

WHEREAS, the Appellant also asserts that the alternative—a slope of 13.59 percent—is within the spirit of the law and secures public safety, in that: (1) the access road will provide access to only four, single-family homes; (2) the homes will be fully-sprinklered; (3) there will be no street parking along the roadway with “no parking” signs posted in accordance with FC § 503.7 and BSA Cal. Nos. 54-92-A through 58-92-A; (4) each home’s driveway will be oversized; and (5) two new fire hydrants will be installed along the roadway; and

WHEREAS, as to substantial justice, the Appellant states that it explored the feasibility of providing a complying (ten-percent slope) and determined that in order to achieve a complying slope, the length of the roadway would have to be increase to 497 linear feet, which is contrary to Fire Code § 503.2.5 (which limits the length of a private road to 400 linear feet); thus, a secondary road would be required, which is impossible given the location of the site with respect to adjacent sites and existing buildings; and

WHEREAS, the Appellant states that a ten-percent slope would also require larger retaining walls and more impervious surfaces than are desirable under the Special Hillside Preservation District regulations and require encroachment on a portion of the site that CPC

previously declared to be a preservation area; further, constructing retaining walls to provide the ten-percent slope would be too costly to be offset by the construction of four homes; and

WHEREAS, therefore, the Appellant represents that complying with the Fire Department requirement would make construction on the site infeasible; and

WHEREAS, the Appellant states that prior to the enactment of the 2008 Fire Code, a slope of 13 percent was permitted; in addition, as noted above, the Fire Department approved a slope of 14 percent for the site in 1992 and again in 2007; and

WHEREAS, finally, at the Board’s request, the Appellant identified numerous nearby access roads with slopes in excess of the proposed 13.59 percent, including: Highview Avenue between East Buchanan Street and Eadie Place (16 percent); Highview Avenue between Eadie Place and Fillmore Street (between 18.2 percent and 21.2 percent); York Terrace between East Buchanan Street and Fillmore Street (between 15.8 percent and 16.4 percent); Occident Avenue between St. Pauls Avenue and Marion Street (between 14.4 percent and 16.2 percent); Concord Place between Richmond Road and Longview Road (between 13.8 percent and 16.5 percent); and Howard Court (between 14 percent and 15.5 percent); and

WHEREAS, in response to the Appellant’s assertions, the Fire Department states that, due to the curving nature of the road, a slope in excess of ten percent would present a serious operational challenge to firefighting operations at the site due to the limitations of its equipment; and

WHEREAS, the Fire Department states that it is aware of the prior approvals at the site as well as nearby existing roads with similar or steeper grades; nevertheless, it states that because the ten-percent requirement is to ensure safe operation of and proper access for its firefighting apparatuses, waiver of such requirement is improper and poses a danger to homeowners and firefighters; and

WHEREAS, the Board acknowledges the Fire Department’s interest ensuring that its equipment may be operated in the most efficient manner and that as roads become steeper, such operation may be made more challenging; and

WHEREAS, nevertheless, the Board finds that slopes in excess of ten percent may be safe where accompanied by other safety measures; indeed, a slope exceeding ten percent was contemplated by FC § 503.2.7 by its terms (“the grade of the fire apparatus access road shall not exceed ten percent *unless* approved by the commissioner”); and

WHEREAS, further, the Board notes that when presented with evidence of nearby access roads, including many with steeper slopes and narrower widths than the proposed access road, the Fire Department provided no information regarding how its operations change with respect to such roads; and

WHEREAS, the Board also notes that the Fire Department did not articulate any conditions under which it would endorse an access road slope of greater than ten

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percent; and

WHEREAS, turning to the variance findings, the Board agrees with the Appellant that the existing slope of the site in combination with the Special Hillides Preservation District regulations present a practical difficulty complying with the strict letter of FC § 503.2.7; and

WHEREAS, in particular, the Board observes that FC § 503.2.7 and the Special Hillides Preservation District regulations further different policy objectives and reflect different perspectives on the appropriate development of the site – due to the existing slope of the site, compliance with the Fire Code provision would require substantial fill, which is unlikely to be permitted under the Special Hillides Preservation District regulations; accordingly, a site plan that is satisfactory to the Fire Department is unlikely to be satisfactory to CPC, and this inherent incompatibility presents a significant practical difficulty in developing the site; and

WHEREAS, the Board also agrees that the proposal's additional safety measures—namely, the limited density, the sprinklering, the no parking zones, and the additional fire hydrants—bring the proposal within the spirit of the law and secure public safety; and

WHEREAS, in addition, the Board requires that the roadway be constructed using asphalt porous pavement or a similar system, as recommended by the Department of Transportation (“DOT”), in order to maximize traction, and that DOT approve a Builders Pavement Plan for the intersection of Harborlights Court and Howard Avenue; and

WHEREAS, as to substantial justice, the Board agrees with the Appellant that development of the site is infeasible using a ten-percent slope for the road and that the proposal represents an alternative that is both technically and financially feasible and consistent with the objectives of the Special Hillides Preservation district regulations; and

WHEREAS, as to the Opposition's concerns regarding the widening of the access road to a width of 30 feet, the Board notes that the Appellant submitted a copy of its easement agreement for access and utilities; the agreement indicates that the width of the easement is 30 feet; to the extent that the Appellant would seek to diminish the 30-foot width, an amendment to this grant would be required; and

WHEREAS, as to the Opposition's concern regarding changes to the topography, vegetation, and drainage, the Board observes that the site plan is subject to CPC approval under the Special Hillides Preservation District regulations and that this grant is limited to a

variance of FC § 503.2.7 and should not be construed as an endorsement of the project with respect to the Zoning Resolution or Building Code; and

WHEREAS, as to the Opposition's preference for a ten-percent slope and the construction of three homes instead of four, the Board notes that although such a scenario would reduce the length of the access road, it would be inconsistent with the objectives of the Special Hillides Preservation District due to the extent of fill and the size of embankments that would be required; and

WHEREAS, finally, while the Board acknowledges the Opposition's other concerns regarding the proposal's potential impact on neighboring properties, the Board finds that such considerations are both beyond the scope of its review in this case, and governed by other laws and regulations; and

*Therefore it is Resolved* that the instant appeal, seeking a reversal of the Fire Department decision dated August 18, 2011, is hereby *granted; on condition* that construction will substantially conform to the drawing filed with the application marked “Received April 25, 2014 (1) sheet; and *on further condition:*

THAT all required CPC approvals will be obtained prior to the issuance of a building permit by DOB;

THAT the slope of the access road will not exceed 13.59 percent at any point;

THAT the access road will have a minimum width of 30 feet;

THAT a maximum of four homes will be permitted at the site;

THAT all homes will be fully-sprinklered;

THAT no street parking will be permitted along the access road and “No Parking” signs will be installed in accordance with the Fire Code;

THAT a minimum of two fire hydrants will be provided along the access road;

THAT the access road will be constructed using asphalt porous pavement or a similar system, as recommended by DOT, in order to maximize traction;

THAT DOT and DOB will review and approve a Builders Pavement Plan for the intersection of Harborlights Court and Howard Avenue;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed objection; and

THAT DOB must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 29, 2014.

**A true copy of resolution adopted by the Board of Standards and Appeals, April 29, 2014.**

**Printed in Bulletin Nos. 16-18, Vol. 99.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**

