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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 55 SSM 51  
In the Matter of Emrey  
Properties, Inc.,  
Respondent,  
v.  
Patricia A. Baranello, &c.,  
et al.,  
Appellants.

Submitted by Vincent J. Messina, Jr., for appellants.  
Submitted by Andrea Tsoukalas, for respondent.

\* \* \* \* \*

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and matter remitted to the Appellate Division, Second Department, for consideration of issues raised but not considered on the appeal to that court. The Zoning Board's determination, upholding the Planning Board's denial of a building permit for petitioner to intensify an existing nonconforming use, was not arbitrary, capricious, or contrary to the Town Code (see generally Matter of Pecoraro v Board of Appeals of Town of Hempstead, 2 NY3d 608, 612-613 [2004]). Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided January 12, 2010