

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

LAND USE SUBCOMMITTEE ON ZONING AND FRANCHISES

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April 30, 2009  
Start: 10:06 am  
Recess: 10:32 am

HELD AT: Council Chambers  
City Hall

B E F O R E:  
TONY AVELLA  
Chairperson

COUNCIL MEMBERS:  
Joel Rivera  
Simcha Felder  
Eric N. Gioia  
Melinda R. Katz  
Helen Sears  
Albert Vann

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

Jim Whelan  
Muss Development Company

Jim Gilday  
Moss Gilday

Michael Kelly  
Silver Moon Bakery

Alan Flacks

Antonius Rahmanackus

1  
2 CHAIRPERSON AVELLA: Good morning,  
3 everyone. I'd like to call this meeting of the  
4 Subcommittee on Zoning and Franchises to order.  
5 Joining me are committee members Simcha Felder,  
6 Helen Sears, Melinda Katz, and Joel Rivera.

7 We have a number of items on the  
8 agenda this morning. First one I'll call up is  
9 Oceana Brighton by the Sea and is the applicant  
10 here? Yes.

11 This application lies within  
12 Council Member Recchia's district--

13 MALE VOICE: Nelson.

14 CHAIRPERSON AVELLA: Nelson, that's  
15 what I thought. I thought it was Nelson, but it's  
16 Recchia on the sheet.

17 [Off mic]

18 CHAIRPERSON AVELLA: No, no,  
19 they're saying Nelson.

20 Well there seems to be a difference  
21 of opinion. Meanwhile, we understand that Council  
22 Member Recchia supports it and so does Council  
23 Member Nelson. So either way we're covered.

24 [Pause]

25 MR. JIM WHELAN: Good morning--

[Off mic]

MALE VOICE: It's on the base.

[Pause] That one, you got it, it's on the back here.

MR. WHELAN: Good morning, Council Members. Thank you. I'm Jim Whelan with Muss Development Company, I am joined by Jim Gilday of the firm Moss Gilday.

Thank you for the opportunity to present to you what would be the final building of the Oceana development in Brighton Beach.

In a few moments, Jim Gilday will provide more details regarding the building we are proposing to construct along Coney Island Avenue just south of Brighton Beach Avenue. I just wanted to spend a few moments reviewing some of the highlights of the proposal.

The new building would be located along the east side of Coney Island Avenue about 120 feet south of Brighton Beach Avenue. It's currently a vacant lot.

We contemplate a 12-story building which, as Jim Gilday will explain, would look very much like the other buildings at Oceana.

SERGEANT-AT-ARMS: Quiet, please.

MR. WHELAN: It would contain 62 units of housing--a mix of one, two and three-bedroom apartments. It would have several features that do not exist at the other buildings at Oceana.

First, below-grade parking for the public would be provided for about 45 cars. The entrance and exit to that garage would be along Coney Island Avenue.

Second, two floors of commercial space would be provided, or a little over 20,000 square feet.

Third, the first floor of the new building would contain a trash storage area to contain the garbage from all of the buildings within Oceana. Currently, such trash is stored along Coney Island Avenue.

We are seeking the City Council's support for two discretionary actions that would permit this building to be built.

First, the restrictive declaration that is in place with the City Planning Commission needs to be modified to permit an increase in the

1  
2 number of residential units that would be  
3 permitted; an increase in the total residential  
4 FAR for the site; and an increase in the number of  
5 12 story buildings permitted on site.

6 Second, a C2-4 commercial overlay  
7 district needs to be mapped for approximately 300  
8 feet along the east side of Coney Island Avenue.  
9 This would permit local retail, as well as the  
10 public parking garage.

11 We are pleased to report that this  
12 project has garnered considerable support during  
13 the land use review process from Brooklyn  
14 Community Board 13, the Brooklyn Borough  
15 President, and the City Planning Commission.

16 I would now like to turn it over to  
17 Jim Gilday who will provide more details regarding  
18 this proposed project. We'd be happy to answer  
19 your questions then. Thank you.

20 MR. JIM GILDAY: Good morning,  
21 thank you. My name is Jim Gilday from Moss Gilday  
22 Group.

23 Oceana is a 15-acre site that  
24 consists of 16 building--

25 MALE VOICE: Move the microphone--

[Off mic]

MR. GILDAY: Oceana is a 15-acre site that contains 16 building sites, 15 of which have been completed. Site P, which is in the northwest corner of the site is the final site, currently, as Jim had indicated, is vacant.

Originally was proposed as a parking facility for the residents only, because public parking is not allowed in the R-71 zone.

We're looking for the actions of, one, is doing the commercial overlay the C2-4 overlay, on the site P parcel, which will allow community facility and retail space on the first and second floor, and will also allow us to do the residential on the floors above.

The building proposed would be very similar to all the other 12-story buildings on Oceana, where the only difference is the first two floors are going to be community facility and retail and the upper 3 through 10 floors would be residential units.

Included in this proposal is on the far south side of the building we would have a refrigerated enclosed trash enclosure, that would

1  
2 take care of the trash problem that we have on  
3 Coney Island Avenue.

4           Secondly, we also have the access  
5 to the public parking to the garage below which  
6 consists of 45 spaces. Currently, the parking  
7 would come off of Coney Island Avenue, not within  
8 Oceana.

9           On site, we have the development  
10 restriction only allows up to 1,200 parking  
11 spaces. We currently have about 858, which only  
12 about 80% is being used, so we're not going to  
13 even come close to our caps at that point, and  
14 there's no public parking on that.

15           So in terms of the building, as I  
16 indicated, all the materials design, proportions  
17 or setbacks are all consistent with the entire  
18 Oceana development site and you can see on the  
19 north end of the Coney Island Avenue façade it's  
20 retail and residential, and then the far south  
21 would be the access to the garage and the trash  
22 enclosure.

23           Any questions?

24           CHAIRPERSON AVELLA: Any questions  
25 from my colleagues? Okay. Seeing none, thank

1  
2 you. And it is our understanding that it is  
3 Council Member Nelson's district.

4 MR. GILDAY: Right.

5 CHAIRPERSON AVELLA: I think the  
6 confusion is, I think you mentioned to me,  
7 Recchia's district is across the street.

8 MR. WHELAN: I believe that's the  
9 case--

10 CHAIRPERSON AVELLA: Okay.

11 MR. WHELAN: --but as you  
12 mentioned, we are pleased to have both their  
13 support.

14 CHAIRPERSON AVELLA: Right.

15 MR. GILDAY: Thanks.

16 MR. WHELAN: Thank you.

17 CHAIRPERSON AVELLA: Thank you.

18 I do not see anyone signed up to  
19 speak on this item, is that correct? Seeing no  
20 one, I will close the public hearing on this item.  
21 And we will move on to the Silver Moon Bakery  
22 application. Call up the applicant.

23 MR. MICHAEL KELLY: Good morning,  
24 Chairman Avella, members of the Council. My name  
25 is Michael Kelly, I'm representing Silver Moon

2 Bakery. We've come to an agreement with Council  
3 Member Mark-Viverito's office and I'd like to read  
4 that into the record.

5 Please accept this letter as  
6 confirmation that as per our agreement, we will  
7 change our sidewalk café seating to 15 tables and  
8 30 chairs. The tables and chairs will all be set  
9 up on Broadway, there will not be any seating on  
10 West 105th Street. We will also make sure there  
11 are no benches or A-frames in front of our  
12 restaurant and we will manage the garbage as to  
13 keep all walkways clear for pedestrians.

14 Thank you.

15 CHAIRPERSON AVELLA: I understand  
16 that, having received this letter now, which was  
17 addressed to Council Member Melissa Mark-Viverito,  
18 that she is now in support of the application.

19 MR. KELLY: Yes.

20 [Off mic]

21 CHAIRPERSON AVELLA: I also  
22 understand that we have a petition from you,  
23 based--

24 MR. KELLY: Yes.

25 CHAIRPERSON AVELLA: --upon

1  
2 residents who have signed in favor of the  
3 application.

4 MR. KELLY: Yes.

5 CHAIRPERSON AVELLA: So it's about  
6 10 pages. Any questions from my colleagues?

7 We do have one person signed up in  
8 opposition.

9 Okay. Seeing none, thank you.

10 MR. KELLY: Thank you.

11 CHAIRPERSON AVELLA: And I'll call  
12 up Alan Flacks.

13 MR. ALAN FLACKS: Alan Flacks, F-L-  
14 A-C-K-S, 313 West 100th Street, Manhattan.

15 First, Your Honor, I would like to  
16 say that I was unaware of this agreement, although  
17 I was told a week ago by the Councilwoman whose  
18 district this resides that they're working  
19 something out. It's interesting to know that no  
20 one tells me.

21 Let me say that I live in the  
22 neighborhood on a 100th Street, I have no feeling  
23 for or against the bakery. When it first got its  
24 outdoor café, Councilwoman at the time for the  
25 area, Gale Brewer, said oh, she's a nice lady, let

1  
2 her have the outdoor café--that's not what we look  
3 at.

4           Everyone likes it, in the 10 pages  
5 of petitions, well you, being politicians, know  
6 you can go out and within three hours get that,  
7 and I can go out and get equal number in  
8 opposition, that means nothing. Of course,  
9 everyone likes it, but they're on our sidewalk and  
10 our street and I don't mind, remember bakeries do  
11 not get outdoor cafés. An exception was made.  
12 And you don't get wraparounds in this Community  
13 Board 7 area, but an exception was made.

14           Let me say that it might take me  
15 more as a reputation witness as to the behavior of  
16 the applicant and those who are maybe advising  
17 her.

18           I would basically put it in one  
19 word, they are liars. They lied to City Council--  
20 we're talking about the two prior approvals for  
21 outdoor café. They lied to the Community Board  
22 Transportation Committee; they lied to the  
23 Community Board; they lied to the Department of  
24 Consumer Affairs; they say we'll be good, we'll do  
25 this and, once you give them what they want, they

1  
2 don't. The most egregious thing is that they have  
3 to leave so many feet through the sidewalk and  
4 they came in better weather months back to within  
5 4 1/2 feet of the curb cut for disabled or  
6 wheelchairs or dollies or whatever.

7 I would say that, as far as I see,  
8 they're liars and their reputation is everyone  
9 likes them, everyone likes to sit outside at a  
10 café--that's fine too, but I would deny them this  
11 and let them go one year without it.

12 Footnote, not on-point, Starbucks,  
13 they're the only such establishment in the City of  
14 New York that feels they can make money without  
15 having an outdoor café.

16 So that is what I say to you.  
17 Also, I don't represent the Community Board, but  
18 when I raised this issue about a hundred days ago  
19 at a full board meeting, I said, why am I carrying  
20 this, why aren't you here at City Council, and so  
21 the Chairwoman Helen Rosenthal said, oh, Alan,  
22 because you could do it so much better than we  
23 can. So let's let that be an implication there.

24 Andrew Albert, the Chair of the  
25 Transportation Committee, pointed out that the

1  
2 committee voted them down twice for whatever  
3 reasons, there were technical good reasons. I  
4 also should say that they submitted phony plans  
5 that didn't comport to what actually existed on  
6 the sidewalk--not tables and chairs, but actual  
7 dimensions--and now they have paint lines on the  
8 sidewalk, they painted it, it still is wrong.  
9 They do what they want. You give them an inch,  
10 they take two miles.

11 I say that they are liars. You  
12 want to give it to them again, fine, but just  
13 remember--Andrew Albert, by the way, said he was  
14 going to be here, but, as some of you might know,  
15 he's a real board member of the MTA Board and he's  
16 quite tied up, both with the board meeting the  
17 other day and a Transit Riders Committee today.

18 So this is what I have to say, but  
19 is there any questions someone might want to ask,  
20 based on observation?

21 CHAIRPERSON AVELLA: Because you  
22 mentioned a couple of previous applications, are  
23 you talking about this specific location?

24 MR. FLACKS: Yes.

25 CHAIRPERSON AVELLA: Okay.

1  
2 MR. FLACKS: They had an outdoor  
3 café and I believe it was renewed once. But as  
4 far as I could see--give them it now and you'll  
5 see, why don't you put a condition on it that if  
6 they get one violation in the next year they must  
7 close the bakery. Well you can't do that, but  
8 would they agree to something? Would they agree  
9 to pay triple the amount of fine? You can't do  
10 that, either.

11 I'm telling you that if this were a  
12 sentencing, you look at their prior bad acts.  
13 They have lied, Mr. Kelly says this, he says that,  
14 oh and we're so nice, and people like our baked  
15 goods.

16 [Crosstalk]

17 CHAIRPERSON AVELLA: Well, I have  
18 to tell you that we hear what you're saying and we  
19 have been very, as the Council, very insistent  
20 that any business that gets an unenclosed sidewalk  
21 café follow the rules. They're getting a public  
22 right. The problem has been, not the Council, the  
23 problem has been the Department of Consumer  
24 Affairs, which doesn't go out, doesn't do the  
25 proper inspections, and allows applicants--and I'm

1  
2 not saying whether this applicant has falsified  
3 the plans or not, I don't know at this point,  
4 other than what you're telling me--but even when  
5 they do, there is no punishment. And I have to  
6 tell you, I take this issue very seriously because  
7 I think it is an absolute disgrace that  
8 applicants--and, again, I'm not saying about this  
9 one specifically--

10 MR. FLACKS: Understood.

11 CHAIRPERSON AVELLA: --but I've  
12 come across applicants that I know have falsified  
13 applications and in at least one case I am asking  
14 the Department of State to revoke the architect's  
15 license because this should be a punishment.  
16 You're filing a city application, you're getting a  
17 right for using a city sidewalk, and if you  
18 falsified plans, you should be denied and the  
19 architect's license should be revoked--no ifs,  
20 ands, or buts, but, unfortunately, we need the  
21 cooperation of the city and the state beyond the  
22 City Council to do that.

23 But we have denied applications and  
24 staff will make unannounced visits to this  
25 location.

2 MR. FLACKS: Your Honor, if I may  
3 just add in response to that--

4 CHAIRPERSON AVELLA: You don't have  
5 to call me Your Honor--

6 [Off mic]

7 MR. FLACKS: Too much time in  
8 courtrooms.

9 [Off mic]

10 [Crosstalk]

11 CHAIRPERSON AVELLA: Yeah,  
12 actually, I said right; no, it's a privilege,  
13 that's what I meant to say, thank you.

14 MR. FLACKS: It is a privilege, but  
15 too much time spent in courtrooms.

16 The Department of Consumer Affairs,  
17 the number of violations, if any, against this  
18 establishment over the past 8, 10, 12, whatever,  
19 10 years or 8 years, is not indicative. The  
20 Department of Consumer Affairs doesn't do its job,  
21 and even Bloomberg didn't Mintz as its  
22 Commissioner, but the Brooklyn organization, I  
23 think, insisted on it. We don't have a Henry  
24 Stern, we don't have a Bess Myerson, we don't have  
25 a Mark Green as a Commissioner of Consumer

2 Affairs, and I believe that probably the city  
3 agency with the most overtime and the least amount  
4 of work performed for that.

5 Thank you.

6 CHAIRPERSON AVELLA: Thank you.  
7 Seeing no one else signed up to speak on this  
8 item, I'll close the public hearing.

9 And I would also just mention that  
10 staff advised me that we had reached out to  
11 Department of Consumer Affairs to find out if  
12 there was any violation history on this location  
13 and the information was not forthcoming, they have  
14 not shared with us any information.

15 We will now move on to the next  
16 item, which is the Plaza Lounge [phonetic].

17 [Off mic]

18 MR. ANTONIUS RAHMANACKUS: Good  
19 morning, Councilman. Dear Chairman Avella, thank  
20 you for permitting us to read this letter into the  
21 record. As always, I will be--

22 CHAIRPERSON AVELLA: Well first of  
23 all, you have to state your name.

24 MR. RAHMANACKUS: Okay. My name is  
25 Antonius Rahmanackus [phonetic]. Thank you for

1  
2 permitting us to read this letter into the record.  
3 As always, I will be there personally by an  
4 important family event on behalf of Mr. Bookman.  
5 It's an important family event prevents me from  
6 being in the city today.

7 I have spoken at length with my  
8 client who has operated this restaurant, a  
9 sidewalk café, for 10 years. Its original  
10 application and renewals have always been approved  
11 with no problems or issues. A concern of this  
12 renewal was over my client's use of a plastic flap  
13 during the cold weather. Once I was made aware of  
14 this I informed him it is not permitted and he  
15 immediately removed them, which was confirmed by  
16 the Council. We pled they will never be used  
17 again and that my client will be more sensitive to  
18 any community complaints in the future.

19 In addition, there were heaters,  
20 fans, and planters within the café space that have  
21 been removed. The café will be configured  
22 strictly in conformance to the approved plans.  
23 The licensee will stay on top of all of this.

24 To that end, a cell phone number of  
25 the manager hereby provided--(917) 945-6387.

2 I want to thank you, Councilman  
3 Vallone, for agreeing to this amicable resolution  
4 and hope this committee agrees as well.

5 CHAIRPERSON AVELLA: Now for the  
6 record, you are the owner?

7 MR. RAHMANACKUS: I'm the manager.

8 CHAIRPERSON AVELLA: You're the  
9 manager, okay. And the letter that you just read  
10 into the record is addressed to me as Chair of the  
11 Committee from Robert Bookman, who represents the  
12 owner--

13 MR. RAHMANACKUS: Yes.

14 CHAIRPERSON AVELLA: --in this  
15 application.

16 MR. RAHMANACKUS: Yes.

17 CHAIRPERSON AVELLA: And correct me  
18 if I'm wrong, but the application is for 14 tables  
19 and 22 chairs.

20 MALE VOICE 1: Thirty-seven.

21 MR. RAHMANACKUS: Thirty-seven.

22 [Off mic]

23 CHAIRPERSON AVELLA: Hold on one  
24 second, we're going to...

25 [Off mic]

MALE VOICE 1: Because the letter  
doesn't say--

[Off mic]

MALE VOICE 1: Fourteen and 37--

[Off mic]

CHAIRPERSON AVELLA: Okay. Staff  
has told me it is 14 tables and 37 chairs, okay?

MR. RAHMANACKUS: Absolutely.

CHAIRPERSON AVELLA: Council Member  
Vallone, once he received this letter, is in  
support of the application, however, he wants it  
made very clear, very clear that there have been  
problems with this location and that under no  
circumstances would any future problems be  
tolerated. So I think, you know, and as you heard  
me mention about the previous application, if we  
find that there is a continuing problem, we will  
either ask the Department of Consumer Affairs to  
revoke the permit or we will certainly not do a  
renewal. So I think this is a warning that we  
want you to follow all the rules and regulations  
and I think in the future if there's any problem  
you will probably not get an extension.

MR. RAHMANACKUS: We're very

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confident that we're going to cooperate.

CHAIRPERSON AVELLA: Okay. Okay.

Any questions from committee members?

[Off mic]

CHAIRPERSON AVELLA: Sure, Council Member Helen Sears.

COUNCIL MEMBER SEARS: So if they had an illegally unenclosed sidewalk, it is all now properly with these 14 tables? Okay, thank you.

CHAIRPERSON AVELLA: Yes.

COUNCIL MEMBER SEARS: Thank you.

CHAIRPERSON AVELLA: Any other questions from my colleagues? Seeing none, thank you.

MR. RAHMANACKUS: Thank you very much.

CHAIRPERSON AVELLA: I see no one signed up to speak in this public hearing on this item, that correct? Seeing none, I will close the public hearing on this item.

The last item on the agenda--how you pronounce it?

MALE VOICE 2: Palazzo.

2 CHAIRPERSON AVELLA: Palazzo. In  
3 Council Member Gerson's district is being laid  
4 over at his request. So we will move to the vote.

5 Now the Clinton Park application,  
6 which is in Speaker Quinn's district, we had the  
7 public hearing on it at the last meeting and the  
8 Speaker asked it to be laid over because there  
9 were still ongoing negotiations. We will be  
10 making a modification to that application and I  
11 will read into the record the modification.

12 In addition for parcels in C6-3X  
13 districts bounded by West 53rd Street, 10th  
14 Avenue, West 54th Street, and 11th Avenue, the  
15 following shall be permitted uses below the level  
16 of any floor occupied by the number of [off mic]  
17 units. Sounds complicated, but it really isn't.  
18 So that's the modification.

19 With that, based upon the  
20 recommendations of the Community Boards and the  
21 Council Members, Chair recommends approval of the  
22 other items, as well as this with the  
23 modification.

24 Chair asks Counsel to call the  
25 vote.

MR. CHRISTIAN HYLTON: Christian Hylton, Counsel to the Committee.

Chair Avella?

CHAIRPERSON AVELLA: Aye.

MR. HYLTON: Councilman Rivera.

COUNCIL MEMBER RIVERA: I vote aye.

MR. HYLTON: Council Member Felder.

COUNCIL MEMBER FELDER: Yes.

MR. HYLTON: Council Member Gioia.

COUNCIL MEMBER GIOIA: Yes.

MR. HYLTON: Council Member Katz.

COUNCIL MEMBER KATZ: Yes.

MR. HYLTON: Council Member Sears.

COUNCIL MEMBER SEARS: Yes.

MR. HYLTON: Council Member Vann.

COUNCIL MEMBER VANN: Aye.

MR. HYLTON: By a vote of seven in the affirmative, none in the negative, no abstentions, LU 1064, 1065, 1041, and 1053 are approved and referred to the full Land Use Committee.

LU 1047, 1048, 1049, and 1050 are approved with modification and referred to City Planning.

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SUBCOMMITTEE ON ZONING AND FRANCHISES 25

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CHAIRPERSON AVELLA: Thank you

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everyone, this closes this meeting of the

4

Subcommittee on Zoning and Franchises.

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[Off mic]

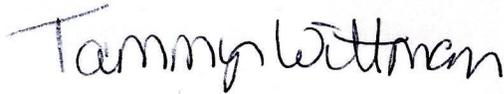
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C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

A handwritten signature in black ink that reads "Tammy Wittman". The signature is written in a cursive style with a large initial 'T'.

Signature\_\_\_\_\_

Date May 22, 2009\_\_\_\_\_