

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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February 28, 2011

Start: 9:55 am

Recess: 10:25 am

HELD AT: Committee Room  
250 Broadway, 16th Floor

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

COUNCIL MEMBERS:  
Mark S. Weprin  
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

## A P P E A R A N C E S

Andrew Tarlow  
Owner  
Diner

Asuman T. Whiteman  
Co-owner  
Barberry

Ayse A. Gonzalez  
Co-owner  
Barberry

Jose Severino  
Il Sole

Miguel Acosta  
Accountant  
Il Sole

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CHAIRPERSON WEPRIN: Good morning.  
My name is Mark Weprin. I am the Chair of the  
Land Use Subcommittee on Zoning and Franchises.  
I'd like to welcome everyone here today. I'm  
joined by my colleagues: Robert Jackson, Joel  
Rivera, Larry Seabrook, Dan Garodnick and Diana  
Reyna. I think that's it for now. Jessica Lappin  
that just walked in, and on my right is Christian  
Hylton, the Counsel to the committee.

We have three sidewalk café  
applications before us today. We are going to  
start with number 317 which is in Brooklyn. It's  
Community Board 1. Diner is the place. Here is  
Andrew Tarlow, I believe?

ANDREW TARLOW: Yes.

CHAIRPERSON WEPRIN: Andrew, come  
on up and have a seat at that desk. I don't know  
if you have something to give us. Give it to the  
sergeant-at-arms if you want. Have a seat. Speak  
into the microphone, state your name and describe  
your application.

ANDREW TARLOW: Hi, my name is  
Andrew Tarlow. I am the owner of Marlow, Inc  
Diner at 85 Broadway. We've been operating a

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2 sidewalk café there for 12 years. We were the  
3 first application in Community Board 1 to ever  
4 come before the Community Board for a sidewalk  
5 café.

6 This is the first time I've heard  
7 of any complaints or any issues with our sidewalk.  
8 I believe that on that stretch of Broadway we kind  
9 of offer a beacon for a very kind of dark corner,  
10 what originally was a dark corner and it's a place  
11 that the community comes together. Certainly  
12 everybody partakes in the restaurant. It's pretty  
13 well known and successful.

14 I want to participate in the  
15 community in any way I can. If there are any  
16 issues, I'm happy to oblige and take care of them.  
17 I do not want it to be seen as anything but a  
18 betterment for that neighborhood.

19 CHAIRPERSON WEPRIN: Thank you, Mr.  
20 Tarlow. Council Member Reyna represents this  
21 establishment and she'd like to make a statement.

22 COUNCIL MEMBER REYNA: Thank you,  
23 Council Member and Chair Weprin. Bear with my  
24 voice here. I just wanted to thank Mr. Tarlow for  
25 coming in. I wanted to just take a moment to deal

1  
2 with our Council staff Peter Janosik has done his  
3 due diligence on our behalf to go to the  
4 restaurant and has raised the issue of concern,  
5 making us aware in this committee, and as Council  
6 Member representing your establishment that the  
7 two tables on the Berry Street side do not give  
8 enough clearance.

9           What most disturbs me is that the  
10 Department of Cultural Affairs--Consumer Affairs,  
11 I apologize. The Department of Consumer Affairs  
12 had approved this particular application as is  
13 prior to raising these matters. I've seen  
14 multiple occasions where the DCA has approved such  
15 applications without doing their due diligence in  
16 following their own rules and regulations.

17           This leaves you susceptible as a  
18 small business to receive a fine. So in order to  
19 avoid such complications, I would like to ask for  
20 those two tables on Berry Street to be removed so  
21 that we can move forward in approving this  
22 application. And a follow-up discussion with DCA  
23 on my behalf, and next door to me is my Chair of  
24 Consumer Affairs, to deal with this matter.

25           There seems to be this culture in

1  
2 the City of New York where the architects are  
3 expressing to business owners that one percent of  
4 applications are being called up. In my district,  
5 I'm trying to make sure that we are not leaving  
6 our small businesses susceptible to further fines.  
7 The City of New York is not out to get you. It's  
8 very easy to self-create hardship here when we  
9 have everyone in an effort to just let things go  
10 when it's convenient and then fine you when it's  
11 in need of addressing other matters.

12 So in agreement with and accepting  
13 your letter as addressed here for 85 Broadway, you  
14 have addressed a number of concerns, quality of  
15 life issues, which I most appreciate and welcome  
16 your good neighbor practices. I commend you and I  
17 enjoy personally your business being in our  
18 neighborhood.

19 So thank you very much for  
20 appearing before us. I approve and encourage with  
21 the conditions of those two particular tables on  
22 Berry to be removed. Just for clarity, the two  
23 tables that we are referencing on Berry, are they  
24 one foot in size?

25 ANDREW TARLOW: I don't know. I

1  
2 mean the one thing is, is that we've had DCA  
3 employees come with measuring tape and check it in  
4 the past and I've never even gotten a ticket for  
5 it with it set up. I'm happy to remove those  
6 tables if that's what you'd like me to do. But we  
7 have been in café operation in the summertime.  
8 They've come with measuring tapes and checked it  
9 with plans and we never got a ticket.

10 COUNCIL MEMBER REYNA: So I want to  
11 have a discussion.

12 ANDREW TARLOW: Sure.

13 COUNCIL MEMBER REYNA: Obviously,  
14 this sidewalk café plan will stay as is. With the  
15 removal of the two tables, you don't have to spend  
16 any further money redrawing plans. I want to have  
17 a discussion with the DCA to deal with this  
18 matter.

19 ANDREW TARLOW: Great.

20 COUNCIL MEMBER REYNA: As a whole  
21 in my district, because you're not the only one  
22 who has said that.

23 ANDREW TARLOW: The only other  
24 thing is that we have started to pay for the café  
25 permit this year. We've already written our first

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2 check. As you know, we pay per table per chair.  
3 So that dollar amount comes out. I don't know  
4 exactly how that equates, and I'm happy to remove  
5 four chairs and two tables. But there should be,  
6 obviously, money come back to us for that.

7 COUNCIL MEMBER REYNA: Right. It's  
8 my understanding that you would be refunded for  
9 that.

10 ANDREW TARLOW: But then I think  
11 they would want me to redraw the plans.

12 COUNCIL MEMBER REYNA: They would  
13 want you to redraw the plans?

14 ANDREW TARLOW: Absolutely.

15 [Pause]

16 COUNCIL MEMBER REYNA: This  
17 application cannot be further delayed. I'm trying  
18 to make sure that we have a discussion with DCA  
19 and I haven't had that opportunity.

20 ANDREW TARLOW: I'll say for now,  
21 for this summer I'll remove the two tables and the  
22 four chairs. But if you can please get back to me  
23 just to tell me how you'd like me to resolve it.

24 COUNCIL MEMBER REYNA: Absolutely.  
25 I don't think it's your establishment in need of



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2 resolving. I think there needs to be a  
3 conversation as a whole with the Department of  
4 Consumer Affairs. We're getting mixed reviews and  
5 applications of the rules and regulations. So  
6 there needs to be one set of rules being applied  
7 and followed.

8 ANDREW TARLOW: Sure.

9 COUNCIL MEMBER REYNA: Thank you  
10 very much.

11 ANDREW TARLOW: Thank you.

12 COUNCIL MEMBER REYNA: So I will  
13 move forward on this application. Thank you.

14 ANDREW TARLOW: Thank you.

15 CHAIRPERSON WEPRIN: Thank you, Mr.  
16 Tarlow, we appreciate your cooperation. We'd like  
17 to now call up Land Use #318, known as Barberry.  
18 This is 20015294. It is also in Community Board  
19 1. Ladies, thank you very much. Again, if you  
20 could speak into the microphone, please state your  
21 name for the record and describe what you're  
22 asking for. Thank you.

23 ASUMAN T. WHITEMAN: My name is  
24 Asuman Whiteman and I'm here accompanied with my  
25 partner, Ayse A. Gonzalez. We are the co-owners

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2 of Barberry. We've been operating our sidewalk  
3 café for the past seven years. So far we didn't  
4 have any problems with our neighborhood. We've  
5 been very respectful. It's a family-owned  
6 restaurant. It took us by surprise that we've  
7 been called here today. There are certain facts  
8 everybody assumed that is bothering the City  
9 Council today. We are also on the verge of  
10 renewing our sidewalk café license. If there are  
11 any issues we can help to resolve the issue, we'll  
12 be more than glad to.

13 CHAIRPERSON WEPRIN: Thank you very  
14 much, ladies. I'm going to ask Council Member  
15 Reyna.

16 COUNCIL MEMBER REYNA: Thank you so  
17 much, Ms. Whiteman, for being here today. I  
18 wanted to just ask you, have you resubmitted plans  
19 concerning this application, regarding the new  
20 installed bike racks to show clearance?

21 ASUMAN T. WHITEMAN: I would like  
22 to point on that. Those bike racks we have never  
23 requested from the city and it took us by  
24 surprise. Last year, during spring, overnight  
25 they were just there and they just appeared. We

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didn't put any request to the city for them to be installed.

COUNCIL MEMBER REYNA: Right. Did the city contact you concerning the bike racks?

ASUMAN T. WHITEMAN: Not at all.

COUNCIL MEMBER REYNA: One second.

[Pause]

COUNCIL MEMBER REYNA: Ms. Whiteman, I'm just making sure we deal with whether or not there is a grandfathering clause because your plans were submitted first. This action was taken on behalf of the city as to whether or not the city is communicating from one agency to the next concerning this particular bike rack being absent from your architectural plans. Because the city took it upon itself to install it that they should almost exempt it so that they are able to regard it within the agency on behalf of the City of New York as opposed to you going and submitting new plans and costing you that particular change.

ASUMAN T. WHITEMAN: Thank you.

COUNCIL MEMBER REYNA: I just wanted to ask you, I know that you're caring for

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2 the two trees. I want to thank you for that. I  
3 don't know if there is any possibility for you to  
4 invest in a better mechanism. We just want to  
5 make sure that the chicken wire doesn't get caught  
6 with anyone. If you can remove that, it would be  
7 fantastic.

8 ASUMAN T. WHITEMAN: Absolutely.  
9 No problem.

10 COUNCIL MEMBER REYNA: We do  
11 appreciate you doing your civic duty in caring for  
12 the City of New York on behalf of Million Trees  
13 NY. I approve this particular establishment for  
14 its sidewalk café. I will make sure that we deal  
15 with the uncertainty of the grandfathering clause  
16 for your bike rack.

17 ASUMAN T. WHITEMAN: Thank you.

18 CHAIRPERSON WEPRIN: Thank you very  
19 much, ladies. We've been joined by Council Member  
20 Vacca, who I didn't mention before and Council  
21 Member Vann also is here, who I didn't mention.

22 We are now going to do our final  
23 café, which is Land Use #316 in Manhattan  
24 Community Board 12 Il Sole Restaurant, 20115231.  
25 Here on behalf of Il Sole, is it Mr. Severino?

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Please state your name for the record and, again, describe the application.

JOSE SEVERINO: Hi, my name is Jose Severino, representing Il Sole restaurant today.

MIGUEL ACOSTA: Good morning. My name is Miguel Acosta. I'm the accountant for Il Sole. I'm also here to represent them.

CHAIRPERSON WEPRIN: Do you want to describe what it is you're asking for?

MIGUEL ACOSTA: Well basically, I finalized discussion last night with the owner, Ms. Sandra Jaquez, and it was brought to my attention that the city wanted her to close about an hour early during the week and an hour early during the weekend. Sandra was the first person to take one of those establishments on that block. That was about six years ago. Since then, about five years ago, she was approved for her sidewalk café. There were never any concerns in the neighborhood with regards to her operations.

Since then, various other establishments have opened. Due to their operations it has occurred that they're closing late, they're converting their businesses into

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2 lounges, which my client doesn't do that. Because  
3 of their operations, my client is being affected  
4 where almost 40 percent of her gross revenue  
5 generated is from sidewalk café during the months  
6 from May all the way to September. So we're  
7 trying to get some type of consideration for my  
8 client to continue operating her establishment the  
9 way she has been for the past five years.

10 Now, it came to our attention that  
11 the other owners have decided to close down an  
12 hour earlier, which in reality they feel they are  
13 not affected. But my client, because of her  
14 operations and her method, she doesn't feel that  
15 she should be part of that decision that they've  
16 made.

17 CHAIRPERSON WEPRIN: What are the  
18 exact hours you're talking about?

19 MIGUEL ACOSTA: Basically, during  
20 the weekdays, my client closes the sidewalk café  
21 about midnight and on the weekends about 1:00 a.m.  
22 But after that business is closed for operation,  
23 meanwhile other establishments are open until 4:00  
24 a.m., 3:00 a.m.

25 CHAIRPERSON WEPRIN: Thank you.

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2 Council Member Jackson, who represents this  
3 establishment, would like to speak on this matter.

4 COUNCIL MEMBER JACKSON: Thank you.  
5 Good afternoon, my colleagues. I want to address  
6 the application of Il Sole. They're coming up for  
7 a sidewalk renewal. I as a member of the City  
8 Council that represents this area, I am not in  
9 favor of granting a renewal of their application.  
10 Let me explain the reasons why.

11 I represent that entire area on the  
12 City Council. Many, many residents have  
13 complained formally in writing, by email, by  
14 videotapes, in person to myself and all the other  
15 electeds that represent the area.

16 Denny Farrell is the State Assembly  
17 Member that represents the area. We have held  
18 meetings concerning this particular matter.  
19 Residents have poured into the Community Board  
20 complaining about the noise of all of the  
21 establishments in that area.

22 In fact, my staff member, a  
23 community liaison, has met with her and also  
24 attempted to meet with her on several other  
25 occasions in which the owner canceled

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appointments.

Finally, my staff even as of this past Thursday, my Director of Operations, Susan Russell, my Legislative and Budget Director Joanna Garcia, who is sitting behind me, met with her at her establishment to communicate with her that this agreement that we're asking her to agree to is in the best interests of the community in which we all live in and work in, in order to have an environment where the residents will be able to rest in their homes. Mind you, there are rental apartments in that are and also co-ops and condos that are valued between \$500,000 and a million dollars.

My staff has asked her to go in alignment with all the other businesses that have signed this agreement, basically asking them on weekends, instead of 1:00 to close at 12:00. And during the week, I believe it's instead of 11:00, closing at 10:00.

The bottom line is that this owner has had many opportunities over the past several months to talk to us, to sign the agreement and she has not done so. She has refused to do so.



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2                   Not only that, but when you look at  
3 staff has visited the location and this applicant  
4 has four DCA violations: two in 2011, one in 2007  
5 and one in 2006. Not only that, as I said, on  
6 that strip there are three other restaurant--not  
7 2011, 2010. There are other establishments on  
8 that two-block area that have agreed to this.

9                   With respects to that staff has  
10 visited the site and noted that the fire escape  
11 ladder was not shown on the approved plans, which  
12 is a requirement of DCA. The applicant is in  
13 violation of DOB rules that mandates that there be  
14 no obstruction three feet around the ladder which  
15 lands on the sidewalk, in case there's a fire. In  
16 this case, at least one table and two chairs must  
17 be removed because they lie within three feet of  
18 where the ladder lands.

19                   Based on all that I have  
20 communicated with you and the fact that this owner  
21 has refused to abide by an agreement that's in the  
22 best interest of our community, I am recommending  
23 that we vote down this application based on all of  
24 the things which I've communicated to you.

25                   CHAIRPERSON WEPRIN: Thank you, Mr.

1  
2 Jackson. Do any of the members of the panel want  
3 to comment or question about this particular site?  
4 I see none. Gentlemen, thank you very much. We  
5 appreciate your time here today.

6 We're going to move to close these  
7 three hearings. I'm going to ask the Counsel to  
8 call the roll on these three items. The Chair  
9 recommends a motion to approve Land Use #317 and  
10 #338 and disapproval on Land Use #316. Christian  
11 Hylton will call the roll.

12 CHRISTIAN HYLTON: Chair Weprin?

13 CHAIRPERSON WEPRIN: Aye.

14 CHRISTIAN HYLTON: Council Member  
15 Rivera?

16 COUNCIL MEMBER RIVERA: I vote aye  
17 on all.

18 CHRISTIAN HYLTON: Council Member  
19 Reyna?

20 COUNCIL MEMBER REYNA: I vote aye  
21 on all.

22 CHRISTIAN HYLTON: Council Member  
23 Jackson?

24 COUNCIL MEMBER JACKSON: I vote aye  
25 on all.

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CHRISTIAN HYLTON: Council Member

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Seabrook?

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COUNCIL MEMBER SEABROOK: Aye on

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all.

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CHRISTIAN HYLTON: Council Member

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Vann?

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COUNCIL MEMBER VANN: Aye.

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CHRISTIAN HYLTON: Council Member

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Garodnick?

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COUNCIL MEMBER GARODNICK: Aye.

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CHRISTIAN HYLTON: Council Member

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Vacca?

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COUNCIL MEMBER VACCA: Aye.

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CHRISTIAN HYLTON: By a vote of

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eight in the affirmative, none in the negative,

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and no abstentions, LU 317 and 318 are approved,

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LU 316 is disapproved. All motions go to the full

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Land Use Committee.

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[Pause]

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CHAIRPERSON WEPRIN: We're going to

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leave the roll open for five minutes. We now make

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a motion to adjourn. Thank you.

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[Pause]

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CHRISTIAN HYLTON: Council Member

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Lappin?

COUNCIL MEMBER LAPPIN: Aye.

CHRISTIAN HYLTON: The vote now stands nine in the affirmative, none in the negative and no abstentions.

[Pause]

CHRISTIAN HYLTON: Council Member Ignizio?

COUNCIL MEMBER IGNIZIO: Yes, I vote aye.

CHRISTIAN HYLTON: The vote now stands ten in the affirmative, none in the negative and no abstentions.

[Pause]

CHRISTIAN HYLTON: Council Member Comrie?

COUNCIL MEMBER COMRIE: Aye on all, this includes the denial of one property.

CHRISTIAN HYLTON: The vote now stands 11 in the affirmative, none in the negative and no abstentions.

COUNCIL MEMBER COMRIE: I hereby end the City Council Subcommittee on Zoning today, February 28th, 2011.

C E R T I F I C A T E

I, Donna Hintze 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 Donna Hintze

Date March 15, 2011