

119-00-BZ

CEQR # 00-BSA-132X

APPLICANT - The Agusta Group, for Gani Realty Corp., owner; Jose Ulloa, lessee.

SUBJECT - Application April 18, 2000 - under Z.R. §72-21, to permit the legalization of an existing food store (Use Group 6) located in an R8 district within the Special Grand Concourse Preservation District (C), which is contrary to Z.R. §22-10 and §122-03.

PREMISES AFFECTED - 2788/2790 Grand Concourse, between Miriam Street and 197 Street, Block 3304, Lot 103, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES -

For Opposition: Battalion Chief Robert Stec and John Scrofani, Fire Department.

ACTION OF THE BOARD - Application denied.

THE VOTE TO GRANT -

Affirmative: Vice-Chair Bonfilio.....1

Negative: Chairman Chin, Commissioner Korbey and Commissioner Caliendo.....3

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated April 7, 2000, acting on Applic. No. 200614861, reads:

“ LEGALIZATION OF A USE GROUP 6 STORE IN THE SPECIAL GRAND CONCOURSE PRESERVATION DISTRICT(R8C) IS CONTRARY TO SECTIONS 22-00 AND 122-03 Z.R. IN THAT SITE IS NOT LOCATED WITHIN ANY OF THE THREE COMMERCIAL SUB AREAS .”;

and

WHEREAS, a public hearing was held on this application on September 26, 2000 after due notice by publication in *The City Record*, laid over to October 31, 2000 and then to November 21, 2000 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board consisting of Chairman James Chin, Vice Chair Paul Bonfilio R.A., Commissioner Mitchell Korbey and Commissioner Peter Caliendo; and

WHEREAS, this is an application under Z.R. §72-21, to legalize an existing food store, Use Group 6, in an R8 zoning district within the Special Grand Concourse Preservation District (C), which is contrary to Z.R. §22-10 and §122-03; and

WHEREAS, the zoning lot is a 97 x 200 located on the east side of the Grand Concourse between East 197<sup>th</sup> and Miriam Streets; and

WHEREAS, the subject premises is currently improved with a six-story, basement and cellar, walk-up apartment building which contains 60 dwelling units as well as the aforementioned food store at the street level; and

WHEREAS, the applicant contends that there are unique physical conditions which create practical difficulties and unnecessary hardships in building in compliance with the R8 zoning regulations; and

WHEREAS, the applicant's main argument is that conforming use of this portion of the building is not

possible due to a lack of privacy and high incidence of crime; and

WHEREAS, while diminished privacy may lessen the ground floor's appeal for use as a dwelling, community facilities, such as doctor's and dentist's offices typically seek to locate on ground floors; and

WHEREAS, furthermore, diminished privacy for the ground floor unit is hardly a condition unique to this property; and

WHEREAS, the record indicates that the subject store had been occupied as an apartment; and

WHEREAS, within the same building, there is an adjacent identical unit that is currently used as an apartment; and

WHEREAS, ground floor dwelling units are located extensively throughout the City and this neighborhood; and

WHEREAS, besides dwelling units, community facility uses are also permitted in the R8 zoning district; and

WHEREAS, the Board's site visit revealed that in the blocks surrounding the subject premises there are multi-story residential building which are characterized by occupied ground floor dwelling units; and

WHEREAS, to the extent that there is a risk of criminal break-ins, the Board finds that such a risk is an area-wide characteristic, not a unique land use condition; and

WHEREAS, based upon the foregoing, the Board finds that the application as presented fails to meet the requirements of Z.R. §72-21 (a); and

WHEREAS, the applicant contends that development of this property without the food store will preclude the earning of a reasonable return; and

WHEREAS, the subject building contains 60 dwelling units; and

WHEREAS, as a general real estate maxim, ground floor apartment rents generally less than dwelling units on upper floors; and

WHEREAS, however, the applicant requests that the Board find that a reasonable return for this fully-occupied residential property hinges upon the conversion of one residential unit to a food store; and

WHEREAS, the Board finds that the application as presented fails to show an inability to obtain a reasonable return without a variance and therefore it fails to meet the requirements of Z.R. §72-21 (b); and

WHEREAS, the area immediately surrounding the subject premises is marked by medium and low density residential buildings; and

WHEREAS, the store's location is in marked contrast to the surrounding residential uses; and

WHEREAS, while the City does have many buildings which have ground floor commercial uses mixed with upper-level residences, those mixed use buildings are in appropriately zoned commercial areas, often along streets developed for local retail uses; and

WHEREAS, in contrast, the store in question is the lone commercial enterprise in an otherwise residential area; and

WHEREAS, the fact that the store has existed illegally since 1959, does not make it more appropriate for the surrounding area; and

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WHEREAS, while its lengthy existence has led to a customer base in the area, the success of a business does not mean that said business does not alter the character of the surrounding area; and

WHEREAS, the Board rejects as speculative, the applicant's contention that the subject site was overlooked as a commercial site when the Grand Concourse Special District was created in 1981; and

WHEREAS, the Board finds that the store in question does alter the residential character of the area and therefore is contrary to Z.R. §72-21 (c); and

WHEREAS, since the application fails to meet the requirements of Z.R. §§72-21 (a), (b) and (c), it must be denied.

*Resolved*, that the decision of the Borough Commissioner dated April 7, 2000, acting on Applic. No. 200614861 must be sustained and the application denied.

Adopted by the Board of Standards and Appeals, November 21, 2000.

A true copy of resolution adopted by the Board of Standards and Appeals, November 21, 2000.  
Printed in Bulletin No. 47, Vol. 85.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

