

84-00-BZ

CEQR # 00-BSA-100X

APPLICANT - The Agusta Group, for Omran Feili, owner; Juan Soto, lessee.

SUBJECT - Application March 22, 2000 - under Z.R. §72-21, to permit the legalization of an existing grocery store (Use Group 6) located in an R5 zoning district, which is contrary to Z.R. §22-00.

PREMISES AFFECTED - 98 West 183rd Street, southeast corner of Andrews Avenue, Block 3217, Lot 27, Borough of The Bronx.

COMMUNITY BOARD #5BX

APPEARANCES -

For Applicant: Philip P. Agusta.

For Administration: Battalion Chief Robert J. Stec and John Scrofani, 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 March 7, 2000, acting on Appl. No. 200605942, reads:

"Proposed legalization of a Grocery Store (U.G.6) in a portion of a basement of an existing 5 story and basement Multiple Dwelling located in an R5 district is contrary to section 22-00 of the Zoning Resolution.";

and

WHEREAS, a public hearing was held on this application on September 12, 2000 after due notice by publication in the *City Record*, laid over to October 3, 2000 and then to October 17, 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 the conversion of a residential apartment in an existing multiple dwelling to a food store, Use Group 6, in an R5 zoning district, which is contrary to Z.R. §22-00; and

WHEREAS, the zoning lot is a rectangular corner parcel with approximately 100' of frontage on West 183rd Street and 87.66' of frontage along Andrews Avenue; and

WHEREAS, the subject premises is currently improved with a non-complying multiple dwelling which contains 40 dwelling units as well as the aforementioned food store; and

WHEREAS, the applicant contends that there are unique physical conditions which create practical difficulties and unnecessary hardships in building in conformance with the R5 zoning regulations; and

WHEREAS, the applicant contends that the property is burdened by a change in grade that makes the use of the ground floor apartment impractical; and

WHEREAS, while there is a change in grade at the site, the applicant has failed to explain how the grade change effects the viability of ground floor units; and

WHEREAS, the applicant's main argument is that conforming use of the ground floor is not possible due to a lack of privacy and high incidence of crime; and

WHEREAS, besides dwelling units, community facilities are also permitted uses in the R5 zoning district; 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, ground floor dwelling units are located extensively throughout the City; and

WHEREAS, the Board's site visit revealed that in the blocks surrounding the subject premises there are numerous multiple dwellings which are built with ground floor dwelling units; and

WHEREAS, likewise, the fact that ground floor residential units may be susceptible to increased crime is hardly a unique condition; and

WHEREAS, burglary is not a condition which is isolated to this particular ground floor apartment, but is a risk that many residents and business people deal with on a daily basis; and

WHEREAS, also of important note is the fact that this unit was illegally converted over twenty years ago, when the crime situation in the Bronx was vastly different than it is today; and

WHEREAS, to the extent that there is a risk of criminal break-ins, the Board finds that such a risk is an area conditions, not an isolated, 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 premises is currently improved with a non-complying multiple dwelling which is 2.5 times the size of what could be currently built under existing zoning; and

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WHEREAS, the subject building contains 40 dwelling units; and

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

WHEREAS, however, the applicant requests that the Board find that a reasonable return for this dramatically overbuilt property hinges upon the conversion of one residential unit to a food store, even though one cannot reasonable expect high income from such a unit; and

WHEREAS, furthermore, as referenced above, ground floor location, while a admittedly a negative characteristic for a dwelling unit, makes the space a premium location for certain community facilities; 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 the surrounding homes; 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 for over 20 years does not make it more appropriate for the surrounding area; and

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 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.

Therefore, it is Resolved that the decision of the Borough Commissioner must be sustained and the application denied.

Adopted by the Board of Standards and Appeals, October 17, 2000.

A true copy of resolution adopted by the Board of Standards and Appeals, October 17, 2000.
Printed in Bulletin No. 41-42, Vol. 85.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

