

288-99-BZ

CEQR # 00-BSA-060X

APPLICANT - Sheldon Lobel, P.C., for Deruish Berish, owner.

SUBJECT - Application November 22, 1999 - under Z.R. §72-21, to permit the legalization of an existing grocery store (Use Group 6) located in an R6 zoning district, which is contrary to Z.R. §22-00.

PREMISES AFFECTED - 20 West 190th Street, corner of West 190th Street & Davidson Avenue, Block 3200, Lot 14, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES -

For Applicant: Eric Palatnik.

For Opposition: Lt. Arthur Haven, Fire Department.

ACTION OF THE BOARD - Application denied.

THE VOTE TO GRANT -

Affirmative:.....0

Negative: Chairman Chin, Vice-Chair Bonfilio, Commissioner Korbey and Commissioner Caliendo.....4

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated January 13, 1999, acting on Application No. 200531709 reads, in pertinent part:

“PROPOSED USE GROUP 6, USE OF GROCERY STORE, IS NOT PERMITTED IN AN R6 ZONE. SECTION 22-00 OF ZONING RESOLUTION.”;

and

WHEREAS, a public hearing was held on this application on March 28, 2000 after due notice by publication in the *Bulletin* and laid over to April 18, 2000 for decision; and

WHEREAS, the site 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 the use of the ground floor of an existing multiple dwelling in an R6 zoning district, which is contrary to Z.R. §22-00; and

WHEREAS, the subject premises is regularly shaped rectangular corner lot with 100' of frontage on West 190<sup>th</sup> Street and 75' of frontage along Davidson Avenue; and

WHEREAS, the subject premises is currently improved with a non-complying five story and basement multiple dwelling; and

WHEREAS, as currently configured, the subject premises contain 35 residential units plus a superintendent's apartment and food store on the ground floor; and

WHEREAS, the aforementioned food store is not permitted as-of-right in this district and is the subject of this variance application; and

WHEREAS, the applicant argues that there are unique physical conditions particular to the subject premises which result in practical difficulties in conforming to the existing zoning regulations; and

WHEREAS, the applicant argues that the unit in question is at basement level and has a history of development as a grocery store; and

WHEREAS, the applicant contends that the status of the subject unit as a basement apartment is a hardship due to street level noise and increased risk of crime; and

WHEREAS, although the subject level is technically a “basement” it is almost entirely above grade and is more accurately described as ground level; and

WHEREAS, inspection of the subject premises as well as the surrounding area reveals many ground level apartments in neighboring buildings of similar size and style as the subject premises; and

WHEREAS, the applicant also claims that “history of the development” of the subject premises as a grocery store contributes to the property's difficulties; and

WHEREAS, however, said development as a grocery store was never done legally, but merely existed outside the law for a number of years; and

WHEREAS, the existence of an illegal business, even for a number of years, does not qualify as “history of development” since said development was never in conformance with the Zoning Resolution; and

WHEREAS, the subject premises do not contain unique physical conditions that lead to any practical difficulties or unnecessary hardships in developing in conformance with the existing zoning; and

WHEREAS, the Board finds that the application as submitted fails to satisfy the requirements of Z.R. §72-21(a); and

WHEREAS, the applicant also argues that the subject premises are unable to obtain a reasonable return with conforming development; and

WHEREAS, in the feasibility study submitted with the application, the applicant speaks of spending \$80,000 to return the unit in question back to a conforming apartment; and

WHEREAS, the Board cannot credit such an expense since the apartment was never legally converted to a store; and

WHEREAS, if the law had been complied with, such an expense would not be necessary; and

WHEREAS, likewise, the applicant claimed the apartment would not be desirable for rental since it exits directly onto the street, instead of through the interior court; and

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WHEREAS, the existing condition of the unit is the result of the illegal construction at the subject premises, since prior plans show no street access and appear to have internal access to the unit; and

WHEREAS, furthermore, the subject premises are proximate to mass transit as well as major thoroughfares and shopping locations; and

WHEREAS, the Board finds that the application as submitted fails to satisfy the requirements of Z.R. §72-21(b); and

WHEREAS, although the Board does not find there to be unique conditions giving rise to unnecessary hardships at the subject premises, the Board further finds that many of the claimed problems at the property are created by the property owner; and

WHEREAS, specifically, the applicant has put in commercial fixtures, blocked residential windows and sealed access to the residential portion of the building; and

WHEREAS, to the degree that these conditions contribute to any alleged hardships, the Board finds it to be a self-created situation; and

WHEREAS, therefore, the Board finds that the application as submitted fails to satisfy the requirements of Z.R. §72-21(d); and

WHEREAS, therefore, having failed to satisfy Z.R. §§72-21(a),(b) and (d), the application must be denied.

*Therefore, it is Resolved* that the Board of Standards and Appeals denies the application and the decision of the Borough Commissioner is affirmed.

Adopted by the Board of Standards and Appeals, April 18, 2000.

A true copy of resolution adopted by the Board of Standards and Appeals, April 18, 2000.  
Printed in Bulletin No. 17, Vol. 85.

Copies Sent  
To Applicant  
Fire Com'r.  
Borough Com'r.

