

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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July 25, 2011  
Start: 9:55am  
Recess: 10:45am

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  
James Vacca

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

Frederick Becker  
Attorney  
Teddy's Bar and Grill

Felice Kirby  
Owner  
Teddy's Bar and Grill

Paul Vaneski  
Concerned Citizen

Jack Rainey  
Senior Vice President  
TD Bank

Paul Prue  
Attorney  
TD Bank

Kim Cody  
President  
Greater Whitestone Taxpayers' Civic Association

Bessie Schachter  
District Representative  
Office of Senator Tony Avella

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2 CHAIRPERSON WEPRIN: Good morning  
3 again. My name is Mark Weprin. I'm the Chair of  
4 the Subcommittee on Zoning and Franchises. I want  
5 to welcome the following members of the Committee  
6 who have joined us so far this morning: Council  
7 Member Robert Jackson, Council Member Dan  
8 Garodnick, Council Member Jimmy Vacca, Council  
9 Member Joel Rivera and Council Member Diana Reyna.  
10 We are also joined by Council Member Steve Levin,  
11 who is here for the first item, and I know we'll  
12 be joined by other members as we move along.

13 So without further ado, we're going  
14 to start with our first item on the agenda--  
15 Jessica Lappin just walked in. Welcome, Council  
16 Member Lappin--Land Use No. 429, Teddy's Bar and  
17 Grill in Council Member Levin's district. We'd  
18 like to call up on behalf of the applicant Fred  
19 Becker. You're doing the presentation by  
20 yourself?

21 FRED BECKER: Yes.

22 CHAIRPERSON WEPRIN: Okay.  
23 Alright, thank you, and then we have a panel  
24 afterwards in favor of this item. Mr. Becker, if  
25 you could push the button and make sure you're

1 speaking into the microphone, state your name once  
2 again and describe the application.  
3

4 FRED BECKER: Good morning, Mr.  
5 Chairman, Council Members. My name is Frederick  
6 Becker. I am the land use attorney here on behalf  
7 of Teddy's Bar and Grill for a zoning amendment  
8 located on the northerly side of Barry Street  
9 between North 7<sup>th</sup> street and mid-block between  
10 North 9<sup>th</sup> Street and North 10<sup>th</sup> Street. The  
11 proposal is to change an existing R6-B zoning  
12 district to include a 100 foot commercial overlay  
13 of a C2-4 zoning district. The property was prior  
14 to the major Williamsburg/Greenpoint zoning change  
15 several years ago, a manufacturing zoned district.  
16 Accordingly, Teddy's Bar and Grill, which is  
17 located on the corner of 8<sup>th</sup> and Barry, which has  
18 been there over 100 years, had a sidewalk café.  
19 When the zoning changed this commercial  
20 manufacturing area was rezoned to R6 and Teddy's  
21 lost its sidewalk café. We came before City  
22 Planning, who suggested that we go for a rezoning  
23 application, which we did and include the two and  
24 a half blocks from the M1-2, R6-B zoning district  
25 in the south to the M1-2, R6-8 zoning district in

1  
2 the north for a land use perspective. The  
3 majority of properties in this area, approximately  
4 11 of 22, are already commercially occupied,  
5 including Teddy's. Additionally, there can be one  
6 additional as of right commercial use on this  
7 site. We submit that the low intensity nature of  
8 the zoning map amendment will have limited impact  
9 on the area. It was approved unanimously by  
10 Community Board 1 after two public hearings and  
11 committee meeting, at which testimony was taken  
12 from both sides. City Planning approved this  
13 unanimously. We have presented to you a map,  
14 which shows the proposed zoning and on the second  
15 page, you can see the area to be rezoned for  
16 convenience purposes where all the diagonal  
17 properties in black have the commercial, so the  
18 impact is minimal. This would allow for low  
19 intensity commercial uses. We think this is  
20 appropriate for the area. We request your support  
21 and thank you for your consideration.

22 CHAIRPERSON WEPRIN: Thank you, Mr.  
23 Becker. Council Member Garodnick has a question.

24 COUNCIL MEMBER GARODNICK: Thank  
25 you very much, Mr. Chairman. Very briefly, this

1  
2 proposed rezoning goes for a number of blocks and  
3 yet it looks like the desired impact is really  
4 only for Teddy's Bar and Grill. Can you help us  
5 understand what exactly is present between North  
6 7<sup>th</sup> and halfway up to North 10<sup>th</sup> Street that would  
7 be impacted here and why it would be the  
8 appropriate designation to move all of those to  
9 the C2-4 in your proposal.

10 FRED BECKER: Yes, certainly, Mr.  
11 Council Member. Just a background, we went to  
12 City Planning, they sort of went "Oops, we didn't  
13 realize what we were doing by taking this out of  
14 the commercial zoning district." Because our  
15 property is mid-block in the middle of this  
16 residential zoning district, they requested from a  
17 zoning point of view that we encompasses all two  
18 and a half blocks of the area, so that they could  
19 connect and make a commercial corridor on Barry  
20 Street, which would be most appropriate from a  
21 zoning and land use point of view. The block from  
22 North 7<sup>th</sup> Street to North 8<sup>th</sup> Street has eight  
23 properties of which six are already commercially  
24 zoned. If you look at the next page, you can take  
25 a look at that, Mr. Councilman.

1  
2 Anything with the diagonal or in  
3 black is already commercial, so therefore, on that  
4 block six out of the eight properties have  
5 commercial use on them. On our block, we are  
6 commercial. The adjoining property is not. The  
7 adjoining property beyond that is. The adjoining  
8 property beyond that going towards North 9<sup>th</sup> has  
9 the potential as of right to be commercial, and  
10 the building on the corner is also commercial, so  
11 here we have basically four out of nine  
12 properties, which are commercial. The remaining  
13 half block has one out of five, which are  
14 commercial. It was felt that this would be  
15 appropriate from City Planning to encompass this.  
16 It's the character of the neighborhood. It's  
17 appropriate for low intensity commercial use, and  
18 that they felt the impact would be nominal given  
19 the longstanding commercial use of this area.

20 COUNCIL MEMBER GARODNICK: Okay.  
21 Thank you, so if I understand you correctly, the  
22 block that you're on is—

23 FRED BECKER: [Interposing] I think  
24 there may be an X on our corner property.

25 COUNCIL MEMBER GARODNICK: There is

1  
2 an X on your corner property—is about half and  
3 half.

4 FRED BECKER: That is correct.

5 COUNCIL MEMBER GARODNICK: The one  
6 to your south is perhaps mostly commercial.

7 FRED BECKER: Correct.

8 COUNCIL MEMBER GARODNICK: And the  
9 one to your north is more residential than  
10 commercial?

11 FRED BECKER: That is correct.

12 COUNCIL MEMBER GARODNICK: Okay.  
13 Thank you.

14 FRED BECKER: Yes. You're welcome.

15 CHAIRPERSON WEPRIN: Mr. Becker, I  
16 know the community board approved this, but I know  
17 there's been some concerns about some of the  
18 people on Barry Street about making it a  
19 commercial overlay. Can you describe their  
20 opposition, if you would?

21 FRED BECKER: Yes. The opposition  
22 came threefold, if you will. There was some  
23 opposition raised at the fact that this becomes  
24 commercial that they would have parking meters or  
25 muni meters installed on the block, which doesn't

1  
2 exist now as it does on Bedford. They felt that  
3 the quiet residential character of the  
4 neighborhood would be changed in a significant  
5 manner, when in fact this is significantly  
6 commercial right now, and there was some concern  
7 raised by people on North 9<sup>th</sup> Street that a few of  
8 the properties might have outdoor seating if it  
9 was changed to a restaurant or a bar -that would  
10 have an adverse impact on those neighbors on that  
11 block. Those were the major issues of concern.

12 CHAIRPERSON WEPRIN: I see. Does  
13 anyone else have a question here? Okay, we have a  
14 couple other on the panel. Mr. Becker, if you  
15 could stick around anyway just to hear the rest of  
16 the discussion. We're going to move ahead now.  
17 We have two people who are also going to testify  
18 on this matter. Paul Vaneski [phonetic] and  
19 Felice Kirby [phonetic], if you could come up  
20 together—whether you like each other or not. I'm  
21 sure you do. Please have a seat. Please state  
22 your name for the record and describe your opinion  
23 on this application.

24 FELICE KIRBY: Hi. My name is  
25 Felice Kirby. I am a principal in Teddy's Bar and

1 Grill and I live in the building—96 Barry Street,  
2 where I've raised my kids. I have been in the  
3 neighborhood for over 32 years. I first came as a  
4 community organizer to work for the great People's  
5 Firehouse—they led this amazing battle to save  
6 their firehouse in the 1970s, and I stayed on. I  
7 bought a business that was pretty much abandoned  
8 and have returned it to a thriving business. We  
9 have over 45 employees. I feel proud that I've  
10 maintained strong roots in the community. I'm on  
11 the board of two non-profits and helped start one  
12 to build a community center around the corner. We  
13 tried to save the firehouse from the cuts in the  
14 early 2000s. We didn't, but we did win an  
15 opportunity to make it a community center. I've  
16 been involved in every quality of life issue and  
17 on subcommittees of the community board. This  
18 change in use of the street outside my building  
19 was not known to any of us that supported the  
20 massive zoning change along the waterfront. It  
21 has cost my small mom and pop business. I have  
22 seating for 100 people. We're open 7 days a week.  
23 That corner is a corner that can be seen from a  
24 block away and when we first opened, it was a  
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2 dangerous, dark, dim lit corner--by running a café  
3 out there, planting flowers, having street  
4 presence, street furniture, we've really made an  
5 impact and made it a lovely block and the  
6 neighbors always come and compliment us. We have  
7 excellent relations. We lost the right to get a  
8 café license when the zoning changed and it's had  
9 a severe economic impact directly through food  
10 sales--we would have eight tables--but also because  
11 of the advertising that being a presence on the  
12 street affords for six months of the year.

13 CHAIRPERSON WEPRIN: Thank you very  
14 much. We've only heard good things about Teddy's.  
15 I don't think even the people that are opposed to  
16 the change have a problem with the place, so  
17 congratulations. Sir, do you want to state your  
18 name for the record?

19 PAUL VANESKI: Yes. My name is  
20 Paul Vaneski. I'm a life-long resident in  
21 Williamsburg/Greenpoint. I'm here speaking in  
22 favor for Teddy's Bar. My family, we own the  
23 building straight across the street from Teddy's,  
24 and Teddy's has always been a good neighbor.  
25 Basically, it's going back to the same way it's

1  
2 always been. It's always been a commercial  
3 corridor. We've never had problems before and  
4 going back to it, I don't foresee any kind of  
5 problems. Teddy's has always been a good neighbor.  
6 I'm also very involved with the community. My  
7 family's fought for a lot of things in the  
8 community and being that we're so involved in the  
9 community, I wouldn't make any kind of decision or  
10 testify for anything that would be negative for  
11 the community.

12 CHAIRPERSON WEPRIN: Thank you very  
13 much. Does anyone have any questions? Comments?  
14 Ms. Lappin?

15 COUNCIL MEMBER LAPPIN: I just  
16 wanted to say that Teddy's really has been a good  
17 neighbor for a very long time. There was a time—  
18 it's hard to remember or imagine when there  
19 weren't that many places you could go out to eat  
20 in Williamsburg and Greenpoint, but that certainly  
21 has changed, but you were one of the pioneers and  
22 really I think people in the neighborhood have  
23 always enjoyed that you were there and appreciated  
24 that you were there, and so I would certainly  
25 support this effort, Mr. Chair.

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2 CHAIRPERSON WEPRIN: Council Member  
3 Reyna?

4 COUNCIL MEMBER REYNA: I would be  
5 remiss not to say encouraging words of this  
6 application supporting Teddy's Bar and Grill.  
7 It's a family restaurant, which is what Teddy  
8 represents in our neighborhood, and when we're  
9 trying to preserve our neighborhood, Teddy's is a  
10 component, an element of preservation. I wish we  
11 could have caught this so that it would not have  
12 cost the business and its owner, Felice, who is a  
13 good friend, to have to deal with the burden of  
14 cost here. Having said that, I want to make sure  
15 we support this application and support a business  
16 that not only believes in free enterprise, but  
17 also contributes to the social responsibility of  
18 what a good partner in a business is all about.  
19 Teddy's exemplifies that. Thank you so much.

20 CHAIRPERSON WEPRIN: Okay. Anyone  
21 else? Thank you very much. You can step down  
22 now. Hold on one second. Alright, we're going to  
23 close this hearing and we're going to move on to  
24 the next item. The next item is Land Use No. 430,  
25 TD Bank, C100175 ZMQ in Council Member Halloran's

1 district. We're going to come back to this later.  
2 I'd like to call on Jack Rainey and Paul Prue  
3 [phonetic]. Come on up. State your names for the  
4 record.  
5

6 JACK RAINEY: Hi, I'm Jack Rainey.  
7 I'm the Senior Vice President at TD Bank.

8 PAUL PRUE: [off mic] TD Bank from  
9 Coes and O'Connor [phonetic] and we're here to  
10 present on this rezoning application. We have  
11 some board for your consideration, and there's a  
12 handout being passed around.

13 CHAIRPERSON WEPRIN: Okay. Do you  
14 need help with those or are you okay?

15 PAUL PRUE: I think I got them.

16 CHAIRPERSON WEPRIN: Alright.

17 PAUL PRUE: Just to familiarize you  
18 with the context, this is an application for the  
19 rezoning of a parcel of land at the corner of 148<sup>th</sup>  
20 Avenue and the Cross Island Parkway service drive.  
21 It's in between the Whitestone and [off mic]  
22 bridge. It's an existing R3-A zone that we're  
23 proposing to put a commercial overlay on top of,  
24 so the existing zoning would remain the same, but  
25 an overlay would be applied in the C1-2 variety.

1 This part of Whitestone Queens is currently  
2 commercial. It's grandfathered—there are  
3 longstanding commercial uses on the Cross Island  
4 service drive, including our parcel, which is  
5 called the Whitestone Lumberyard. It's operated -  
6 - as a lumberyard and as a marine maintenance  
7 facility, and we just happened to catch it on the  
8 day when they were delivering boats on one side  
9 and picking up lumber on the other, so there's  
10 quite a bit of truck traffic relative to the  
11 neighborhood, but as you can see, it's a very old  
12 building that's been there for a number of years.  
13 The rezoning that we're requesting your approval  
14 for would facilitate a one story TD Bank, which  
15 would be LEED certified, would provide quite a bit  
16 of glass on the street, where currently there is a  
17 wall of bricks. It would redo the curb faces  
18 there where there's no curb currently, and it  
19 would present a very landscaped appearance to the  
20 neighborhood. Here's the site plan. As you can  
21 see, the Cross Island Parkway is here. 148<sup>th</sup>  
22 Street is here. We would have entrances for this  
23 parking lot here off of the Cross Island Boulevard  
24 and off of 148<sup>th</sup> Street. This employee parking on  
25

1  
2 the bottom would be accessible only from 148<sup>th</sup>  
3 Street and pursuant to a community board  
4 recommendation, we have agreed to funnel all of  
5 our drive through traffic, which is approximately  
6 35% of the total traffic, on to the Cross Island  
7 Boulevard. The Borough President has also  
8 requested that we provide additional buffering on  
9 the south side of the parcel, which isn't adjacent  
10 to a residential property because there's a ten  
11 foot buffer in between that which is associated  
12 with this property here—the lot comes out here  
13 just for that 10 foot swath, but we're going to  
14 provide extra landscaping per their request  
15 anyways. I've provided the chair with  
16 documentation of our commitment to that request.

17 CHAIRPERSON WEPRIN: That land use  
18 buffer is what the borough president raised?

19 PAUL PRUE: The zoning requires a  
20 three foot buffer of plants or a six foot fence,  
21 and we were going to do a six foot fence and just  
22 less than three feet of buffer. We're going to do  
23 both now per their request.

24 CHAIRPERSON WEPRIN: Okay. Council  
25 Member Garodnick?

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2 COUNCIL MEMBER GARODNICK: Thank  
3 you. The images that you presented, which was the  
4 delivery of lumber, boats, whatever that was, that  
5 was reflective of the R3-A that currently exists?

6 PAUL PRUE: That's right. It's a  
7 grandfathered use, but it exists there legally,  
8 and it's operated in the summertime for boat  
9 maintenance and throughout the year as a  
10 lumberyard.

11 COUNCIL MEMBER GARODNICK: Alright.  
12 Thank you.

13 CHAIRPERSON WEPRIN: Council Member  
14 Robert Jackson.

15 COUNCIL MEMBER JACKSON: Good  
16 morning. In your presentation, you talked about  
17 the proposed construction that would be LEEDS  
18 certified—at what level of LEEDS?

19 PAUL PRUE: Our target is platinum—  
20 the highest level. We are pretty sure that we can  
21 make that at that site.

22 COUNCIL MEMBER JACKSON: Excellent.  
23 Thank you.

24 CHAIRPERSON WEPRIN: Council Member  
25 Comrie—who joined us by the way. I don't think I

1  
2 ever mentioned you are formally here, so welcome,  
3 Council Member Comrie.

4 COUNCIL MEMBER COMRIE: I'm glad I  
5 put my [off mic]. I just wanted to say that my  
6 experience with the TD Bank's installation in  
7 Queens has been excellent. They have made all of  
8 their sites that they've put—at least in the  
9 locations that I'm aware of they've all been LEED  
10 certified and in fact, there's one building that  
11 is an energy efficient building. I don't know if  
12 you could describe it, but it's beyond LEED  
13 platinum, and all of the locations have also  
14 really integrated well in the community. I look  
15 forward to the installation of this additional  
16 site. I'm just curious as banks are having more  
17 difficult times—was this part of your original  
18 expansion plan and are you still looking to  
19 acquire other sites in Queens?

20 PAUL PRUE: In the New York  
21 Metropolitan Area, we anticipate about another 100  
22 sites. TD Bank fortunately has not faltered  
23 during the financial crisis. We're a AAA rated  
24 bank—one of the few left in the world, and we - -  
25 on what we call our - - strategy of building out

1  
2 branches versus acquisitions. It's not to say we  
3 haven't done acquisitions, but it's been in  
4 Florida and North Carolina markets. So I'd say in  
5 New York City in the next three years, you'll  
6 probably see an additional 15-20.

7 COUNCIL MEMBER COMRIE: So you are  
8 looking for other properties?

9 PAUL PRUE: We are looking for  
10 other properties. Yes.

11 CHAIRPERSON WEPRIN: At those 15  
12 and 20, you're talking about all new construction?

13 PAUL PRUE: New construction, and  
14 we use union labor, which is an additional  
15 benefit.

16 COUNCIL MEMBER COMRIE: Right. I  
17 look forward to the expansion of TD Bank. It has  
18 been a consumer friendly and neighborhood friendly  
19 bank. I look forward to it, and I would  
20 congratulate you on finding a site.

21 PAUL PRUE: Thank you.

22 CHAIRPERSON WEPRIN: Council Member  
23 James Vacca from the Bronx?

24 COUNCIL MEMBER VACCA: Just very  
25 briefly, I'd like to echo the remarks of my

1  
2 colleague. In the past three years, I've had  
3 three new TD Banks in my district: Pelham Parkway  
4 South, Morris Park and Throgs Neck, and they're  
5 all beautiful. You did a fantastic job. The  
6 residents are happy--the landscaping, the parking,  
7 everything. I thank you and don't forget the  
8 Bronx if you look for more sites. We'd love to  
9 have you.

10 PAUL PRUE: We'd be glad to get  
11 with you and show you what are plan is for the  
12 Bronx, but thank you very much. We pride  
13 ourselves on being very community-focused, both on  
14 supporting community organizations and our sites.  
15 We like them to be clean, well-landscaped. We're  
16 all very accessible if there are any issues that  
17 come up; I'm very easy to reach. Some of us in  
18 the Bronx--I can speak for the delegation I think--  
19 we have felt when it comes to banks locating in  
20 the Bronx, we've been overlooked over the course  
21 of many years, so we appreciate--

22 COUNCIL MEMBER VACCA:

23 [Interposing] The Bronx is underbanked.

24 PAUL PRUE: It's underbanked, and  
25 you investing in us is something we want to

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acknowledge. Thank you.

CHAIRPERSON WEPRIN: Okay. Well, thank you gentlemen very much. If you want to leave the pictures nearby, we may need to discuss with them also, so... next case. We'd now like to call on the following two people in opposition to this matter: Kim Cody from the Greater Whitestone Taxpayers' Civic Association and Bessie Schachter from Senator Avella's Office. Now, if you could state your name for the record and state your reasons for opposition... and I see there's a handout from Senator Avella coming around. Whenever you're ready.

BESSIE SCHACHTER: Hello, and good morning. My name is Bessie Schachter. I'm here to read a statement on behalf of Senator Tony Avella, which says, I am strongly opposed to the proposed rezoning application of the current Whitestone Lumber Yard for development of a TD Bank branch and adjacent properties across the Cross Island Parkway to be rezoned with a C1-2 commercial overlay on top of the current R3-A residential zone for the following reasons: first, TD Bank initially came to my office in 2009 with a

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2 variance request, which I believed was an  
3 appropriate way of proceeding with this proposal.  
4 At some point, the proposed variance was dropped  
5 in favor of pursuing a rezoning without any  
6 further discussion with my office or the Greater  
7 Whitestone Taxpayer Civic Association until after  
8 the proposal was certified at the Department of  
9 City Planning. Second, similar to the recent  
10 rezoning application that I proposed at 154<sup>th</sup>  
11 Street between 10<sup>th</sup> and 11<sup>th</sup> Avenues where the  
12 former White House Restaurant is located, I  
13 believe that a variance is the appropriate  
14 mechanism to allow both development on a  
15 particular site without negatively impacting a  
16 larger low-density area. The Greater Whitestone  
17 Taxpayer Civic Association spent many hard years  
18 of work getting their contextual rezoning approved  
19 for the neighborhood. This kind of proposal  
20 unravels the protection of the Whitestone rezoning  
21 created in the first place, and like the  
22 Whitehouse rezoning, sets a precedent for this  
23 sort of thing to happen again and again. Third  
24 and additionally, TD Bank will not actually ever  
25 own the Whitestone Lumber Yard property, only

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2 lease it. I'm actually quite surprised as to how  
3 TD Bank is the applicant in the first place due to  
4 this arrangement. Having met with the TD Bank  
5 representatives in my office, I asked what would  
6 happen should TD Bank get bought out and the  
7 branch closed. The response from TD Bank was  
8 simple, it is possible that the owner, which will  
9 remain the current owner of Whitestone Lumber  
10 could develop a small strip mall on this site.  
11 This is definitely not what the community wants,  
12 as there are enough strip malls on the other side  
13 of the Cross Island Parkway in Whitestone Village  
14 that were built as of right. There is definitely  
15 not a need for that as of right ability at this  
16 site. Fourth, the current auto repair shop at Lot  
17 3 is governed by a variance, which expires in  
18 2011. Why would we want to create an as of right  
19 situation on a commercial property that is already  
20 subject to a variance process that protects and  
21 informs a community as to what limits the current  
22 business is allowed to operate under? In summary,  
23 I oppose the rezoning of Block 4645, Lots 1, 37, 3  
24 and 22. I strongly urge the Zoning and Franchise  
25 Committee of the City Council to disapprove this

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application.

CHAIRPERSON WEPRIN: Thank you.

Sir, do you want to go next, and then any questions?

KIM CODY: My name is Kim Cody.

I'm the president of the Greater Whitestone Taxpayers' Civic Association. I've been a resident of Whitestone for over 55 years. I've seen the commercial strip malls that have come to our commercial area in the village and the stores have been built and they're empty. At the present time, TD Bank wants to take an area that is a non-conforming commercial use under the present zoning laws. Once this is done, if TD Bank should falter and another corporation takes it over and finds this bank to be underperforming, it could be closed, and as stated by the Senator's Representative, a strip mall could be built. This would be impacted on the residents of 148<sup>th</sup> Street, the residents on 14<sup>th</sup> Avenue and the children who attend the public school approximately one block away. In about 12 months, the Whitestone Bridge is going to be under construction in our neighborhood. Traffic is going to be diverted to

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2 14<sup>th</sup> Avenue, so that people can get into College  
3 Point [phonetic] and get into Whitestone itself.  
4 The traffic problems are going to become  
5 horrendous. We do not need a commercial property  
6 exiting more people onto the roadways there. The  
7 Cross Island Parkway exits right at that  
8 intersection where they want to build the bank.  
9 Now the gentleman from TD Bank showed you pictures  
10 of a truck delivering lumber and a boat being  
11 towed into the boat repair service. This is not a  
12 busy location. If the business was that good, do  
13 you think the owner of the lumber yard and the  
14 boat service would be leading the land to TD Bank?  
15 This is not a busy area. If TD Bank goes in there  
16 and it gets a commercial zoning, it will become a  
17 busy area. We actually have no objection to TD  
18 Bank, but the rezoning of our community is at the  
19 forefront of everything we have worked against.  
20 We wish that you reject this application to rezone  
21 it, and advise TD Bank to apply to the BSA for a  
22 variance. Thank you.

23 CHAIRPERSON WEPRIN: Thank you, Mr.  
24 Cody. Mr. Cody, I had a question. Did members  
25 of the Greater Whitestone Taxpayers go to the

1

2 community board and make this argument? Do you  
3 know?

4 KIM CODY: We did go to the  
5 community board, and we voiced our objection to  
6 the rezoning of the area. We also met with TD  
7 Bank approximately three years ago, where they  
8 told us they wanted to come in and bring a bank  
9 into the area there. At that time, there was  
10 absolutely no mention of rezoning the area from  
11 R3-A to a commercial overlay in the area. We  
12 found this out when we received a revised  
13 application, and immediately, we were against it.

14 CHAIRPERSON WEPRIN: Is that  
15 meeting the one that referred to in Senator  
16 Avella's letter, which said that they met about a  
17 variance? Was that the meeting you're describing?

18 KIM CODY: No, we had a meeting  
19 with TD Bank and residents who lived on the area.  
20 They contacted us and asked for this meeting. We  
21 brought some residents to our office and TD Bank  
22 explained what they wanted to do, and at that  
23 time, they never mentioned anything about rezoning  
24 the property to commercial. All they said was  
25 they wanted to come in, put a bank there and

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they'd be very good to the community.

CHAIRPERSON WEPRIN: Council Member Halloran has joined us. He represents this area, and he has some questions for this panel.

COUNCIL MEMBER HALLORAN: Kim, thank you for being here. I appreciate it. As you're no doubt aware within a three block radius of this particular location on the Cross Island Parkway, you've mentioned the fact that we have numerous businesses that have closed and have not been refilled. You're aware of that, right?

KIM CODY: That's correct.

COUNCIL MEMBER HALLORAN: Okay, and I understand your concern about upzoning; however, we're talking about the Cross Island Parkway service road—approximately 500 yards from where it meets the Van Wyck Expressway; you're certainly not going to say that this whole area isn't commercialized as it is right now, are you?

KIM CODY: There is no commercial property south of the Cross Island Parkway—

COUNCIL MEMBER HALLORAN:  
[Interposing] That's correct.

KIM CODY: Any stores of businesses

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that are there are grandfathered in.

COUNCIL MEMBER HALLORAN: That's correct, but all along that are in fact grandfathered commercial businesses. You have the transmission shop. You have Verdi's Restaurant. You have Café Neo [phonetic]. You have Shenanigan's—I mean that entire area over there has commercial establishments existing, correct?

KIM CODY: The transmission shop is operating under a variance. The catering hall is operating under a variance. I don't know about the bar that you're referring to.

COUNCIL MEMBER HALLORAN: Alright, and all of those businesses as you've indicated are trying to survive at this point. I know the Senator mentioned the White House rezoning. Do you know approximately how many businesses are closed on that strip—154<sup>th</sup> Street?

KIM CODY: I believe there are three.

COUNCIL MEMBER HALLORAN: Okay, and they've been closed for a significant period of time. Yes?

KIM CODY: Yes. Some of them have

1  
2 been closed for a year or two; others possibly a  
3 little bit longer.

4 COUNCIL MEMBER HALLORAN: Okay. My  
5 concern is in not getting this done that we will  
6 once again have dead space, unrented in a major  
7 location in our district and while I appreciate  
8 the lack of interest in upzoning, the area that's  
9 being upzoning I think by your own testimony is  
10 admittedly full of grandfathered in, commercial  
11 businesses.

12 KIM CODY: And the ones that are  
13 there are operating under variances. Why can't TD  
14 Bank go to the BSA and apply for a variance? Have  
15 they? Have they received a no?

16 COUNCIL MEMBER HALLORAN: It's my  
17 understanding—and again, there are people here  
18 that can speak to the issue—that there would be no  
19 basis, and as you know, there are five issues that  
20 have to be addressed in order for them to get that  
21 variance. There are issues with regards to what  
22 they're looking to do in the long-term lease that  
23 they're acquiring. The Greater Whitestone  
24 Taxpayers are one of our best civics; it's one of  
25 our largest civics, and it's one of our most

1  
2 active, but it just seems to me that at this  
3 point, we need to be more concerned about job  
4 creation and maintaining our businesses in our  
5 district and making accommodations that make it  
6 financially worthwhile for them to make the long-  
7 term investment in our community that TD Bank is  
8 doing. My understanding from the meetings that  
9 we've had with TD Bank is that at every step of  
10 the way they've been willing to compromise.  
11 They've been willing to alter their plans to suit  
12 requests from the community. They relocated their  
13 entrance and exit systems in order to accommodate  
14 concerns. Don't you feel that keeping them  
15 interested in this location is better than letting  
16 the Whitestone Lumber Yard lay fallow for  
17 potentially the next couple of years?

18 KIM CODY: Again, I have no  
19 objection as a representative of the association  
20 to TD Bank coming into our community, and I again  
21 pose the question; have they received a no on  
22 application for a variance?

23 COUNCIL MEMBER HALLORAN: I think  
24 the screening was a no and that was the issue—is  
25 that they didn't feel it was going to succeed.

1  
2 KIM CODY: They didn't feel, so  
3 they don't want waste their time then.

4 [crosstalk]

5 COUNCIL MEMBER HALLORAN: Kim, I  
6 don't want to get into an argument. You guys do a  
7 lot of great work, but do you know how much it  
8 would cost them to pursue the BSA variance, and  
9 then ultimately have it fall and not be granted  
10 based on what lawyers who have looked at the deal,  
11 looked at the proposed issues—how much it would  
12 cost them to do that? If it would no longer be  
13 viable, would you accept that as a reasonable  
14 enough basis for them to seek this remedy rather  
15 than wasting their time to be ultimately turned  
16 down by the BSA?

17 KIM CODY: What amount is  
18 considered viable?

19 COUNCIL MEMBER HALLORAN: I think  
20 the application process and what expect to expend  
21 could be somewhere between \$25,000 and \$50,000 to  
22 negotiate a lease. Do you really think that  
23 that's something that we want to impose on a  
24 business that's looking to come take property  
25 that's laying fallow and potentially lose them as

1  
2 a customer, as a business in our district, rather  
3 than go forward with this? That I guess  
4 ultimately becomes the question.

5 KIM CODY: If this is a company  
6 that wants to come into our community, then I say  
7 they should make that investment, if it will  
8 appease the community.

9 COUNCIL MEMBER HALLORAN: Even if  
10 it won't ultimately result in an actual granting  
11 of the variance?

12 KIM CODY: If they don't get the  
13 granting of the variance, then they can come and  
14 ask for a rezoning issue then. At least apply for  
15 the variance.

16 COUNCIL MEMBER HALLORAN: As those  
17 of us in the legal profession know, if you have  
18 almost no chance at success, it's called an  
19 exercise in futility, and if you don't meet any of  
20 the five categories required to get the variance  
21 from the BSA, then putting in the application to  
22 this attorney is frivolous. Again I know some  
23 people who have gone forward with these, despite  
24 the fact that they don't meet any of the criteria  
25 and they ultimately get turned down six, eight,

1  
2 ten months later, and we wind up in a situation  
3 where we've lost the potential for having them  
4 come in. I appreciate your work. I appreciate  
5 what you're saying. I just don't agree.

6 KIM CODY: Unfortunately, you have  
7 me at a disadvantage 'cause I'm not an attorney.  
8 I'm just a layman. Thank you.

9 CHAIRPERSON WEPRIN: Does anyone  
10 else on the panel have a question, comment? Mr.  
11 Halloran, do you want to add anything before we-

12 COUNCIL MEMBER HALLORAN:

13 {Interposing} I would just ask the Committee to  
14 vote in the positive on this. TD Bank is not in  
15 danger of going out of business. They're one of  
16 the strongest and fastest growing banks in the  
17 state of New York. They've gone to great lengths  
18 to research this to see if they could get the  
19 variance. The attorneys who looked at it  
20 indicated that they would not be able to. I don't  
21 have to tell you all how variances work and what  
22 the criteria are to get them granted. This is a  
23 completely commercialized strip as the testimony  
24 has borne out. There are grandfathered businesses  
25 all around this area. It's the Cross Island

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2 Parkway service road. I and my office are  
3 supportive of this, and prior to my coming into  
4 office according to the records turned over to me  
5 by then Councilman, now Senator Avella, he was in  
6 support of this plan. I don't know at what point  
7 that changed; however, that is the case according  
8 to the files that were turned over to my office  
9 upon taking office in 2010.

10 CHAIRPERSON WEPRIN: Okay. I want  
11 to thank you both very much. Mr. Cody, Ms.  
12 Schachter, thank you for coming. I wish Senator  
13 Avella had spoken to me in more detail about this  
14 before the hearing. We could have maybe worked it  
15 out and kept it a little happier, but please do  
16 send him our regards on behalf of the whole  
17 Committee, and we thank you both, and we are going  
18 to move to close this hearing. You can be  
19 excused. What I'd like to do now is to go back to  
20 our first item on the agenda. Council Member  
21 Levin, who represents the area of Teddy's Bar and  
22 Grill, is here on Land Use No. 429, and he has a  
23 statement he'd like to make.

24 COUNCIL MEMBER LEVIN: Thank you,  
25 Mr. Chairman. I would ask my colleagues to

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2 support this application for rezoning with a  
3 modification. What I would ask as a potential  
4 compromise between—clearly, the valid application  
5 and the valid need for some commercial overlay on  
6 the blocks that were proposed, but then balancing  
7 that with concern of residents in a rapidly  
8 commercializing neighborhood that neighbors have  
9 come to my office and expressed their concern and  
10 their desire to maintain some peace and quiet in  
11 the neighborhood, and so, the proposed compromise  
12 that I'd like to put forward is to scale back the  
13 zone so that it go no further north than Lot 27 on  
14 the block between North 8<sup>th</sup> Street and North 9<sup>th</sup>  
15 Street on Barry. Again, no further north than Lot  
16 No. 27, which is midway through the block. I want  
17 to thank the applicant, Teddy's Bar and Grill,  
18 their attorney Mr. Becker and all the community  
19 residents for their concern and their dedication  
20 one and all to what is really a wonderful  
21 neighborhood. Thank you, Mr. Chairman.

22 CHAIRPERSON WEPRIN: Thank you, Mr.  
23 Levin. Give me one minute. [long pause] Okay.  
24 We are going to adopt that modification that  
25 Council Member Levin described and the commercial

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2 overlay will be cut off midway between North 8<sup>th</sup>  
3 and North 9<sup>th</sup> Street on Barry. The specific meets  
4 and bounds of that will be described in tomorrow's  
5 resolution at the Land Use meeting. Does anyone  
6 have any comments or questions on this  
7 modification? Are we okay with that? Everything  
8 south of that mid 8<sup>th</sup> and 9<sup>th</sup> Street will be  
9 included in the commercial. All the commercial  
10 property south of that will remain in the  
11 commercial zone. Okay. I'd like to move now to a  
12 vote on these two items. The first item is Land  
13 Use No. 429, Teddy's Bar and Grill. We are going  
14 to couple that along with Land Use No. 430. Land  
15 Use No. 429 will have a modification and cut off  
16 in the middle of Lot 27 between North 8<sup>th</sup> and North  
17 9<sup>th</sup> Street. The wording will be ready tomorrow.  
18 This is supported by Council Member Levin and  
19 coupled with Land Use No. 430, which is the TD  
20 Bank in Council Member Halloran's district. Those  
21 two items are coupled, and we're now going to call  
22 on counsel, Christian Hilton, to please call the  
23 roll. The Chair recommends aye votes.

24 COUNSEL: Chair Weprin?

25 CHAIRPERSON WEPRIN: Aye.

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COUNSEL: Council Member Rivera?

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COUNCIL MEMBER RIVERA: I vote aye.

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COUNSEL: Council Member Reyna?

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COUNCIL MEMBER REYNA: Aye.

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COUNSEL: Council Member Comrie?

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COUNCIL MEMBER COMRIE: Aye.

8

COUNSEL: Council Member Jackson?

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COUNCIL MEMBER JACKSON: Aye on

10  
all.

11

COUNSEL: Council Member Garodnick?

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COUNCIL MEMBER GARODNICK: Aye.

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COUNSEL: Council Member Lappin?

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COUNCIL MEMBER LAPPIN: Aye.

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COUNSEL: Council Member Vacca?

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COUNCIL MEMBER VACCA: Aye.

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COUNSEL: By a vote of eight in the

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affirmative, none in the negative, no abstentions,

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L.U. 429 is approved with modifications and L.U.

20

430 is approved and referred to the full Land Use

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Committee.

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CHAIRPERSON WEPRIN: Okay. Thank

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you very much. The meeting is now adjourned.

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[gavel]

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COUNCIL MEMBER COMRIE: Land Use

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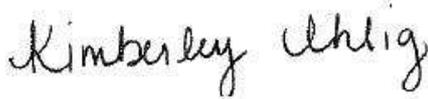
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tomorrow at 10.

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

Handwritten signature of Kimberley Uhlig in cursive script, written over a horizontal line.Date August 2, 2011