

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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August 21, 2012  
Start: 10:26 a.m.  
Recess: 10:41 a.m.

HELD AT: Council Chambers  
City Hall

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

COUNCIL MEMBERS:  
Leroy G. Comrie, Jr.  
Daniel R. Garodnick  
Robert Jackson  
Jessica S. Lappin  
Diana Reyna  
Joel Rivera  
Larry B. Seabrook  
James Vacca  
Albert Vann  
Vincent M. Ignizio

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2 CHAIRPERSON WEPRIN: If I could  
3 have quite please, I'd like to welcome everybody  
4 here this morning. My name is Mark Weprin. I am  
5 the chair of the Zoning and Franchises  
6 Subcommittee of the Land Use Committee. I am  
7 joined in the room by many members of the Land use  
8 Committee, but I want to acknowledge the members  
9 of the Subcommittee for quorum purposes. We are  
10 joined by Council Member Jackson, Council Member  
11 Vann, Council Member Comrie, Council Member Reyna,  
12 Council Member Garodnick, Council Member Vacca,  
13 Council Member Ignizio, Council Member Rivera—did  
14 I say you? Did I say it? Okay. I just did.  
15 Alright. So we have a quorum, and we are  
16 continuing the recessed meeting from yesterday  
17 where we had approved four cafes that were not  
18 controversial. We have one café where members of  
19 the Committee had expressed in trying to find  
20 common ground and an agreement. The staff and  
21 members of Council Member Lander's staff as well  
22 as the owner of this restaurant have been talking  
23 all night, and we've had a lot of discussions and  
24 research done. What I'd like to do is call up  
25 Michael Freedman Schnapp who works for Council

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2 Member Lander, who is unable to be here himself  
3 today, to discuss some of those discussions, to  
4 read a statement and comments into the record.

5 Whenever you are ready, just state your name.

6           MICHAEL FREEDMAN SCHNAPP: Thank  
7 you, Chair Weprin and Chair Comrie and members of  
8 the Subcommittee. My name is Michael Freedman  
9 Schnapp. I'm the director of policy for Council  
10 Member Brad Lander. I'm also joined by our  
11 district director, Catherine Zenell [phonetic] who  
12 has been working extremely diligently on this.  
13 Thank you for considering the application from  
14 Huitres NYC Incorporate doing business as  
15 Buschenschauk for revocable consent to establish,  
16 maintain and operate an unenclosed sidewalk café  
17 at 320 Court Street in Brooklyn. I apologize in  
18 advance for the lengthy statement, but it is  
19 necessary to get this on the record.

20           Following yesterday's hearing on  
21 this application with encouragement from the  
22 chairs of the Subcommittee and the Committee on  
23 Land Use, our office attempted to reach agreement  
24 with the establishment's owners on a reasonable  
25 set of modifications to the application. Our

1 office proposed two rounds of reasonable  
2 modifications that might help mitigate or diminish  
3 the impact of the operation of the sidewalk café.  
4 Both were rejected by the applicant. The business  
5 in question opened in November 2011 and since  
6 early spring of this year has been the subject of  
7 numerous complaints from a number of community  
8 residents because of the noise the establishment  
9 and its patrons generate into the late evening.  
10 Contrary to testimony by the applicant yesterday,  
11 76 precincts community affairs unit confirmed to  
12 our office that more than two dozen complaints  
13 logged with 311 were made by at least five  
14 different neighbors, not counting the anonymous  
15 ones. In addition, 76 precincts conditions unit  
16 gave the establishment multiple warnings before  
17 the lieutenant for special operations authorized  
18 the issuance of a summons for unnecessary noise in  
19 June of this year. Gary Riley [phonetic] of  
20 Brooklyn Community Board 6, who testified  
21 yesterday, also confirmed that the noise  
22 complaints were the basis of Community Board 6  
23 unanimous vote to disapprove the sidewalk café  
24 application. It is extremely rare for this  
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2 Community Board to disapprove an application. In  
3 the last two years, there have been 25 new or  
4 renewal sidewalk café licenses approved by CB 6  
5 and the vast majority of these were approved  
6 without conditions. Subsequent to yesterday's  
7 hearing the Community Board also provided  
8 documents that clarified that the first sidewalk  
9 café application filed for this location was  
10 approved in 2007. We have provided this  
11 documentation to Committee staff; however, as the  
12 establishment did not open until November of 2011  
13 and the permitted sidewalk café was never opened,  
14 it had no track record of operation at the time  
15 the application was previously approved. We are  
16 also providing additional documents for the record  
17 that documents our office's knowledge about noise  
18 complaints. These complaints do not as the  
19 applicant complained yesterday originate from two  
20 disgruntled individuals. They are from a number  
21 of reasonable neighborhood residents and civic  
22 leaders, who objectively believe that the  
23 applicant is operating a business with disregard  
24 for the residential area which abuts the  
25 establishment. In fact, as I was working on this

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2 issue yesterday, I got an unsolicited call from a  
3 staffer for State Senator Daniel Squadron, who was  
4 conveying a constituent's complaint about the  
5 noise from the business. I have never heard of  
6 this constituent before. It is fairly clear that  
7 the operation of this business is causing its  
8 neighbors more than a little grief. Her  
9 communication is attached to this testimony.  
10 Should this application be granted without  
11 conditions that modify business operations in a  
12 way to significantly reduce noise in the evening  
13 hours, it is clear that the operation of the  
14 sidewalk café would only compound issues that  
15 exist there. With the encouragement of Chairs  
16 Weprin and Comrie, we engaged in another round of  
17 negotiations yesterday with the supplicant. To  
18 that end, following the hearing our office  
19 proposed to the applicant that they make the  
20 following reasonable operating accommodations,  
21 which I will summarize and leave out the less  
22 important ones: close all the establishment  
23 windows at 7. If the windows are open prior to 7,  
24 the music volume will be at a level of volume that  
25 cannot be heard five feet from the exterior of the

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2 bar. The operating hours of the sidewalk café  
3 would be as follows: Sunday through Thursday  
4 closed by 10, Friday through Saturday closed by  
5 11. Reduce the sidewalk café seating to 50% of  
6 the indoor seating. This is a standard rule the  
7 Community Board has asked other sidewalk café  
8 operators for to balance the amount of street  
9 activity. These points were structured on an  
10 agreement we reached last month with a business  
11 that is also operating on Court Street about ten  
12 blocks away. In that case, the owner agreed to  
13 close their windows at 7 and reduce the volume of  
14 the interior stereo system to a level that was  
15 acceptable. In the case before us, the applicant  
16 and our office reached agreement on some minor  
17 points that essentially restate the sidewalk café  
18 license terms; however, the applicant refused to  
19 substantially engage in the main issues that we  
20 believe the sidewalk café would compound—that of  
21 noise from the open windows, the volume of music  
22 and other noise from the interior of the  
23 establishment, and the operating hours of the  
24 sidewalk café. In a second and most recent  
25 proposal for an amendment to the sidewalk café

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2 permit, we proposed that the establishment close  
3 its windows at 8:30 pm and modify the hours of the  
4 sidewalk café such as that it is completely closed  
5 by 11 on weeknights and midnight on weekends. The  
6 latter is a standard set of hours that Community  
7 Board 6 sets for all applicants; however, the  
8 owner again refused to agree to these operating  
9 accommodations or engage in a practical discussion  
10 of what modifications to evening business  
11 operations might reduce noise impacts. The owner  
12 said he was amenable to closing the windows at  
13 midnight; however, the manager of the  
14 establishment previously said to us in writing  
15 that they close the windows at 11 pm. He engaged  
16 a general willingness to engage in minor  
17 soundproofing that may or may not work, such as  
18 putting out tablecloths, but not the kind of  
19 soundproofing that would be guaranteed to work,  
20 such as closing the windows at a reasonable hour.  
21 These negotiations were conducted via e-mail and  
22 via phone. I have documented the negotiations  
23 with a print of an e-mail chain attached to this  
24 statement that has just been provided to you all.  
25 During these negotiations, the applicant indicated



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2 to me that he secretly recorded all of his  
3 conversations with our office, which should he  
4 pursue further legal action, I'm confident will  
5 show a record of fair legal dealing with our  
6 applicant by our office. In our experience, it is  
7 extremely unusual for the discussions around an  
8 operating agreement to become contentious to the  
9 point of having to vote down an application.

10 Although the accommodations proposed go beyond  
11 what local law may ordinarily require should the  
12 owner not be - - a sidewalk café permit is more  
13 than reasonable to seek ways to modify business  
14 operations in order to mitigate the impact the  
15 sidewalk café may have on the community. At the  
16 time of this writing, we are unsure if the  
17 applicant has submitted revised drawings or  
18 compliance with city sidewalk café rules.

19 Submissions of drawings or compliance would in all  
20 likelihood reduce the number of seats permitted,  
21 but would not address the underlying issues of  
22 finding reasonable business operation  
23 accommodation to substantially reduce noise  
24 impacts. Therefore, Council Member Lander  
25 continues to feel strongly that this permit is not

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2 in compliance with the sidewalk cafe guidelines  
3 and that the applicant would not use it  
4 responsibly. For these reasons, Council Member  
5 Lander respectfully urges you to disapprove the  
6 sidewalk café permit. Mr. McGowan [phonetic] is  
7 perfectly welcome to continue to operate his  
8 business without this revocable consent as he  
9 pleases within the letter of law; however, given  
10 our extensive discussions with the applicant over  
11 the past month, we do not believe that approving  
12 this application would be in the best interest for  
13 the community. Thank you to the Chair and the  
14 members of the Subcommittee for their indulgence  
15 for this long statement and to the members of the  
16 Land Use staff who helped us come to this  
17 conclusion.

18 CHAIRPERSON WEPRIN: Okay. Thank  
19 you very much. Thank you very much. What I'd  
20 like to do is ask the committee—could I just have  
21 quiet in the Committee Room, I have some comments  
22 I want to read. They're somewhat lengthy so  
23 please bear with me. Okay?

24 Yesterday we had a hearing on this  
25 matter and all interested parties have been given

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2 the opportunity to be heard before the  
3 Subcommittee, including the applicant, Community  
4 Board 6, which unanimously denied the application,  
5 City Council Land Use staff, which performed an  
6 onsite inspection of the - - café, as well as  
7 Council Member Lander's office in whose district  
8 the proposed café would be located. The café is  
9 located in an R6A zoning district, which is  
10 residential, mid density zoning district. This  
11 location also has a C24 overlay, which allows up  
12 to two floors of commercial uses characterized by  
13 local retail services, which would be compatible  
14 with the predominantly resident nature of these  
15 communities. This building is a three story  
16 building with four apartments and the restaurant  
17 is on the ground floor and sits on the northwest  
18 corner of Sackett and Court Street. It is  
19 immediately adjacent to one and two family homes  
20 on the Sackett Street and to similar three story  
21 buildings on Court Street, having retail uses on  
22 the ground floor and residential uses on the  
23 second and third floors. The zoning resolution  
24 has a goal in these types of districts to protect  
25 nearby residents and residences by regulating the

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2 intensity of local retail development. That is  
3 precisely what the Community Board and Council  
4 Member have tried to do here—add additional  
5 safeguards to ensure that the uses can be  
6 compatible and will be compatible. New York City  
7 zoning resolution 14-20 requires unenclosed  
8 sidewalk cafes to comply with the physical and  
9 locational requirements under rules established by  
10 the New York City Department of Consumer Affairs.  
11 These rules require a certain minimum distances of  
12 unobstructed sidewalk areas immediately adjacent  
13 to the proposed unenclosed café for pedestrian  
14 use. Further within the sidewalk café area, a  
15 service aisle of at least three feet must be  
16 maintained. The Land Use division staff conducted  
17 an onsite inspection of the proposed café and has  
18 reported to the Subcommittee that the width of the  
19 sidewalk in front of this establishment is not  
20 accurately shown on the plans that the applicant  
21 architect submitted to Consumer Affairs as part of  
22 its application. The Subcommittee was further  
23 advised that if the plans did show the actual  
24 width of the sidewalk, the sidewalk cafe as  
25 proposed with the indicated number of tables and

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2 chairs would result in non-compliance with the  
3 minimum distances established by Consumer Affairs  
4 rules as required by the zoning resolution. The  
5 applicant testified that he had previously applied  
6 for and received an unenclosed sidewalk café  
7 permit at this location for the same operation,  
8 but neither the sidewalk café nor the bar  
9 restaurant was ever built or opened due to the  
10 financial crisis. The Land Use staff has located  
11 this prior application. It was in fact in 2007  
12 and at the time, the applicant's drawing showed  
13 the sidewalk width in front of the establishment  
14 at 18.6 feet. In the application before us today,  
15 the sidewalk width is shown on the plans as 20  
16 feet. The applicant chose not to use the same  
17 architect who prepared the plans in 2007 for the  
18 application before us now. Land Use staff has  
19 confirmed to the Subcommittee that the accurate  
20 width of the sidewalk based on its onsite  
21 inspection is 18.6 feet as was indicated in the  
22 2007 application, not the 20 feet indicated in the  
23 plan before us now. Further, using the correct  
24 width of the sidewalk would render the proposed  
25 café non-compliant with the required minimum

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2 distances required under the zoning regulations.  
3 There are quality of life issues in addition to  
4 the non-compliance issues under zoning, the  
5 Subcommittee is additionally concerned with the  
6 quality of life issues raised by the local  
7 community with the respect to this establishment.  
8 It has in just a few short months after it has  
9 been open amassed a very poor track record and has  
10 proved itself not to be a good cooperative  
11 neighbor. There has been significant number of  
12 noise complaints lodged against this establishment  
13 with 311 for excessive noise. Noise complaints  
14 have also been made to the Community Board, the  
15 Council Member's office and as we heard, the  
16 Senator's office. The Chair of the Community  
17 Board 6 Licensing and Permitting Committee  
18 testified that in his tenure at the board,  
19 Community Board 6 has never turned down a café  
20 license; rather they have always been able to come  
21 to a workable compromise with the applicants.  
22 That was not the case here. I understand that  
23 Council Member Lander's office has made  
24 substantial good faith efforts to come to a  
25 reasonable agreement the details of which we heard

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2 before with the applicant to address not only the  
3 zoning non-compliance, but the community concerns  
4 about the significant number of noise complaints  
5 and other good neighbor issues that have been made  
6 in the very short few months this business has  
7 been operational as a restaurant bar and without a  
8 sidewalk café. These efforts by Council Member  
9 Lander's office have not been successful. I echo  
10 Council Member Lander's statement that there is a  
11 need to strike an appropriate balance for the need  
12 of locally owned businesses like restaurants and  
13 bars and the needs and concerns for their  
14 neighbors. I would like to thank Council Member  
15 Lander's staff as well as the staff of the Land  
16 Use division for their efforts, which have  
17 provided this Subcommittee with a full and  
18 complete record for this application and based on  
19 the totality of the establishment's record, I  
20 recommend that we disapprove this application.  
21 Based on the record that we heard in the  
22 Subcommittee and careful consideration, we make  
23 this recommendation. I do not make this  
24 recommendation lightly. Based on the record  
25 before us, it is clear to me as to other members

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2 of the Committee that not only is this proposed  
3 café contrary to the zoning requirements as  
4 established by the Department of Consumer Affairs  
5 rules pursuant to the zoning resolution, but there  
6 are serious concerns, which have been raised  
7 regarding the very important quality of life  
8 issues identified by local residents, the  
9 community board and Council Member Lander's  
10 office. I therefore recommend an aye vote on the  
11 disapproval of this café application. With that  
12 in mind, I'd like to call on Christian Hilton to  
13 please call the roll of the Subcommittee. Again,  
14 I recommend an aye vote, which is the disapproval  
15 of the petition. Mr. Hilton?

16 COUNSEL: Chair Weprin?

17 CHAIRPERSON WEPRIN: Aye.

18 COUNSEL: Council Member Rivera?

19 COUNCIL MEMBER RIVERA: I vote aye.

20 COUNSEL: Council Member Reyna?

21 COUNCIL MEMBER REYNA: I vote aye.

22 COUNSEL: Council Member Comrie?

23 COUNCIL MEMBER COMRIE: I want to  
24 state for the record that I'm disappointed that  
25 the negotiations could not work out in a positive



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2 way. I was hoping that they could come to some  
3 kind of agreement at the end of the day on this,  
4 so that the business could have every opportunity  
5 to prove itself, but since there's a clear  
6 statement of intent not to cooperate and the  
7 request of the Community Board that matched the  
8 other establishments in the area, I'm forced to  
9 vote aye.

10 COUNSEL: Council Member Jackson?

11 COUNCIL MEMBER JACKSON: Aye.

12 COUNSEL: Council Member Vann?

13 COUNCIL MEMBER VANN: Aye.

14 COUNSEL: Council Member Garodnick?

15 COUNCIL MEMBER GARODNICK: Aye.

16 COUNSEL: Council Member Vacca?

17 COUNCIL MEMBER VACCA: Aye.

18 COUNSEL: Council Member Ignizio?

19 COUNCIL MEMBER IGNIZIO: Yes.

20 COUNSEL: And on previous items?

21 COUNCIL MEMBER IGNIZIO: Yes.

22 COUNSEL: By a vote of nine in the  
23 affirmative, none in the negative, no abstentions,  
24 L.U. 655 a motion to disapprove is approved and  
25 referred to the full Land Use Committee.

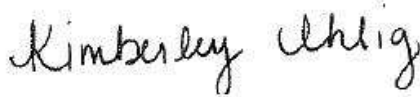
1  
2 CHAIRPERSON WEPRIN: Thank you very  
3 much, Mr. Hilton. I want to thank the members of  
4 the Committee and the Land Use Committee for being  
5 cooperative during my lengthy statement. With  
6 that in mind, the meeting is now adjourned.

7 [gavel]

C E R T I F I C A T E

I, Kimberley Uhlig 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.

Signature \_\_\_\_\_



Date \_\_\_\_\_September 2, 2012\_\_\_\_\_