

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

SUBCOMMITTEE ON ZONING AND FRANCHISES

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November 18, 2014
Start: 10:02 a.m.
Recess: 11:16 a.m.

HELD AT: 250 Broadway- Committee Rm, 16th Fl.

B E F O R E:
MARK S. WEPRIN
Chairperson

COUNCIL MEMBERS:
ANTONIO REYNOSO
DANIEL R. GARODNICK
DONOVAN RICHARDS
JUMAANE D. WILLIAMS
RITCHIE J. TORRES
RUBEN WILLS
VINCENT IGNIZIO
VINCENT J. GENTILE

A P P E A R A N C E S (CONTINUED)

[gavel]

CHAIRPERSON WEPRIN: Okay we're going to get started. Welcome to this meeting on Manhattan Community Board 4, naw [sic] I'm just kidding this is... this is the Zoning and Franchises Subcommittee. I am Mark Weprin, Chair of the Subcommittee. I am... good morning, good morning all. We've been joined this morning by Vincent Gentile who actually got the gold star this morning, Council Member Dan Garodnick, Council Member Ritchie Torres, the Chair of the Land Use Committee David Greenfield. We're also joined by special guest Rosie Mendez, is Rosie still here, okay she is, and Corey Johnson who have, who have items a, who have items... yes. We have a number of items. We are going to take them in, out of order because we're going to take them in least controversial to most controversial. So we do have an item, land use number 143, a café called Lantern in Council Member Mendez's district which has been withdrawn by the Department of Consumer Affairs. However Council Member Mendez has a strong opinion on this withdraw and this, this location so we're going to give her the opportunity to make a

1 statement on such. So Council Member Mendez
2 whenever you're ready.

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4 COUNCIL MEMBER MENDEZ: Thank you Mr.
5 Chair. I wanted to come and be on the record about
6 the situation that is, that happened here at
7 Lantern. Their withdraw is not enough. This
8 restaurant not once, not twice, not three times,
9 but four times have applied for a sidewalk café.
10 And it is contrary to zoning so they've lied on
11 their application. When we raise this issue to DCA
12 I asked for sanctions and all they did was
13 withdraw, I didn't want them to withdraw until
14 their license was immediately surrendered. And in
15 fact the Land Use Council staff has been calling
16 asking them to surrender their license and they
17 have not. So this withdraw means that they could in
18 fact apply again and lie again even if it's
19 contrary to zoning. And it would be incumbent upon
20 my office to keep track of this because it is clear
21 that DCA does not. So we have a bigger issue where
22 DCA restaurants, no one is paying attention to the
23 law and we need to get stronger law and stronger
24 sanctions, also several months ago in the last
25 legislative term the law was changed. So when we

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2 have a bad actor and it's legal to have a sidewalk
3 café we won't be able to address this issue for
4 another four years because now the renewals are
5 done every four years instead of every two. So
6 having said that I want to thank my colleagues for
7 giving me this time and I want to thank the chair
8 for putting my objections on the record and I'd
9 like to follow up with this committee and with the
10 chair to take some stronger measures and to have
11 DCA be more accountable as the agency that has
12 oversight over this. Thank you very much.

13 CHAIRPERSON WEPRIN: Thank you Council
14 Member Mendez and we, we will discuss this further
15 and work on our DCA summit that we want to have.
16 And we thank you for coming and you're always
17 welcome to come back and visit anytime. We have
18 been joined by Council Member Reynoso who joins us
19 this morning. We are now going to skip the other
20 café and go to Land Use number 146 which is the
21 auto showroom text amendment in Council Member
22 Johnson's district. I'd like to call up Melanie
23 Meyers from Fied Frank and Eric Hirsch... what
24 happened, okay, Eric Hirsch. Ms. Meyers you've been
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2 here before we you know head to the table. We have
3 brand new microphones. You may be the first to so...

4 MELANIE MEYERS: I'm sorry? Yeah, or
5 else maybe Eric can be... yeah. You need to smile.
6 Good morning Council Members thank you for having
7 me. My name is Melanie Meyers. I'm an attorney with
8 Fried Frank, Harris, Shriver, and Jacobson
9 representing 605 West 42nd Street LLC, the
10 applicant for the matter before you. This is an
11 application for a zoning text amendment to section
12 96-21 of the zoning resolution and what it will
13 allow is for a full service automobile dealership
14 at, in the base of a building that is now under
15 construction at the corner of 11th avenue and West
16 42nd Street. The site is in yellow, do you want...
17 The site is located in the C64 district in the
18 perimeter area of the Special Clinton district in
19 Council Member Johnson's district. It is surrounded
20 by a mix of uses including manufacturing districts
21 to the north and residential districts to the west
22 and Hudson Yards to the south. It's also located in
23 an area which has been known traditionally as
24 automobile dealership row. Ad with a variety of
25 automotive dealerships to the north in a variety of

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2 vehicle related service and support uses throughout
3 the district. The site... what this change would
4 allow is allow an automotive dealership to be
5 located in the base of the building which is I
6 think shown in the next drawing at the corner of
7 43rd and 11th Avenue. And it would be allowed to be
8 introduced into the neighborhood in a way that is
9 consistent with other uses in the neighborhood and
10 in a way that will not affect the uses in the
11 surrounding area. The, under the zoning text
12 amendment it would allow for vehicle preparation
13 and auto, automotive repair uses which is typical
14 of a full service dealership today. The entrances
15 to those uses are required to be located by the
16 text on West 43rd Street which is immediately
17 adjacent to the manufacturing district to the
18 north. And it also requires that those uses be
19 located below grade and seller space. We were
20 pleased to get the community boards and the borough
21 president's support on the application. We did ask
22 for certain operational commitments which we were
23 happy to give to them, or the client was happy to
24 give to them. We received the approval of the city
25 planning commission and we have reconfirmed those

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2 commitments to the local council member. So we
3 appreciate everybody's consideration and we would
4 ask for your support.

5 CHAIRPERSON WEPRIN: Thank you Ms.
6 Meyers. Before we go down the rest of the panel I'd
7 like to give Council Member Johnson a chance to
8 comment.

9 COUNCIL MEMBER JOHNSON: Thank you Mr.
10 Chair. The text amendment before you today is
11 entirely no contentious which is a nice thing and
12 has received support all along the way. So I just
13 wanted to quickly take a moment to the positive
14 working relationship the applicant and the
15 representatives have had throughout the review
16 process and the commitments that they've made and
17 that have been enshrined in writing to Community
18 Board 4, the Manhattan borough president, and my
19 office. These include doing things to minimize the
20 glare and lighting of signage explicitly for
21 bidding in their lease, parking, or cuing of cars
22 on the sidewalk locating the fans facing the UPS
23 facility and ensuring their compliance with the
24 noise code and restrict the delivery of new
25 vehicles between the hours of 11:00 p.m. and 6:00

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2 a.m. A full service car dealership is consistent
3 with the uses in the area and with these
4 commitments in place to prevent any harmful impact
5 with beneficial addition to the community I support
6 this application. Thank you very much.

7 CHAIRPERSON WEPRIN: Thank you Mr.
8 Johnson. We like a happy ending. Any embers of the
9 panel want to ask any questions of Ms. Meyers on
10 this matter? Vinny, no, no. I don't see any so look
11 at that Community Board 4 seems happy right? Right.
12 They, they smiled.

13 MELANIE MEYERS: Thanks very much.

14 CHAIRPERSON WEPRIN: So okay good. Thank
15 you very much. That was easy. Don't forget your
16 charts. We've been joined by Council Member Donovan
17 Richards who is with us as well. Does anyone, is
18 there anyone else here to testify on that matter? I
19 see none. So we are going to close this hearing and
20 we're going to move onto the main event of the
21 morning. We'd like to.. next is Land Use number 134
22 I believe, yes. Uh Barchetta, Barshetta [sic]. I'd
23 like to call up Donald Bernstein and Anthony is it
24 Curro [sp?]... close enough, okay. Those two letters
25 are kind of merged together there. Alright Anthony,

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2 come on up, sorry about that. This is a café in
3 Council Member Johnson's district as well; 461 West
4 23rd Street. Gentleman please when you speak state
5 your name for the record and both of you are going
6 to speak. When you do speak make sure to state it
7 is you, your name every time you speak so we can
8 keep track. So whenever you're ready you can
9 describe your application. Are you okay? Great.
10 Alright if I could have some quiet please we'll get
11 started. Thank you.

12 DONALD BERNSTEIN: [off mic] Thank you
13 Mr. Chair. Good morning Council Members. [on mic]
14 Red button needs to be lit. Good morning, thank you
15 Mr. Chair. My name is Donald Bernstein from the law
16 firm of Victor and Bernstein P.C. I am council to
17 LDV 23 LLC which is the owner and operator of
18 Barchetta on West 23rd Street. Our application this
19 morning is for a very small unenclosed sidewalk
20 café in front of the restaurant which is located in
21 the London, one of the London Terrace buildings
22 only a few feet from the intersection of West 23rd
23 Street and 10th Avenue. The sidewalk café that we
24 are applying for is probably one of the smallest
25 and most restrictive certainly that I'm aware of

1 that is appended to a full service restaurant. It
2 is limited to only two tables. That is what we are
3 talking about. Two tables, outdoors with a maximum
4 capacity of eight seats. The total size of the
5 sidewalk café is 160 square feet. It will close by
6 9:00 p.m. every evening seven days a week. That is
7 significantly earlier than the city regulations of
8 closing by midnight during the week and 1:00 a.m.
9 on weekends. It is significantly earlier than
10 Manhattan Community Board 4's policy of closing a
11 sidewalk café at 10:00 p.m. during the week and
12 11:00 p.m. on weekends. These two tables have been
13 approved thus far by every city and state agency
14 that has considered the matter. That includes
15 zoning approval and confirmation of appropriate
16 zoning by the Department of City Planning, approval
17 by the Department of Consumer Affairs, approval of
18 Service of Liquor at the two tables by the New York
19 State Liquor Authority which was not opposed by
20 anyone. It was overwhelmingly approved by Manhattan
21 Community Board 4 after three public hearings and
22 it has the support of over 140 residents of the
23 building. The restaurant is owned and operated by
24 one of the most experienced operators in the city.
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2 LDV hospitality has nine restaurants in the city of
3 New York. It employs over 450 full time and part
4 time people. And it pays an excess of 3.3 million
5 dollars in city taxes including sales tax. When we
6 filed the application we submitted to DCA a plan as
7 required by the rules showing the measurements of
8 the café, measurements of the sidewalk and any
9 obstructions in the sidewalk. That is typically
10 what DCA uses and is sufficient. In this instance
11 DCA then asked us to prepare a survey which we did.
12 And that survey is attached to the letter that I
13 hope you all had an opportunity to review on
14 November 3rd. I sent the letter to City Council
15 with all of these points and with these documents.
16 We provided to DCA a copy of that survey that is
17 typically not requested by them. They then came
18 back and asked us to provide proof of the zoning
19 lot from a title company which we did. We provided
20 proof of zoning lot submitted by Kensington
21 Vanguard National Land Services, an agent for
22 Stuart Title Insurance. Once we provided all those
23 documents to the DCA we were told that City
24 Planning confirmed that this was approved, that
25 zoning was confirmed as a split lock. I am not

1 going to address other zoning issues since city
2 planning has spoken on that. Our architect is here
3 if you do have any questions about zoning he will
4 be glad to answer any of those questions. There was
5 a hearing held on DCA on October 8th. Only one
6 individual appeared in opposition to that. And DCA
7 approved this application. As I mentioned Manhattan
8 Community Board 4 overwhelmingly approved this
9 application. We have the space in front of the
10 restaurant to have gotten a nine tables with 18
11 seats. That's what we could have applied for but we
12 didn't do that. We were aware that there was
13 concern among residents in the building and others
14 in the community and therefore we pared it down and
15 then we pared it down a second time so we were left
16 with only two tables and a maximum of eight seats.
17 We also agreed after much discussion at the
18 community board to restrict the hours of operation
19 to 9:00 p.m. As I said the community board after
20 these three, three hearings voted overwhelmingly by
21 a margin of two to one to recommend approval of
22 this application. There was an article in Chelsea
23 now on August 28th of year, of this year that
24 quoted Christine Berthet who was the chair of
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2 Community Board four and that was a time, at a time
3 when the zoning had not yet been finally determined
4 and according to the article she said that if
5 zoning is permitted she said we don't have grounds
6 for rejecting it and we are okay with the two
7 tables. And this is confirmed also by case law. The
8 Court of Appeals has spoken on this issue and said
9 in a case number of years ago that classification
10 of a particular use as permitted in a zoning
11 district is tantamount to a legislative finding
12 that the permitted use is in harmony with the
13 general zoning plan and will not adversely affect
14 the neighborhood. And that was precisely the
15 finding of Community Board 4, that with the
16 concessions that we agreed to and with the severe
17 limitations that it would not adversely affect the
18 community. And in fact one of the members of I
19 believe the only member of the BLP Committee of
20 Community Board 4 who lives in London Terrace was a
21 supporter and indicated that with our concessions
22 they did not believe there'd be, he did not believe
23 there'd be any adverse impact. I want to show you
24 some diagrams because I think it's very important,
25 some charts to see the layout of this. If you are

1 not familiar with London Terrace the building, the
2 group of buildings extend all the way from 9th
3 Avenue to 10th Avenue bounded by 23rd and 24th
4 Street. Barchetta is on the north side of 23rd
5 street, just about 125, 150 feet from 10th Avenue.
6 This is North 23rd Street looking east towards 9th
7 Avenue standing in front of Barchetta. And you can
8 see that there is this grate filled with plantings
9 that goes about three-quarters of the length of
10 23rd Street. It's been there forever. This sticks
11 out five and half feet from the building. Here is
12 another photograph of it. I'm sorry for the small
13 size. I didn't want to blow it up too much because
14 it would be unclear. You can see this going all the
15 way down. There are gaps in between so people can
16 get in and out of the building of course but other
17 side this continues all along. What we have in
18 front of Barchetta, Barchetta is a natural built
19 alcove for these two tables because that grate ends
20 just where Barchetta begins. This is Barchetta
21 right here. The grate ends here. And where you see
22 this empty space this is where the two tables go.
23 This grate extends five and a half feet. The two
24 tables will extend four feet. So this 160 square
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2 foot space of two tables is going to take less of
3 an obstruction if you could even considerate an
4 obstruction which you can't in our view than the
5 balance of this grate that goes all along 23rd
6 Street. It naturally fits in here. Now people in
7 opposition at the community board meetings have
8 said that these two tables are going to obstruct
9 handicap people, children, elderly, people walking
10 down the street. I submit that defies common sense.
11 If you look at the photo when people are walking
12 down the street as here no one is going to walk
13 down here, make a right turn, and then go this way.
14 It defies common sense. No one's going to be
15 walking over here and then have to say oh, there
16 are two tables I got to get out of the way. Of
17 course they'd, if they did that they'd have to get
18 out of the way anyway because the grate is there.
19 So the point is twofold. One there is this natural
20 alcove that extends less than the grate along two-
21 thirds of the avenue and it really diminishes,
22 really eradicates any claim that is going to
23 interfere with any pedestrian traffic. The width of
24 10, of, of 23rd Street is enormous. It's 23 and a
25 half feet. 10th Avenue is 15 feet. And that's

1 without a sidewalk café. So sidewalk cafés on 10th
2 Avenue, and there are some, use part of that 15
3 feet meaning the walkway is even less. With our
4 sidewalk café to the extent you can even call two
5 tables that although technically it is. You have 18
6 feet clearance. You have more clearance with the
7 two tables than you have on 10th Avenue even
8 without any sidewalk café. I've given you the
9 plans. I hope you've had a chance to see it. All
10 the measurements are in there. There was also a
11 concern raised about the number of people that are
12 walking down 23rd Street that, that these between
13 two to eight people sitting outside would somehow
14 wreak havoc on the pedestrian traffic on the block.
15 And the way some people portrayed it was like you
16 know a crowd of people trying to get into Madison
17 Square Garden and it's just really not accurate. I
18 was there on many occasions between the summer and
19 just a few weeks ago. And I took all of these
20 photos myself on the weekend and during the day.
21 And I apologize for the poor quality but this is my
22 iPhone camera. This was a Saturday about three or
23 four weeks ago. It was 70 degrees. It was 2:00 in
24 the afternoon. There's a photo of the highline in
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1 the letter that I sent showing the highline was
2 packed. And this is right in front of Barchetta.
3 And there are people coming down the block. This is
4 not an overly crowded area. Imagine two tables
5 right here are not, is not going to have any impact
6 on pedestrian traffic. Another photo, not very
7 congested. This is looking towards 10th Avenue.
8 This is Barchetta, this is where the two tables
9 would be. People coming down the block. It's really
10 hard to imagine that these two tables is going to
11 cause any problem in terms of pedestrian traffic.
12 Another point that was raised that I'd like to
13 address is that 23rd Street is a quiet residential
14 side street. Of course it is residential, no one
15 disputes that. It is, there is nothing illegal or
16 improper or unusual about having a sidewalk café in
17 a residential area. It's in Chelsea. You go to the
18 upper west side, you go to the upper east side,
19 many other neighborhoods and it is not unusual at
20 all for a restaurant and a sidewalk café to be in a
21 residential building. This is not a quiet one way,
22 narrow, side street that has no commercial
23 establishments. There are commercial establishments
24 here. There are residents here. It is a two lane
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2 two way, it's a two way street with two lanes of
3 traffic each way feeding into 10th Avenue which is
4 the major artery for commercial traffic heading
5 northbound since they can't go on west street or
6 the west side highway. And as I said I was there a
7 number of times during the day and these are just
8 some random photos that I took right in front of
9 Barchetta. And you can see there are trucks,
10 garbage trucks, taxis, trucks all along. This is
11 looking on 10th Avenue. Here's another photo,
12 trucks stopped at the light. You see three, you
13 can't even see the other ones that this truck is
14 blocking. The notion that up to eight people
15 maximum sitting outside only until 9:00 p.m. which
16 means the last seating would probably have to be
17 around 7:30 would cause any noise or unreasonable
18 disturbance on this block we submit is really
19 unfounded. And we are aware of concern of residents
20 and that's why we agreed to the restrictions of the
21 number of tables, the number of patrons, and the
22 hours. One of the beauties of our city and
23 particularly Manhattan is the confluence of
24 residents and commercial businesses. You go to
25 other cities and other areas you have residents

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2 over here and you have a downtown commercial
3 district. We, we don't have that in New York and I
4 think that's one of the beauties of, of our city
5 and this borough. And the question is how do you
6 live together. And we think we have proposed
7 something with these two tables that is
8 extraordinarily reasonable under these
9 circumstances in an area and in a spot that is
10 specifically zoned for this. The fact that it did
11 not have a sidewalk café before is not the point.
12 There are new sidewalk cafés that pop up all over.
13 There is no rule that says no more sidewalk cafés,
14 you can't have any. We have submitted petitions in
15 support of this. I, we are well aware of the fact
16 that there are residents who oppose this. We're
17 well aware of the fact that they had an online
18 petition. I would note that their petition made no
19 reference to hours or size. We have submitted
20 petitions signed by about 140 residents of London
21 Terrace in support of this. We had residents appear
22 at the community board meetings to speak in
23 support. They do not speak for all of the
24 residents. They speak for themselves. They do not
25 speak for everyone. In terms of an operator I

1 mentioned LDV's experience as an operator. There
2 have been complaints we heard about rats. We have
3 never received a violation. My client has an A
4 grade from the Department of Health. I have 3-1-1
5 records I would be happy to share with you but of
6 course you can access them online. Never a
7 complaint for noise, never a complaint for any
8 environmental issue, never a complaint for, never
9 any violation issue for Barchetta. There was an
10 issue raised at the community board meetings about
11 doing construction without permits. Anthony can
12 address that if you have any questions. The fact is
13 no permits were needed for the minor work that was
14 done. Notwithstanding that we did pole permits just
15 so we would avoid having residents complain that
16 there are no permits. So that is my presentation.
17 I'm happy to answer any questions you may have. We
18 believe that... oh, I'm sorry last point. The,
19 another point that was raised, raised is that this
20 is going to open up the door to sidewalk cafés all
21 along 23rd Street and that just can't be because we
22 are at the furthest point east from 10th Avenue for
23 a sidewalk Café. So beside the fact that until you
24 get to 9th Avenue there are no other commercial
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1 establishments, and there's no place to even put a
2 sidewalk café the rest of 23rd Street going
3 Eastbound would not be zoned for a sidewalk café.
4 In any event every application has to be determined
5 on its individual merits not based upon
6 hypothetical situations as to what could happen
7 down the road. So in short we believe we've met all
8 of the DCA, city, and zoning requirements, that
9 there's no good cause to deny this, that it would
10 be arbitrary and capricious to do so, and we
11 request your approval. Thank you.

12
13 CHAIRPERSON WEPRIN: Okay. Thank you
14 very much. Before I get to Council Member Johnson I
15 just want to, you don't have any plans to have any
16 planters, dividers, or any other barriers to be
17 used in any way.

18 DONALD BERNSTEIN: That's correct. And
19 that was an agreement we reached with the community
20 board.

21 CHAIRPERSON WEPRIN: Okay. I'm just
22 curious. Alright Mr., Mr. Johnson.

23 COUNCIL MEMBER JOHNSON: Thank you Mr.
24 Chair. I want to share with the subcommittee this
25 morning my opposition to this application before us

1 today. The proposed unenclosed café is located in
2 R8A residential zoning district which does not
3 permit commercial uses and it is outside the C25
4 commercial overlay extending 100 feet from the 10th
5 Avenue portion of the block to serve local retail
6 needs. So this is 100 feet from 10th Avenue. This
7 is a residential block which as the attorney for
8 the applicant pointed out has never had an
9 unenclosed sidewalk café and there is a reason for
10 that. And the reason why there has never been an
11 unenclosed sidewalk café is because the applicant
12 is relying on a split zot [sic], split lot zoning
13 provision rule that the New York City Zoning
14 Resolution talks about to locate this unenclosed
15 sidewalk café directly adjacent to ground floor
16 apartments. It is misplaced in a residential zoning
17 district. While the application of these split lot
18 rules may make sense to apply to uses located
19 within buildings that makes sense. Commercial
20 within buildings split lot rule. It is not
21 appropriate in any way to extend these rules to a
22 public sidewalk which is going to interfere with
23 the quality of life of people that are living
24 adjacent to it. An unenclosed sidewalk café is by
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1 definition an outdoor use that has materially
2 different impacts on residential neighborhoods
3 which is why sidewalk cafés are not permitted in
4 residential zoning districts. An outdoor sidewalk
5 café will have fundamentally different and
6 disruptive impacts on adjacent residents including
7 noise, light, litter, and pedestrian circulation in
8 the area such as this one which is already
9 overburdened by the exponentially heavy foot
10 traffic generated by the nearby highline. I could
11 go out any day of the week with any of you all and
12 take similar photos that will show crowded
13 sidewalks at that very spot. So I don't take those
14 photos at face value. And the last thing I want to
15 say and I think this is actually very important for
16 this committee is I was, before I was elected to
17 the council I was chair of Manhattan Community
18 Board 4 which covers where this is. When I was
19 chair of Manhattan Community Board 4 this applicant
20 came for a liquor license at this location. And
21 there was a massive dust up in the community.
22 Actually I apologize, the liquor license was for
23 West 16th Street but they still had this location.
24 There was a bait and switch that occurred at the
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2 time. It became hugely controversial. The State
3 Liquor Authority had to get involved, Donald
4 Bernstein their attorney, who actually I like very
5 much and who I think is a very good attorney and a
6 good guy and does a lot of good work in the
7 community, and I had it out then. And I'm not going
8 to characterize what he said but I will just say
9 that the applicant was not truthful to me as chair
10 of the community board, was not truthful to the
11 committee of the community board, was not truthful
12 to the full community board. The State Liquor
13 Authority had to get involved because of a bait and
14 switch that occurred. The operator who is not here
15 today, didn't come to give his side of the story at
16 the time was incredibly arrogant and basically said
17 I'm doing what I'm going to do and whatever I
18 represented to you at the time, I'm getting my
19 license and application, forget about you. They
20 said they were going to get a gastro pub restaurant
21 on West 16th Street two blocks from where I live.
22 Instead it turned into a velvet rope nightclub,
23 total bait and switch. So today when we're here and
24 we're talking about how wonderful this applicant is
25 and how they're making all these concessions to the

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2 community that is not the experience that I had as
3 chair of the community board. It's not the
4 experience that many people had. And I actually
5 think that Mr. Bernstein is right. We should be
6 looking at these applications on a case by case
7 basis. And it's my opinion that given that they're
8 relying on split lot rules which do not make sense
9 for this location and we're dealing with an
10 applicant that directly lied to me in the past and
11 to others in decision making positions I don't
12 trust them or believe them. And their track record
13 and history is not one that is benefit to the
14 community. So I am completely opposed to this
15 application. I, the, the zoning maps are from the
16 1930s where they're getting the split lot rule 80
17 years old.. And so I ask my colleagues to please
18 take this into consideration. There are people here
19 from the community who have lived in London Terrace
20 for decades that are going to talk about the impact
21 and also their experience with this operator who
22 operates in their building. And I know that it is
23 difficult for the city council to reject
24 applications. But I do think as was stated it
25 depends on the operator, it depends on the

1 location, and it depends upon one part of the
2 zoning resolution is being relied upon. And they
3 are, they are getting a technicality on the split
4 lot rule for this individual circumstance and one
5 that I does not think merits this committee and the
6 council allowing them to proceed to get a sidewalk
7 café. Thank you very much for the opportunity to
8 testify.
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10 CHAIRPERSON WEPRIN: Thank you Mr.
11 Johnson. We've also been joined by Council Member
12 Williams. Mr. Bernstein do, I'll give you the
13 opportunity if you want to make a statement, as
14 long as you keep it calm, in response to that
15 comment?

16 DONALD BERNSTEIN: Yes, thank you Mr.
17 Chair. First of all I, I, the issue here is a Land
18 Issue relating to Barchetta on 23rd Street. That is
19 the only issue that is before you. I do not think
20 any matters relating to what really are personal
21 issues between Council Member Johnson and my
22 client... [cross-talk]

23 COUNCIL MEMBER JOHNSON: That is
24 entirely unfair Donald. That is, that is, this is
25 not a personal issue.

1
2 DONALD BERNSTEIN: Alright. Okay. I take
3 you... that, that's fine. Let me just say this about
4 16th Street which I believe is irrelevant but I,
5 but you know you made a strong statement and I
6 think I need to respond is this is a disputed, it's
7 a disputed issue. The council member made certain
8 claims regarding 16th Street. Because of that we
9 met with the Executive Committee of Community Board
10 4. We worked out the issues that we had. The State
11 Liquor Authority issued it. The community board and
12 my client signed off on it. When this was presented
13 to the community board on 16th Street we said it
14 was a gastro pub open 'till 4:00 a.m. with security
15 guards, with a D.J. It was made very clear what the
16 method of operation was. But what's most important
17 is that we have to stay on track for what this is
18 with a, which is a Land Use issue on 23rd Street.
19 My client never got any violations in all of their
20 restaurants. For all these years they've had one
21 violation for I think not having an affidavit for
22 a, for a flame proofing, for, flame proofing
23 affidavit for a curtain. 16th Street was not turned
24 into a club but that is not the focus. We're
25

1
2 focused on 23rd Street and, and the guidelines for
3 issuing a sidewalk café for those premises.

4 CHAIRPERSON WEPRIN: Do any other
5 members of the panel have a question? Mr.
6 Greenfield.

7 COUNCIL MEMBER GREENFIELD: Thank you
8 Mr. Chairman. Thank you Council Member. Thank you
9 Councilor. So I just want to clarify on a couple
10 of, couple of points. So 16th Street owned by the
11 same owner, is that why it's being.. [cross-talk]
12 discussed today.. [cross-talk]

13 DONALD BERNSTEIN: It was.. [cross-talk]

14 COUNCIL MEMBER GREENFIELD: ...just to be
15 clear?

16 DONALD BERNSTEIN: I don't know if the,
17 all the individuals are identical. They're
18 certainly overlapping ownership.

19 COUNCIL MEMBER GREENFIELD: Some of the
20 folks of 16th Street own this particular
21 establishment at Barchetta?

22 DONALD BERNSTEIN: Right.

23 COUNCIL MEMBER JOHNSON: The main
24 principals are.

1
2 COUNCIL MEMBER GREENFIELD: The main
3 principals. Okay, no just want to clarify that for
4 the record. As far as the community board... so we
5 actually have a record from the community board
6 says that they're going disapprove it unless
7 certain items are met, one of which is 9:00 p.m.,
8 the second is... two tables, third is the no
9 planters. I don't believe we have though an updated
10 version from the community board saying that they
11 do approve and you're saying that you do have that.
12 So that's just a...

13 DONALD BERNSTEIN: I can explain that.

14 COUNCIL MEMBER GREENFIELD: ...point of
15 clarification.

16 DONALD BERNSTEIN: I can explain that
17 if... [cross-talk]

18 COUNCIL MEMBER GREENFIELD: Am, am I
19 correct councilor? Do we have that? I'm sorry, just
20 give me one second. Please?

21 DONALD BERNSTEIN: Yeah the, the State
22 Liquor Authority has requested community boards to
23 phrase letters of approval as deny unless. Because
24 it's just we approve the SOA sticks it in the file
25 and they don't read it. So they said to community

1 boards if you approve something your letter should
2 say deny unless the applicant agrees to those
3 conditions.
4

5 COUNCIL MEMBER GREENFIELD: No I
6 certainly understand and obviously... [cross-talk]
7 you're meeting those conditions but you explicitly
8 said that there were subsequent meetings with, with
9 the community board where they did approve, was
10 that... [cross-talk]

11 DONALD BERNSTEIN: No there were three
12 meetings and...

13 COUNCIL MEMBER GREENFIELD: Yeah.

14 DONALD BERNSTEIN: ...the letter you have
15 was at the culmination of the final meeting. So the
16 final meeting was a vote to approve with those
17 conditions. And the form of the letter is a deny
18 unless...

19 COUNCIL MEMBER GREENFIELD: Got it.

20 DONALD BERNSTEIN: ...the conditions are
21 agreed to which of course we agree to because we
22 negotiated all of those with the Business Licenses
23 and Permits Committee.

24 COUNCIL MEMBER GREENFIELD: Okay. Thank
25 you.

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2 CHAIRPERSON WEPRIN: Thank you. Council
3 Member Gentile.

4 COUNCIL MEMBER GENTILE: Thank you,
5 thank you Mr. Chair. It, it, it appears that we
6 didn't find out about the ground floor apartments
7 being next to Barchetta until Councilman Johnson
8 mentioned it to us. I'm curious are there, are
9 there apartments above the restaurant also?

10 DONALD BERNSTEIN: I believe so. As, as..
11 [cross-talk] there are..

12 COUNCIL MEMBER GENTILE: Everyone's
13 shaking their head so I guess the answer is yes..
14 [cross-talk]

15 DONALD BERNSTEIN: As there are with
16 hundreds of sidewalk cafés in residential
17 buildings.

18 COUNCIL MEMBER GENTILE: And you, you,
19 you didn't mention this but I'll, I'll bring it up.
20 You're not planning any music outside the café?

21 DONALD BERNSTEIN: Absolutely not, no
22 music outside... [cross-talk]

23 COUNCIL MEMBER GENTILE: No music?

24 DONALD BERNSTEIN: None.
25

1
2 COUNCIL MEMBER GENTILE: Okay great. And
3 would you, would you agree that you are actually
4 outside the commercial overlay?

5 ANTHONY CURRO: I think I can answer
6 that question.

7 CHAIRPERSON WEPRIN: Please state your
8 name.

9 ANTHONY CURRO: My name is Anthony
10 Curro. I'm a registered architect... it's supposed to
11 be on. Okay. My name is Anthony Curro. I'm a
12 registered architect and I'm the, I was advising on
13 the zoning issues regarding this application. First
14 let me state that I don't know what was stated by
15 anybody else right. I wrote my opinion to our
16 client regarding the zoning. And I'd like it noted
17 on the record I take great exception to what
18 Councilman Johnson has said regarding lying. Giving
19 a legal opinion, if I give a legal opinion as a
20 professional that cannot be regarded at lying, I'd
21 not believe so. That's a serious characterization.
22 I take great exception. So it is my opinion that
23 this and the 77-11 of the zoning resolution, this
24 location actually falls in the C25 overlay. Right,
25 best on. And I think I'll quote the, I'll quote

1 what the resolution says. Whenever a zoning lot
2 existing on December 15th, 1961 on any applicable
3 subsequent amendment thereto is divided by a
4 boundary between districts in which... are permitted.
5 The use regulations applicable to the district in
6 which more than 50 percent of the lot area, of the
7 zoning lot is located may be applied to the entire
8 zoning lot provided that the greatest distance from
9 the mapped district boundary to any lot line of
10 such zoning lot in the district in which less than
11 50 percent of its area is located does not exceed
12 25 feet. In layman's language the way I understand
13 this is that this lot is 125 feet wide, okay. The
14 zoning boundary, the district boundary... 100 feet
15 eastwards. So the zoning split into two, one is 100
16 feet wide and the other one is 25 feet wide, okay.
17 What this reso, what this section of the resolution
18 allows you to do is that it allows to take the 25
19 feet and add it to the 125, to the 100 so that you
20 have a 125 which is the entire width of this lot.
21 So this lot therefore now falls under the C25
22 zoning district, right. Now I, I did not see any
23 exception that's, you know if there are apartments
24 on the ground floor, you, the apartments, I did not
25

1
2 see any exceptions. There are no exceptions to
3 these rule. That, it's just... [cross-talk]

4 COUNCIL MEMBER GENTILE: So, so based on
5 a technicality you're disputing the fact that was
6 brought up that you were, you're saying you're
7 inside the overlay, or that you can apply the
8 overlay to the entire lot?

9 ANTHONY CURRO: Yes. That is on... the
10 zoning resolution is written this way right. It
11 would be absurd if you had a space falling on this
12 spot, if you had a space falling on this spot of
13 the district boundary in, on the same lot... [cross-
14 talk]

15 COUNCIL MEMBER GENTILE: Okay.

16 ANTHONY CURRO: ...then you are saying no.
17 You can have a restaurant on this side but the
18 other one you cannot... [cross-talk]

19 COUNCIL MEMBER GENTILE: Okay.

20 ANTHONY CURRO: ...have a restaurant.

21 COUNCIL MEMBER GENTILE: Alright.

22 ANTHONY CURRO: So that's, so it's not a
23 technicality. This is a reso, this is a, this is a
24 section of the zoning resolution. It's not a
25 technicality at all.

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COUNCIL MEMBER GENTILE: Alright.

ANTHONY CURRO: Right.

COUNCIL MEMBER GENTILE: Thank you Mr.
Chair.

ANTHONY CURRO: Thank you.

COUNCIL MEMBER JOHNSON: Mr. Chair I
just want to say Mr. Curro..

CHAIRPERSON WEPRIN: Yes Mr. Johnson.

COUNCIL MEMBER JOHNSON: ...I apologize if
you thought that I was speaking towards what you
put together, I was not. I was talking about
something different. So I don't dispute your
analysis and the work you've done on this. I think
there's a difference of opinion but I, I did not
state that you were lying and I wouldn't do that. I
don't know you, I didn't know you prepared this and
that was not my opinion. So I'm sorry if it was
construed that way.

ANTHONY CURRO: Thank you Councilman. My
observation was just that you know an
interpretation of a law, cannot be interpreted as
you know, as being..

CHAIRPERSON WEPRIN: Okay.

ANTHONY CURRO: ...untruthful.

1
2 CHAIRPERSON WEPRIN: Apology accepted.
3 Council Member Garodnick.

4 COUNCIL MEMBER GARODNICK: Thank you Mr.
5 Chairman. Just very briefly on the proximity of the
6 residential windows to the proposed location maybe
7 you can show us that on your, on your map. I, I've
8 been by this location hundreds of times and I'm
9 having a little difficulty.. I live on 23rd Street
10 myself so.. just on the eastern half. So help us
11 just to understand so.. [cross-talk]

12 DONALD BERNSTEIN: So the restaurant is
13 here.

14 COUNCIL MEMBER GARODNICK: Yep.

15 DONALD BERNSTEIN: The door is, is right
16 here.

17 COUNCIL MEMBER GARODNICK: The door to
18 the restaurant is there.

19 DONALD BERNSTEIN: Yes is right there..
20 [cross-talk]

21 COUNCIL MEMBER GARODNICK: And right..
22 [cross-talk]

23 DONALD BERNSTEIN: ...always been... [cross-
24 talk] Sorry. The, the door is here it's... it's on,
25 it's on, red, yeah can you hear it now? The, the

1 door to the restaurant is, is right over here. It's
2 been a restaurant for many many years, various
3 incarnations. This is a window and, and this is the
4 end. The restaurant inside ends where this begins.
5

6 COUNCIL MEMBER GARODNICK: And so where
7 that first tree is is where your first residential
8 at least, I guess are we looking eastbound over
9 here, is that where we're...

10 DONALD BERNSTEIN: This is looking
11 towards 9th Avenue, that's correct.

12 COUNCIL MEMBER GARODNICK: Okay so that
13 first, that first tree represents where the first
14 apartment is at least closest to the, to the ground
15 floor?

16 DONALD BERNSTEIN: I assume so. I don't
17 know... [cross-talk] I don't know if that's a
18 bathroom or I, you know I don't know.

19 COUNCIL MEMBER GARODNICK: Right, but
20 that's a residential... how about even on the ground
21 floor? Is that actually an apartment there too?

22 DONALD BERNSTEIN: Uh this is a door
23 right here.

24 COUNCIL MEMBER GARODNICK: Are there,
25 are there apartments right at the first level?

1 Council Member Johnson's saying yes. So right above
2 the restaurant, right there where that air
3 conditions is.

4 DONALD BERNSTEIN: I assume that's a
5 residential tenant.

6 COUNCIL MEMBER GARODNICK: And that, it
7 is, it, this is, the restaurant is physically in...

8 DONALD BERNSTEIN: The building.

9 COUNCIL MEMBER GARODNICK: ...a
10 residential building?

11 DONALD BERNSTEIN: Correct. The
12 residential building that has commercial uses on
13 the ground floor.

14 COUNCIL MEMBER GARODNICK: I understand.

15 DONALD BERNSTEIN: Not the only store on
16 the ground floor.

17 COUNCIL MEMBER GARODNICK: Okay. Thank
18 you.

19 CHAIRPERSON WEPRIN: Thank you. Anyone
20 else have any questions? Mr. Bernstein we're going
21 to excuse you. We have members of the community who
22 are here. Would you be willing to leave those
23 photographs there... [cross-talk]

24 DONALD BERNSTEIN: Sure.
25

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2 CHAIRPERSON WEPRIN: ...we could use if we
3 need to use it as we ask...

4 DONALD BERNSTEIN: Of course.

5 CHAIRPERSON WEPRIN: ...the other people?

6 Okay, thank you. So we're going to excuse this
7 panel. We're going to call up. There are a number
8 of residents... Alright, alright well we're going to
9 take them up three and then two, how's that... I may
10 be able to just bring everybody up; three and
11 three, there are six people testifying? Great.

12 We're going to try to limit you to three minutes...
13 think we can do it in three minutes each. We're
14 going to set... three minutes... don't ask them... ask
15 them you know. They're regulars. Alright so I'd
16 like to call up Andy Humm [sp?], Ann Northrup
17 [sp?], and Deborah Bell. The other three will be up
18 in the text panel. I took the first three on top.
19 So you guys... Okay, Sargent of Arms when you're done
20 with the clock... He has testimony he wants to pass
21 out, Mr. Humm does. Give that to the panel whenever
22 you're ready, it looks like they brought their own
23 pictures anyway Mr. Bernstein... So you guys decide
24 who goes first. We'll try to limit you to three
25 minutes each please whenever you're ready. It

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2 should be lit up so it may be on already. Just try
3 to talk close to the mic.

4 ANDY HUMM: Alright.

5 CHAIRPERSON WEPRIN: And state your
6 name.

7 ANDY HUMM: I am Andy Humm, President of
8 the London Terrace Tenants Association, founded in
9 1953 and representing 1,000 rental apartments in
10 the London Terrace complex and that would be where
11 you see the planters, we're beyond that. This
12 building is the co-op building on the corner, it
13 used to be one building. Our board is unanimously
14 opposed to opening up our residential block to
15 sidewalk cafés especially since the pedestrian
16 volume on our block has increased literally 1,000
17 fold since the development of the highline. This
18 used to be the end of the earth, there was nobody
19 walking on this street. Now it's crowded. Taking
20 those pictures Mr. Bernstein you must have to wait
21 an awful long time to find it empty. We need more
22 pedestrian space, not less. We strongly urge the
23 council to consider how radically the neighborhood
24 has changed in just the last few years and reject
25 this application from Barchetta for a sidewalk café

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2 in a totally inappropriate location if you'd look
3 at the, if you at the, the diagram here, one of
4 these, of pictures it is right next, the two tables
5 are going to be up against the laundry vent from
6 the basement. A nice place to eat raw fish with hot
7 air, scented air pouring out of that vent
8 obstructing it as well. It is wrong for a business
9 to be entitled to public space as a matter of
10 right. It's incumbent on the city council to look
11 closely at the overall effect on the neighborhood.
12 We are opposed to the sidewalk café not just for
13 the location because of the precedent it would set
14 for the block. Because at the other end of the
15 block they can start doing the same thing and
16 setting up sidewalk cafés where there haven't been
17 for 80 years. And this by the way is what London
18 Terrace looked like 80 years ago. This is as god
19 intended it, nothing on the sidewalks. There's,
20 everything is inside. In the earlier stages of this
21 application it was denied under the zoning law. Mr.
22 Bernstein is not painting a full picture here. It
23 was also rejected by a committee of the community
24 board where some people changed their votes later,
25 I don't know why, we were very discouraged. You

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2 know I've been down here lobbying on gay rights,
3 tenant rights, AIDs, all this kind of stuff. This
4 has been one of the most frustrating processes I
5 have ever been involved in my life. Just...
6 commercial space. And the other thing is you're
7 pulling out this map from 1931 that shows this
8 whole corner as a commercial unit, not taking into
9 consideration that what you want in zoning is that
10 you you know... this thing is beyond, this café will
11 be beyond 125 feet from the property line. It
12 touches on that but they're, they're get, they're
13 getting it as a result of that because, because
14 this map that they found in the basement on some
15 parchment seriously that they had to dig out
16 because it was originally denied... [beeping] well
17 you know says that all of the units are one unit,
18 it's all one commercial unit as opposed to being
19 broken up the way it is.

20 CHAIRPERSON WEPRIN: No problem. She has
21 a photograph there if you want to just to, Andy...

22 ANDY HUMM: Yes.

23 CHAIRPERSON WEPRIN: I know you had a
24 comment on the site. Is that, photo work?

25

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2 ANDY HUMM: Yeah this is where the, this
3 is where the laundry vent is where the two tables
4 will go, not mentioned.

5 CHAIRPERSON WEPRIN: Mm-hmm.

6 ANDY HUMM: This is.. this, this footage
7 here yeah. I mean the tables might fit in there but
8 they've also got to have how many feet for your
9 service area?

10 UNKNOWN FEMALE: Three.

11 ANDY HUMM: Three, that's going to
12 extend it out. And we've, look at the, and you know
13 again we live there.

14 CHAIRPERSON WEPRIN: Right.

15 ANDY HUMM: This is what it looks like
16 on a typical day and this, and people do walk, as
17 soon as they can they do move beyond that space and
18 move into that space. We have elderly residents,
19 disabled residents..

20 CHAIRPERSON WEPRIN: Okay.

21 ANDY HUMM: ...who are already complaining
22 about the block and the, and the, and the traffic
23 and this is going to add to that.

24 CHAIRPERSON WEPRIN: Okay, thank you Mr.
25 Humm.

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ANDY HUMM: Thank you.

CHAIRPERSON WEPRIN: And yeah we can't direct questions to the audience unfortunately but, so... just work through us, we'll try to fill you in if you have a question. Alright next, whoever... [cross-talk] sorry, next. I apologize.

DEBORAH BELL: Hello members of the council. My name is Deborah Bell and I've been a shareholder in London Terrace since 1996. I live at the 465, in the 465 building which is exactly next door to the restaurant Barchetta. And in my experience it's a very very crowded area that I have no problem with the wonderful things that have happened in the neighborhood that have resulted in more crowds. However I see all of us use that space that would be occupied by the tables that Barchetta is proposing to have outdoors. We, we traverse that space all day long. And as Andy said it's used by some of our disabled residents. They need it for access and egress. So for me this is a very important issue. And also the crux of the matter I think is that it seems to me that while we're talking about statistics all over the place it's really unrealistic to think that those statistics

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2 can be, we can conform practice to statistics
3 because once we're talking about statistics without
4 bodies in, in there. What about the, the three
5 feet, four plus three equals seven. I mean the, the
6 numbers don't add up right away. Four feet wide for
7 the tables, three feet for the service area. We've
8 already got seven feet. What about when people come
9 and join their friends at the tables? What is
10 Barchetta going to do say oh, you can't sit there?
11 I mean it's inevitable that this is going to be a,
12 a, a stone gathering moss. And what about us
13 shareholders? I mean is it so much of a benefit to
14 the city to have this extra sales tax or whatever
15 the revenues may be that it will, it trumps our
16 quality of life. I just think that the numbers
17 we're talking about are, we're just talking about
18 them in the abstract. And once those tables, that,
19 that situation comes alive it's going to be an
20 entirely different situation. Thank you.

21 CHAIRPERSON WEPRIN: Thank you Ms. Bell.
22 Ms. Northrup.

23 ANN NORTHRUP: Good morning. I'm Ann
24 Northrup. I have been a shareholder in the 465
25 building at London Terrace since 1993. I find Mr.

1
2 Bernstein's testimony entirely disingenuous and,
3 and conforms to what Council Member Mendez was
4 talking about with bad actors. He is wrong about
5 the, the footage. To say that the tables fit within
6 five and a half feet while totally disregarding the
7 Department of Consumer Affairs rule about the need
8 for a three foot wait service area is dissentious
9 at best. This operation will interfere with traffic
10 on the sidewalk. You know why should we oppose two
11 small tables that will close early? Because it will
12 interfere with traffic on the sidewalk and change
13 the character of the block. They did violate
14 construction rules as they were putting this
15 together. They talk about unanimous approvals from
16 everyone. Every one of those approvals was
17 dependent upon pending zoning approval. But as Andy
18 says they had to go into the files for a 1931 map
19 that no one had otherwise looked at to assert that
20 these commercial spaces were in fact seen as one
21 space. This is outside the regular zoning space and
22 should not be given approval on the basis of that
23 tortured interpretation. Every, the residents of,
24 and chair holders of the 465 building voted
25 unanimously against this operation. And the,

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2 unfortunately our co-op board had already given its
3 approval pending zoning approval before they
4 bothered to survey the residents. But the residents
5 when given the chance to express their opinion
6 unanimously voted against it, and did sign a
7 petition against it. Mr. Bernstein talks about a
8 petition of London Terrace residents that he's
9 collected. He stood on, his people stood on the
10 sidewalk to collect petition signatures. There is
11 no evidence that those people were all London
12 Terrace residents. They were just grabbing people
13 on the street who undoubtedly knew very little
14 about this. This is... you know I don't know how much
15 of an overlap there is with the previous owners of
16 the Betty [sp?] restaurant there, it's my
17 understanding there is some, they almost blew up
18 the building by violating construction rules. They
19 decided to mess with the gas lines a few years ago
20 without proper city oversight. They blew out the
21 gas lines. They tried to do it twice. We were
22 without gas in the building for more than six
23 months because we had to replace every inch of gas
24 line in the building. They are bad actors and not
25 to be trusted.

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2 CHAIRPERSON WEPRIN: Okay. Thank you
3 very much. I'd like to call on Mr. Johnson first
4 had a comment and then I'll call on Council Member
5 Greenfield. Did you want to say something? Oh no
6 I'm sorry I misunderstood. Council Member
7 Greenfield.

8 COUNCIL MEMBER GREENFIELD: Thank you
9 very much. So first of all I want to thank you for
10 coming out. Certainly we appreciate civic
11 engagement and we have a lot of respect for what it
12 is that you're doing. And we certainly understand
13 the frustrations. I'm just trying to understand a
14 couple of specific points. The first is I think Mr.
15 Humm you mentioned that you're worried about a
16 precedent. It's my understanding that this actually
17 would not provide a precedent because as you've
18 discussed in your testimony this is in fact sort of
19 an exceptional case. So what is the precedent that,
20 that you are concerned about?

21 ANDY HUMM: There is commercial space on
22 both ends of the block...

23 COUNCIL MEMBER GREENFIELD: Yeah.

24 ANDY HUMM: ...where within we thought
25 within 100 feet you could do something. Now we got

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2 a bank on one end so they're probably going to set
3 up a sidewalk operation but it could turn into
4 another, the bank could turn into something else.
5 On the other end there are already eating
6 establishments that could now apply and under this
7 rule get sidewalk cafés on, on towards the 9th
8 Avenue end. So that's the precedent we're talking
9 about.

10 COUNCIL MEMBER GREENFIELD: I

11 understand.

12 ANDY HUMM: On a block that has just
13 changed so, so very very much.

14 DEBORAH BELL: If this is regarded as an
15 exception than surely these other establishments
16 can apply with the precedent of an exception.

17 COUNCIL MEMBER GREENFIELD: I don't

18 think it's... I mean just to be clear and, and, and I
19 want to be clear, I'm very sympathetic but I don't
20 think it's an exception. I think part of the
21 challenge that we have here on the committee is you
22 know every sidewalk café interferes with traffic,
23 it's just a fact right. I mean so essentially part
24 of the argument that you're making is we shouldn't
25 have sidewalk cafés anywhere. The problem is that

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2 the city through the zoning text amendment has in
3 fact made a determination that in some cases we
4 should have sidewalk cafés. So I just, I just want
5 to be fair about that. And I certainly understand
6 your frustration. I'm not so sure it's, it's an
7 exception and I, I guess I take exception to the
8 word exception because I don't want us to be
9 perceived as, somehow that we are trying to grant
10 an exception. It's really a question, a matter of
11 the zoning text amendment and how you read it and
12 whether in fact the law allows it or not. And
13 generally our, our view in the committee and
14 subcommittee is we follow the law right. I mean so
15 I just want to be fair about that just to
16 understand in terms of what it is the parameters
17 that we're, that we're looking at. Certainly I have
18 concerns when the council member tells me that
19 there have been some bad actors here in the past
20 even if it's not directly related to this
21 particular project. Certainly we have concerns when
22 you talk about the, the interference in terms of
23 traffic. But ultimately I just, and I have said
24 this many times in this committee and in the full
25 committee just, just so we're clear ultimately we

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2 are guided by the law. Now, if you're not happy
3 about the law there are mechanisms to changing the
4 law but that's not what we do in these hearings. We
5 do in fact consider changes to the law at other
6 hearings. I just want to be clear about that
7 particular issues, is that we're very focused on
8 what the law is and what the law isn't and to my
9 understanding it's not an exception it's a question
10 of an interpretation of a zoning text amendment.

11 DEBORAH BELL: I apologize. You had used
12 the word exception which is why I was reflecting on
13 that.

14 COUNCIL MEMBER GREENFIELD: No no no, no
15 apology necessary. I just want to, I just want to
16 be clear on, on the parameters... [cross-talk]

17 DEBORAH BELL: Yes but... [cross-talk]

18 COUNCIL MEMBER GREENFIELD: ...discussing.

19 DEBORAH BELL: ...I'm also, you know if it
20 were simply a matter of look I think this violates
21 the law by not taking into account the DCA
22 regulation on the three foot wait staff area, they
23 have, Barchetta has asserted that they will remain
24 within the five and half foot grate line, they will
25 not. And that in itself is a, a disingenuous

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2 assertion on their part and violates the DCA
3 regulation.

4 COUNCIL MEMBER GREENFIELD: I don't, I'm
5 not convinced... I hear what you're saying and...
6 [cross-talk]

7 DEBORAH BELL: Mm-hmm.

8 COUNCIL MEMBER GREENFIELD: ...it's
9 certainly something that we will take under
10 advisement. My only point that I'm making is not to
11 disagree with any of the facts or the feelings or
12 the concerns about the new... obviously you have a
13 lot more traffic, the upside is you've got a great
14 park and I certainly understand that. It's not to,
15 it's not to comment on those, and believe me you
16 cannot ask for a stronger or better advocate in the
17 city council than Corey Johnson, so that's not the
18 issue. It's simply as a matter of, I just, I just
19 like when we are in these hearings just so that
20 folks who are, whether they're watching at home or
21 folks like yourself who actually come out and
22 testify understand at the end of the day how we
23 make our decisions and ultimately they're based on
24 the law. So thank you for your testimony.

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2 ANDY HUMM: This is a, a clear violation
3 of the spirit of the law. If the maps had been
4 looked at once since... well actually they had been
5 looked at and this, this was rejected but they had,
6 as I said they had to dig out this old map. If that
7 map...

8 COUNCIL MEMBER GREENFIELD: I'm not sure
9 what you're referring to either. I mean also..
10 [cross-talk] when we speak to our, our council
11 we're not sure what you refer to when you speak,
12 when you speak of digging out old maps. I mean..
13 [cross-talk]

14 ANDY HUMM: If you... Yes, okay I will.

15 COUNCIL MEMBER GREENFIELD: What old
16 maps are you referring to?

17 ANDY HUMM: If you, this took forever by
18 the way. Originally it was rejected on the zoning.
19 If you punch this into your computer online you get
20 a total rejection of this, of this project. Do it,
21 you can do it right now, you will still get a
22 rejection because they haven't updated the
23 computer. But they had to find, and they told us
24 they couldn't show us the map, it was too fragile,
25 it was in a vault... seriously these are what... I mean

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2 I'll, I'll swear to this. I, I don't think Mr.
3 Bernstein could swear to everything he said because
4 he said things like the community board gave, gave
5 this overwhelming approval when in fact they
6 rejected it at first etcetera.

7 COUNCIL MEMBER GREENFIELD: And we...

8 ANDY HUMM: So...

9 COUNCIL MEMBER GREENFIELD: ...and we
10 questioned him on that.

11 ANDY HUMM: So, so what I'm saying is
12 that in the, the spirit of the law is 100 feet
13 maybe, maybe a 25 foot thing, this falls outside of
14 that. But it, only reason it's in it is because
15 the, this old zoning map they found treated all of
16 the commercial units together as one unit. So that
17 if it touched at... that's, well that's what we were
18 told. [cross-talk]

19 COUNCIL MEMBER GREENFIELD: ...honestly
20 just, just to be clear we review this our council,
21 I don't think that's correct. Because the, right
22 now you have a conforming use with the restaurant
23 that is currently, that is currently there right?
24 And so based on what you're saying.. you're, you're
25 essentially, and I don't want to get technical and

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2 legal with you, but I would refer you back to
3 whoever gave you that information. I think honestly
4 you've been misinformed about that particular fact
5 and, and the, and the, the allegations of the old
6 map because my understanding for speaking to our
7 lawyers and just taking a cursory look at this is
8 that it is currently a legal conforming use as a
9 restaurant so I, I honestly think that's, that's,
10 that's not correct. And once again the only reason
11 I bring it up, I want to be clear it's not to
12 debate this, believe me I'm not in the habit of
13 debating with, with constituents who genuinely are
14 coming out and trying to the right thing, and I
15 appreciate that, I simply want you to understand
16 what goes into our calculations so that when a
17 decision is made you don't go back and say oh my
18 gosh they ignored the old maps right. I mean that's
19 all I'm trying to do over here is to sort of be
20 objective about what actually is occurring. And I,
21 I honestly think you might want to go back to
22 whoever gave you that information, I don't... [cross-
23 talk]

24 ANDY HUMM: The Department of Consumer
25 Affairs.

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DEBORAH BELL: Yeah, just to be clear I...

COUNCIL MEMBER GREENFIELD: Alright

we're, we're not, we're not...

DEBORAH BELL: ...what we're saying. Just, just to clarify what we're saying.

COUNCIL MEMBER GREENFIELD: Yeah.

DEBORAH BELL: All these approvals of the co-op board or the community board or DCA were issued conditionally on finding out what the actual zoning was, every single one of them. And we kept saying well what is the zoning, what is the, what are the maps, what is, what are the regulations, what is the zoning. We were begging for this for months and we met with DCA and we went to all the community board hearings and we have been through this for months. And we kept being told we can't give you an answer on the zoning because Barchetta has not made a formal application to the Department of Community Planning to get an actual decision on the zoning. And in fact DCA sent their application to the community board too fast, before the zoning was interpreted and decided. So this went on and on and we did measurements on the street and we read the regulations. And what we found was that the,

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2 certainly the café tables and maybe the restaurant
3 itself did not fall within the 100 feet, maybe part
4 of it within the extra 25 feet. So we kept saying
5 this is what we're seeing, what are the zoning and,
6 regulations, and what finally was told to us after
7 all this had gone on was that they had gone into
8 the vaults at DCP and dragged out a 1931 map that
9 interpreted the separate commercial spaces on that
10 corner as one commercial space and that was how
11 they were going to get it into the 100 foot, maybe
12 125 foot regulation. It is our understanding and
13 you know you may have different information but
14 this is the understanding we are working on that in
15 fact if you viewed this as a separate commercial
16 establishment on the block because it is not the
17 gallery, it is not the barbershop, it is not the
18 bank, then it would fall outside the zoning. But
19 because they have pulled out this 1931 map that
20 puts all these commercial establishments together
21 that is how they've made themselves legal in the
22 zoning.

23 ANDY HUMM: Right. That's what we were
24 told.

25 CHAIRPERSON WEPRIN: Okay okay.

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ANDY HUMM: By our government.

CHAIRPERSON WEPRIN: I am going to move on because we have three other people to testify. We do appreciate your testimony... [cross-talk] very much. I, I'd like to call up the following three people; Juliana Fry, Allen Cohen in opposition, and then Benjamin Healthcott, Benjamin, you're not going to testify? Okay, thought better of that huh? Okay. So what, these two then... If you could, again we'll put a three minute clock on you. Before you start I'm going to ask, Council Member Johnson has something to add.

COUNCIL MEMBER JOHNSON: Yes I just want to say that I have to run to another meeting which doesn't mean I, I don't care what you say, I know where you guys stand on this. I want to reiterate to my colleagues who are walking out the door that I am opposed to this application. And, and I look forward to hopefully my colleagues supporting me on this, thank you.

CHAIRPERSON WEPRIN: Thank you Mr. Johnson. We, just for the record we're not going to be voting on this today. So just so you know, and

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2 members should know. Whenever you're ready. Please
3 just make sure to say your name when you start.

4 JULIANA FRY: I'm Juliana Fry. I live at
5 465 West 23rd Street. I'm a 16 year resident of
6 London Terrace Community. And I'm here in
7 opposition of the outdoor café. Most of my
8 testimony mirrors what my three other friends have
9 said along the way which is the, the, the outdoor
10 café for us we feel is going to interfere with our
11 use of the public sidewalk. And I know that
12 everything you're concerned about goes back to the
13 law but we are as residents and owners mostly
14 concerned with the, sorry, mostly concerned with
15 the population of the block. Okay, oh thank you,
16 thank you Deborah. So one of the, oh okay, one of
17 the main things that I read when I was going
18 through the paperwork is that the Department of
19 Consumer Affairs specifically forbids interference
20 with sidewalk traffic. And this is going to
21 definitely interfere with sidewalk traffic as has
22 been shown in our pictures here. And thank you, and
23 the other thing I want to point out is the
24 excessive garbage on the sidewalk. We have one more
25 shot there. This what our, this is in front of our

1 building and this is what this looks like on a
2 daily basis in front of our building... this is in
3 front of the restaurant which is also, I mean it's
4 adjacent to our lobby door so that's there. I do
5 also want to clarify that there are definitely
6 ground floor residents at the 455 building which is
7 the building next door to Barchetta. And there are
8 second floor up to 16 floor residents above the
9 Barchetta outdoor space. We also have pictures of
10 people smoking. We know that that's going to be
11 something that's going to affect the people living
12 in those apartments above that the people who step
13 outside to smoke and possibly try to smoke in the
14 outdoor café even though it is illegal, that smoke
15 will be going into those residents' homes. So
16 between the people we have that are disabled,
17 strollers, the smoking, no you can't it's illegal
18 but, but we have pictures of it anyway. I mean this
19 is people, this is their, this is their employees
20 and other people in the restaurant outside smoking
21 and I could take this picture every single day
22 because I live right there so I see it every day.
23 That, that's basically it. I mean I'm against the
24 taking of commercial space for private utilization.
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2 That's my biggest thing here. And I do want to say
3 the five businesses that are there today; the city
4 bank, the barber shop, the china store, and
5 Barchetta, that's four, plus our private lobby is
6 five things from the corner to Barchetta's door.
7 They do have one commercial underlying space. But
8 it should have been broken up into five individual
9 commercial spaces and it, back to 1931 it was
10 delivered as one and that is the, the, the
11 technicality I'll call it that they're getting away
12 with this conforming use. When if you actually
13 looked at any other business they should just have
14 each their own individual spaces.

15 CHAIRPERSON WEPRIN: Got it.

16 JULIANA FRY: Okay well I thank you...

17 [cross-talk]

18 CHAIRPERSON WEPRIN: Mr. Cohen.

19 JULIANA FRY: ...very much.

20 CHAIRPERSON WEPRIN: Thank you.

21 ALLEN COHEN: I'd like to start... I'm,
22 I'm Allen Cohen, humble citizen of the Chelsea
23 neighborhood at 415 West 23rd Street. I'd like to
24 start by saying that you know if there is no law
25 against having an outdoor retail space right next

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2 to a residential building then there should be a
3 law against it and I would like to sit in on that
4 committee meeting because the law should be
5 changed. The attorney mentioned that anything could
6 be done with this space if it doesn't adversely
7 affect the community and I believe this would
8 definitely adversely affect the 23rd Street area.
9 To think that only eight people are going to sit
10 there is crazy. It's going to be a point of
11 congregation; people drinking, smoking, talking
12 loudly. It's one thing to have to deal with noise
13 from traffic passing by, it's another thing to have
14 to deal with it just sitting right next to your
15 window. So in that sense it's going to be a new
16 sense to the whole neighborhood as well as safety
17 concerns for pedestrians who have to veer around
18 what we've already said is not going to be five
19 feet what is going to technically be seven feet
20 with other people standing by the tables could be
21 nine or 10 feet so how can you really regulate or
22 tell what's going to be. But it certainly won't be
23 five feet. You know the highline has brought tons
24 of traffic. There, the highline hotel has been
25 slapped with violation after violation, they've

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2 been a bad actor and it seems like what the
3 highline is bringing to the neighborhood is just a
4 level of chaos. And we have to decide as citizens
5 you know what kind of life we want in our
6 neighborhoods. When I went to a CB4 meeting a
7 member, his name was Bert, and Bert said you know
8 you might not have seen this coming in your
9 neighborhood, you may not even like this but you're
10 just going to have to live with it. And that's at a
11 meeting where opponents outnumber proponents 20 to
12 one. So the citizens that didn't want this showed
13 up in numbers and the citizens that wanted it were
14 nowhere to be seen. The owner of the establishment
15 was extremely contentious and the, even threatened
16 violence after the, and got in the face of members
17 of the LDTA. And these people are, they've acted in
18 bad faith and they probably will continue to do so.
19 Thank you..

20 CHAIRPERSON WEPRIN: Thank you humble
21 Mr. Cohen, thank you. Did you want to add one
22 thing... [cross-talk]

23 JULIANA FRY: Well I'll just want to say
24 that I was at that meeting and I did... [cross-talk]
25 witness that, that of which he's speaking. I, I saw

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2 that outside of the cameras in the room and in
3 front of the council members I saw what went on.
4 And it was, it was horrifying, it was frightening
5 and I, you know I started to think that that might
6 be what goes on for us in our building once they're
7 given this outdoor café.

8 CHAIRPERSON WEPRIN: Okay. Any
9 questions...

10 COUNCIL MEMBER GREENFIELD: Just want to
11 thank all of you for coming out. We appreciate your
12 testimony. We take it very seriously and we
13 certainly appreciate this feedback. Thank you very
14 much.

15 JULIANA FRY: Thank you, thank you..
16 [cross-talk]

17 CHAIRPERSON WEPRIN: We have some
18 discussions to do over the next couple of days. So
19 we will do that, talk to Council Member Johnson. So
20 I'm going to thank you. Thank you. We're just going
21 to close this hearing Mr. Bernstein I can't, I,
22 that's alright Mr. Bernstein you don't need to do
23 that right now because I got to open up the, the
24 thing again so... Honestly I don't think it's
25 necessary so... You, you're fine. I want to close

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2 your public hearing and we're going to recess the
3 Subcommittee on Zoning and Franchises until
4 Thursday, November 20, that's this Thursday at
5 10:30 a.m. which is before the Land Use meeting.
6 It'll be across the street at the City Hall
7 Committee Room where we will be voting on this item
8 and on the auto shown text amendment that we heard
9 earlier today. And again that's right before
10 Council Member Greenfield's Land Use Committee
11 meeting. And with that in mind this meeting is now
12 recessed, thank you.

13 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date November 20, 2014