

216-13-BZ

CEQR #14-BSA-010R

APPLICANT – Rampulla Associates Architects, for 750 LAM Realty, LLC c/o Benjamin Mancuso, owners; Puglia By The Sea, Inc. c/o Benjamin Mancuso, lessees.

SUBJECT – Application July 17, 2013 – Variance (§72-21) to demolish an existing restaurant damaged by Hurricane Sandy and construct a new eating and drinking establishment with accessory parking for 25 cars, contrary to use (§23-00) regulations, and located in the bed of the mapped street, (*Boardwalk Avenue*), contrary to General City law Section 35. R3X (SRD) zoning district.

PREMISES AFFECTED – 750 Barclay Avenue, west side of Barclay Avenue, 0' north of the corner of Boardwalk Avenue, Block 6354, Lot 40, 7, 9 & 12, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez4
Negative:.....0
Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 9, 2013, acting on Department of Buildings Application No. 520146128, reads in pertinent part:

Proposed detached two-story Eating and Drinking Establishment with roof deck, in Zoning Use Group 6, is not permitted as-of-right in R3X zoning district. (ZR 22-00)

Proposed detached two-story Eating and Drinking Establishment with an open roof deck constitutes an increase in the degree of non-conformance and non-compliance. (ZR 52-34)

Proposed separate accessory open parking lot for eight parking spaces on Block 6397/Lot 12 on the southwest corner of Barclay Avenue and Boardwalk Avenue is not permitted use in an R3X zoning district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R3X zoning district within the Special South Richmond District (SRD), construction of a one-story building occupied by a restaurant (Use Group 6), which does not conform to district use regulations, contrary to ZR §§ 22-00 and 52-34; and

WHEREAS, a public hearing was held on this application on February 25, 2014, after due notice by publication in *The City Record*, with continued hearings on May 13, 2014 and June 10, 2014, and then to decision on June 24, 2014; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Staten Island, recommends approval of the application; and

WHEREAS, Borough President James Oddo recommends approval of the application on the condition that it is not larger in scale than the existing restaurant; and

WHEREAS, certain members of the community provided testimony in support of the application; and

WHEREAS, certain members of the community provided testimony in opposition to the application, citing concerns about noise and insufficient parking; and

WHEREAS, the site is at the dead end of Barclay Avenue and has frontage on three streets: Barclay Avenue, Boardwalk Avenue and First Court within an R3X zoning district within the Special South Richmond District and has a total lot area of 17,029 sq. ft.; and

WHEREAS, the site is across Boardwalk Avenue from Raritan Bay; and

WHEREAS, due to the location of a mapped street within the site, the applicant has filed a companion application for a waiver of General City Law § 35, pursuant to BSA Cal. No. 217-13-A, which was decided on the same date; and

WHEREAS, the site is currently occupied by (1) a two-story commercial building formerly used for a restaurant use (Use Group 6) and (2) a one-story single-family detached home; and

WHEREAS, the applicant proposes to demolish both buildings and build the new restaurant and an accessory on-site parking lot; and

WHEREAS, the applicant also proposes to merge the four existing tax lots and zoning lots (7, 9, 12, and 18) into one zoning lot to accommodate 24 self or 43 attended parking spaces; and

WHEREAS, the applicant initially proposed to construct a building with a floor area of 10,176 sq. ft. (0.6 FAR) with restaurant use on two floors, and a height of 39'-6", which would include eight parking spaces across Barclay Avenue (Block 6354, Lot 40) and 25 parking spaces to the north of the site; and

WHEREAS, at the Board's direction, the applicant first reduced the floor area to 7,208 sq. ft. and a height of 34'-8" and eliminated the lot across Barclay Avenue from its proposal; ultimately, the applicant reduced the size of the building to one-story (with an attic) and a floor area of 4,890 sq. ft.; and

WHEREAS, the applicant states that the restaurant was established on the site in 1941 and is reflected on Certificate of Occupancy #2706; and

WHEREAS, on January 9, 1979, pursuant to BSA Cal. No. 72-78-BZ, the Board granted a variance to permit in what was then an R3-2 zoning district the

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enlargement of the restaurant; the 1987 Certificate of Occupancy reflects a restaurant with a one-family apartment on the first floor and another on the second floor; and

WHEREAS, the approved building allowed for two stories with 4,896 sq. ft. of floor area; and

WHEREAS, the applicant states that there is no required on-site parking for the existing restaurant however, there is an existing parking lot for approximately 20 cars; and

WHEREAS, the applicant acknowledges that it enlarged the lot area and the building subsequent to the Board's prior variance approval, without requesting an amendment; and

WHEREAS, at the Board's request, the applicant provided the following information about the site conditions: (1) the approved lot area is 10,261 sq. ft. and the existing/proposed is 17,029 sq. ft.; (2) the approved floor area is 4,896 sq. ft. (for residential and commercial), the existing is 7,457.64 sq. ft. (commercial), and the proposed is 4,890 sq. ft. (commercial); and (3) the approved site plan did not include any parking, the existing includes 20 spaces, and the proposed is 24 unattended or 43 attended spaces; and

WHEREAS, accordingly, the applicant notes that the proposal reflects an enlarged lot area but a floor area that is consistent with the prior approval; and

WHEREAS, because the restaurant use is not permitted in the subject zoning district, the applicant seeks a use variance to permit the enlargement of the Use Group 6 use; and

WHEREAS, the applicant states that the following are unique physical conditions which create unnecessary hardship and practical difficulties in developing the site with a conforming development: (1) the history of the site for restaurant use; (2) the storm-damaged condition of the building and location within a flood zone; and (3) the location of the site within mapped unbuild streets; and

WHEREAS, as to the history of use and the existing building, the applicant states that the site has been occupied by restaurant use from at least 1941 to the present; and

WHEREAS, the applicant states that the restaurant was established on the site in 1941 and is reflected on Certificate of Occupancy #2706; subsequent alteration applications were filed in 1949 and 1950; and

WHEREAS, as noted, on January 9, 1979, the Board granted a variance to permit in what was then an R3-2 zoning district the enlargement of a two-story building occupied by the restaurant, pursuant to BSA Cal. No. 72-78-BZ; the 1987 Certificate of Occupancy reflects a restaurant with a one-family apartment on the first floor and another on the second floor; and

WHEREAS, the applicant represents that a restaurant has operated without interruption from 1941

until October 29, 2012 when it was damaged by Superstorm Sandy; and

WHEREAS, as to the storm damage and flooding potential for the site, the applicant cites to the Mayoral Executive Order No. 230 – Emergency Order to Suspend Zoning Provisions to Facilitate Reconstruction in Accordance with Enhanced Flood Resistant Requirements – for the City's policy that if reconstruction of an existing flood-damaged building is proposed that was substantially damaged, the building must be elevated to fully comply with the flood zone regulations in the Building Code's Appendix G; and

WHEREAS, the applicant notes that "substantially damaged" had been defined as exceeding 50 percent of the market value of the building; and

WHEREAS, the applicant asserts that the restaurant suffered damage in excess of 50 percent of the market value of the building so now must be elevated to a height which exceeds the new flood hazard elevations; and

WHEREAS, accordingly, the applicant states that it cannot simply repair the existing established restaurant building, but must elevate it, which is not possible due to its wood frame construction; and

WHEREAS, the applicant states that on October 29, 2012, when Superstorm Sandy hit the Staten Island Shoreline, the site was not deemed to be in a flood hazard zone; the flood maps at that time reflect that the seawall that borders the site's southeast property line as the limit of Flood Zone AE; and

WHEREAS, however, the applicant notes that on June 10, 2013, the Federal Emergency Management Agency (FEMA) revised the flood maps to include the site to be within a Zone VE with a minimum first floor elevation of 21 feet; and

WHEREAS, the applicant notes that Zone VE is subject to more stringent building requirements than other zones because it is exposed to a higher level of flood risk; and

WHEREAS, the applicant states that after calculating the Richmond Datum conversion factor, the design flood elevation is required to be 18.91 feet, which dictates a new first floor elevation of 20.41 feet; and

WHEREAS, the applicant notes that the elevation of the existing first floor is 16.41 feet, which is four feet below the required flood elevation; and

WHEREAS, the applicant notes that within Zone VE, a building subject to High Velocity Wave Action (a breaking wave with a height of three feet) is required to comply with additional construction measures, which the existing damaged building does not; and

WHEREAS, the applicant notes that specific conditions include that cellars are not permitted, the first floor elevation must be above the minimum Flood Hazard Elevation, and two additional feet of freeboard must be added to the minimum first floor elevation; and

WHEREAS, the applicant notes that premium construction costs are associated with constructing a

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building in a Zone VE and in compliance with the Building Code's Appendix G which mandates that new buildings be on concrete or wood piles that are elevated above natural existing grade and that the piling system and its connection to the first floor living space must be designed to withstand wave velocity; and

WHEREAS, the applicant notes that the City, State, and Federal government have instituted financial programs to aid homeowners rebuild after Superstorm Sandy, but there are no such programs available to rebuild commercial businesses; and

WHEREAS, the applicant states that the portion of the site (Block 6396, Lots 7, 9, and 18) currently used for accessory parking for the restaurant is one of the few vacant parcels in the area and any new construction there would have to follow FEMA regulations; and

WHEREAS, thus the proposed parking use is more feasible than new construction which must comply with FEMA regulations that prohibit cellars and must be elevated above the flood plain on concrete piles; and

WHEREAS, the applicant asserts that residential construction in full compliance with all flood-related regulations would be subject to significant construction premiums yet would be less marketable due to the absence of a cellar which is typical in the area; and

WHEREAS, as to the presence of the mapped unbuild streets on the site, the applicant states that Barclay Avenue is a final mapped street with a width of 70 feet; Boardwalk Avenue is a final mapped street owned by the City, with a width of 20 feet and a widening line mapped to 60 feet within the site; and First Court is an un-built mapped street; and

WHEREAS, the applicant notes that the widening line with a width of 40 feet on Boardwalk Avenue is owned by the applicant and that the portion of the zoning lot within the widening line is 4,014 sq. ft., or 24 percent of the site which requires waiver from the Board to allow construction; and

WHEREAS, further, the applicant notes that First Court is not open or improved and, thus, access to the site is constrained on that frontage; and

WHEREAS, the applicant notes that within the subject R3-X (SRD) zoning district, construction is limited to one- or two-family detached homes on zoning lots with at least 3,800 sq. ft. of lot area and, thus, this zoning lot would allow four buildable lots with two-family homes but, due to the presence of the widening line, only three buildable lots can be realized instead of four; and

WHEREAS, further, the applicant states that, due to the odd shape of the lot, development is limited to three two-family homes and one one-family home rather than four two-family homes; and

WHEREAS, the applicant asserts that the presence of the widening lot is a unique condition in the area; and

WHEREAS, the applicant further asserts that because Lots 7, 9, and 18 create a partial through lot with a truncated L-shape with the short dimension of 50 feet, when a front yard of 18 feet and a rear yard of 20 feet is included, only two feet of depth remains, rendering the lot unbuildable; and

WHEREAS, the applicant asserts that the truncated part of the L shape is unbuildable due to the narrow depth; and

WHEREAS, the applicant asserts that a lawfully pre-existing commercial building located in a residential zoning district with the encroachment of a 40-ft. widening line depth is a unique physical condition that is not shared by other sites in the area; and

WHEREAS, finally, the applicant asserts that the existing building does not meet City requirements for flood resiliency thereby creating a practical difficulty in bringing it up to current flood hazard standards; and

WHEREAS, based upon the above, the Board finds that the history of the site, and the inability to reconstruct the existing building due to new flood regulations are unique conditions which create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board is not persuaded that the presence of the mapped unbuild streets creates hardship since the Board has waived that restriction under the companion application; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) three detached two-family homes and one detached one-family home; (2) three detached two-family homes and one detached one-family home built outside of the widening line; and (3) the proposal; and

WHEREAS, the study concluded that based on the premium costs associated with the new flood resistant construction regulations and the subsurface conditions, the conforming alternatives are infeasible and only the proposal would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

WHEREAS, the applicant asserts that the proposal will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant notes that restaurant use has occupied the site since at least 1941, more than 20 years before the Zoning Resolution was adopted, and has existed continuously since that time; and

WHEREAS, accordingly, the applicant notes that the restaurant is an established use in the area; and

WHEREAS, the applicant states that Puglia by the Sea restaurant was originally known as Carmen's

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restaurant when it was established in 1941 in a business use district, which was rezoned to R3-2 in 1961; and

WHEREAS, additionally, the applicant notes that in 1979, the Board approved the enlargement of the historic restaurant to a size that is identical to the current proposal but which represents a lower FAR due to the enlargement of the zoning lot; and

WHEREAS, the applicant notes that, although the parking was not part of the 1979 approval, it has been a compatible and appropriate addition to the site if permitted to confirm; and

WHEREAS, the applicant asserts that the parking lot will help address concerns about traffic and insufficient parking in the area; and

WHEREAS, the applicant notes that the neighborhood is now occupied by large single-family detached homes and other forms of single-family homes included those converted from seasonal to year round bungalows; and

WHEREAS, the applicant notes that during the early 1900s through the 1960s, there were very few homes in the area and most of them were seasonal bungalows; and

WHEREAS, the applicant states that after 1961, construction of homes began to occur in the surrounding area with the restaurant as the only commercial use in the immediate vicinity; and

WHEREAS, the applicant notes that the site is separated from residential uses by the width of Barclay Avenue and First Court and only directly abuts residential use on one side and that is where the new parking lot with screening will be located after the demolition of the existing bungalow; and

WHEREAS, the applicant states that the demolition of the one-story bungalow in the middle of the existing parking lot will allow for 24 off-street self-parking spaces or 41 attended spaces, as necessary; and

WHEREAS, the applicant states that the parking lot will include planting islands, buffer planting areas around the perimeter of the parking lot and parking lot trees as well as new curbs and sidewalks along the Barclay Avenue frontage; and

WHEREAS, the applicant asserts that the proposed inclusion of the additional lots to allow for parking will increase the compatibility of the non-conforming use on the surrounding neighborhood, without enlarging or extending the actual use; and

WHEREAS, the applicant notes that the building will actually be reduced from its current size and will accommodate approximately 187 patrons; and

WHEREAS, as noted, the new building will also comply with all current flood-related construction requirements in contrast to the existing frame construction which would be vulnerable to future damage; and

WHEREAS, as to bulk, the applicant notes that the building at a height of 31'-4" and with 4,890 sq. ft. of floor area (0.28 FAR) is well within the underlying bulk regulations for a conforming use; and

WHEREAS, the applicant proposes hours of operation that are consistent with its current hours; and

WHEREAS, specifically, the applicant proposes the following hours of operation for the indoor restaurant: Monday through Thursday, 12:00 p.m. to 11:00 p.m.; Friday and Saturday, 12:00 p.m. to 2:00 a.m.; and Sunday, 10:00 a.m. to 11:00 p.m.; and

WHEREAS, the applicant proposes the following hours of operation for the outdoor seating area, seasonally: Monday through Thursday, 12:00 p.m. to 11:00 p.m.; Friday and Saturday, 12:00 p.m. to 12:00 a.m.; and Sunday, 10:00 a.m. to 11:00 p.m.; and

WHEREAS the applicant submitted a copy of its revocable license agreement with the City to allow for the outdoor café use along Boardwalk Avenue, which is renewable annually; and

WHEREAS, based upon the above, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's historic use and conditions; and

WHEREAS, the Board notes that the revised proposal reduced the initial proposal by more than half and is consistent with the 1979 Board variance for restaurant use and, thus, finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as Unlisted Action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 14-BSA-010R dated November 18, 2013; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact

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Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR § 72-21 and grants a to permit, within an R3X zoning district within the Special South Richmond District (SRD), construction of a one-story building occupied by a restaurant (Use Group 6), which does not conform to district use regulations, contrary to ZR §§ 22-00 and 52-34; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 23, 2014" – six (6) sheets; and *on further condition*:

THAT the following will be the bulk parameters of the enlarged building: a total floor area of 4,890 sq. ft. (0.28 FAR); a total height of 31'-4", and a minimum of 24 unattended parking spaces or 41 attended spaces, as illustrated on the Board-approved plans;

THAT the hours of operation will be limited to Monday to Thursday, 9:00 a.m. to 9:00 p.m.; Friday and Saturday, 9:00 a.m. to 6:00 p.m.; and Sunday, 11:00 a.m. to 6:00 p.m.;

THAT attended parking is required on Fridays and Saturdays;

THAT signage on the site will comply with C1 district regulations, as reflected on the BSA-approved plans;

THAT all fencing and landscaping be installed and maintained as reflected on the BSA-approved plans;

THAT the parking layout be as reflected on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of

A true copy of resolution adopted by the Board of Standards and Appeals, June 24, 2014.

Printed in Bulletin No. 26, Vol. 99.

Copies Sent

To Applicant

Fire Com'r.

Borough Com'r.

plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals,
June 24, 2014.

