

**6-11-BZ**

APPLICANT – Paul Bonfilio, for Denis Forde, Rockchapel Realty, LLC, owner.

SUBJECT – Application January 19, 2011 – Variance (§72-21) to permit the construction of a one family detached residence on a vacant corner tax lot contrary to ZR §23-711 for minimum distance between buildings on the same zoning lot; ZR §23-461 for less than the required width of a side yard on a corner lot and ZR §23-89(b) less than the required open area between two buildings. R2A zoning district.

PREMISES AFFECTED – 50-20 216<sup>th</sup> Street, corner of 51<sup>st</sup> Avenue, Block 7395, Lot 13, 16, Borough of Queens.

**COMMUNITY BOARD #11Q**

APPEARANCES –

For Applicant: Paul Bonfilio.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Queens Borough Commissioner, dated January 11, 2011 acting on Department of Buildings Application No. 420234400, read in pertinent part:

- Proposed construction of a single family dwelling in an R2A Zoning District on tax lot #16 does not have the required 20 foot side yard for a corner lot and is contrary to Section 23-461 of the Zoning Resolution;
- Proposed construction of a single family dwelling in an R2A Zoning District on tax lot #16 does not have the required minimum 40 foot distance from existing residential dwelling on lot #13 of the same zoning lot for legally required window to window condition and is contrary to Section 23-711 of the Zoning Resolution; and
- Proposed construction of a single family dwelling in an R2A Zoning District on tax lot #16 does not have the required 20 foot depth of open area for the designated rear wall of the proposed building together with the existing building on lot #13 on a zoning lot facing two streets and is contrary to Section 23-89(b) of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2A zoning district, the proposed construction of a two-story single-family home that does not provide the required minimum distance between buildings, minimum side yard on a corner lot, or minimum open area, contrary to ZR §§ 23-461, 23-711, and 23-89; and

WHEREAS, a public hearing was held on this application on June 14, 2011 after due notice by publication in *The City Record*, with a continued hearing on July 26, 2011 and September 13, 2011, and then to decision on October 18, 2011; and

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

WHEREAS, Community Board 11, Queens, recommends disapproval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends disapproval of this application; and

WHEREAS, City Council Speaker Christine C. Quinn, City Council Member Daniel J. Halloran III, New York State Senator Tony Avella, and New York State Assembly Member David I. Weprin provided testimony in opposition to this application; and

WHEREAS, the Bayside Hills Civic Association, the Auburndale Improvement Association, and certain members of the community testified in opposition to this application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the “Opposition”) cited the following primary concerns: (1) the proposed home is out of context with the surrounding neighborhood; (2) the site is too small to accommodate a second home; and (3) the subdividing of the lot constitutes a self-created hardship; and

WHEREAS, the site is located on the northwest corner of 51<sup>st</sup> Street and 216<sup>th</sup> Street, within an R2A zoning district; and

WHEREAS, the subject site is an irregularly shaped zoning lot with 18.26 feet of frontage along 51<sup>st</sup> Street, 109.96 feet of frontage along 216<sup>th</sup> Street, and a total lot area of 7,536.8 sq. ft.; and

WHEREAS, the subject zoning lot consists of two tax lots (Lots 13 and 16); and

WHEREAS, Lot 13 consists of a 4,218.6 sq. ft. parcel located on the northern portion of the site, which is occupied by an existing two-story single-family home with a floor area of 1,484.6 sq. ft. (0.35 FAR for Lot 13 and 0.19 FAR for the zoning lot); and

WHEREAS, Lot 16 consists of a 3,318.6 sq. ft. triangular-shaped parcel located on the southern portion of the site, which is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home on the Lot 16 portion of the site; and

WHEREAS, the proposed home will have the following complying parameters: 1,491 sq. ft. of floor area (0.45 FAR for Lot 16), for a total of 2,975.6 sq. ft.

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of floor area on the zoning lot (0.39 FAR for the zoning lot) (the maximum permitted FAR is 0.50); lot coverage of 11 percent, for a total lot coverage of 26 percent on the zoning lot (the maximum permitted lot coverage is 30 percent); front yards with a depth of 20'-0" along the eastern and southern lot lines (front yards with minimum depths of 15'-0" are required); a street wall height of 20'-0" (the maximum permitted street wall height is 21'-0"); a total height of 27'-4" (the maximum permitted total height is 35'-0"); and two parking spaces; and

WHEREAS, however, the applicant proposes to provide a side yard with a width of 5'-0" along the western lot line (a side yard with a minimum width of 20'-0" is required); a distance of 13'-0" between the proposed home on Lot 16 and the existing home on Lot 13 (a minimum distance of 40'-0" is required between a residential building and any other building on the same zoning lot, with a window to window condition); and non-compliance with the open area requirements; and

WHEREAS, the applicant originally proposed to construct a two-story home with a street wall height of 21'-0" and a total height of 28'-0"; and

WHEREAS, at the Board's direction, the applicant revised the plans to reflect a street wall height of 20'-0" and a total height of 27'-4"; and

WHEREAS, the applicant states that the requested relief is necessary for the reasons stated below; thus, the instant application was filed; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the irregular shape of the subject corner lot, and the location of the existing home on the site; and

WHEREAS, the applicant represents that the requested waivers are necessary to develop the site with a habitable home; and

WHEREAS, the applicant states that the subject zoning lot is a large, significantly under-developed corner lot that is triangular in shape; and

WHEREAS, specifically, the applicant states that the zoning lot has a lot area of 7,536.8 sq. ft. and is currently occupied by a single-family home with a floor area of 1,484.6 sq. ft. (0.19 FAR), which is significantly underdeveloped based on the maximum allowable floor area of 3,768.4 sq. ft. (0.50 FAR) for the site; and

WHEREAS, the applicant represents that as a result of the triangular shape of the site and the location of the existing home on Lot 13, the site cannot be developed with a second viable single-family home that complies with the underlying zoning regulations with regard to the minimum distance between the two homes, the required side yards for corner lots, and the minimum open area requirements; and

WHEREAS, the applicant notes that pursuant to the density regulations of ZR § 23-22, two homes are

permitted to be constructed on the subject zoning lot as-of-right; and

WHEREAS, however, the applicant states that the triangular configuration of the lot and the location of the existing home create practical difficulties in constructing the second home, such that constructing a complying home would result in an irregularly-shaped building footprint of 268 sq. ft., which would not be viable for habitable use; and

WHEREAS, the applicant states that, if not for the triangular shape of the site and the location of the existing home, two viable single-family homes could be constructed that would comply with all zoning regulations in the underlying R2A district; and

WHEREAS, in support of this statement, the applicant submitted an analysis of a development consisting of a regularly-shaped lot with the same lot area as the subject site, which reflected that two homes that meet all the requirements of the Zoning Resolution could be located on either an interior or corner lot of the same size as the subject site provided that the lot was regularly-shaped; and

WHEREAS, in support of its claim that the subject site is uniquely underdeveloped, the applicant submitted a survey of the lots within a 400-ft. radius of the site, which reflects that, of the 104 properties included in the survey, the subject zoning lot is the largest site in the surrounding area and one of only two sites with an FAR of 0.19, which is the lowest FAR in the surrounding area; and

WHEREAS, the survey submitted by the applicant further reflects that most lots in the surrounding area are 4,000 sq. ft. and are developed with FARs ranging between 0.35 and 0.42, and that there are only two other sites on the subject block larger than 5,000 sq. ft. (Lot 1 at 6,200 sq. ft. and Lot 18 at 6,100 sq. ft.), and the other two sites are built to an FAR of 0.32 and 0.26, respectively; and

WHEREAS, the applicant represents that the enlargement of the existing home is not a viable option because it would require the redesign of the entire home, which would be prohibitively expensive, and because the floor area of homes in the surrounding neighborhood generally range between 1,000 sq. ft. and 2,000 sq. ft., and enlarging the existing home to the average FAR in the surrounding neighborhood (between 0.35 and 0.42 FAR) would result in an oversized home with a floor area of 2,700 sq. ft. to 3,200 sq. ft., which would be out of context with the surrounding homes; and

WHEREAS, accordingly, the applicant concludes that the proposed construction of a two-story single-family home with a floor area of 1,491 sq. ft. (0.45 FAR on Lot 16) and a total floor area on the zoning lot of 2,975.6 (0.39 FAR on the entire zoning lot) is the only way to make the site viable and comparable to other sites in the surrounding area; and

WHEREAS, during the course of the hearing

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process, the Opposition identified a number of lots as being similar to the subject site and contends that the site is therefore not unique because there are many corner lots in the surrounding neighborhood which are underdeveloped and which have significant amounts of open space; and

WHEREAS, in response, the applicant states that the lots identified by the Opposition are located beyond the 400-ft. radius of the site, are significantly smaller than the subject site, and with the exception of Lot 34 in Block 7424, none of the other sites is entitled to a second home pursuant to ZR § 23-22; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable regulations; and

WHEREAS, initially, the applicant did not provide a financial analysis in support of the finding pursuant to ZR § 72-21(b); however, in response to questions raised by the Opposition regarding the financial feasibility of the site, the applicant subsequently provided a financial analysis; and

WHEREAS, specifically, the applicant submitted a feasibility study which analyzed: (1) the existing condition; (2) an as-of-right enlargement of the existing home; and (3) the proposed construction of a second home on Lot 16; and

WHEREAS, the study concluded that the existing and complying scenarios would not result in a reasonable return, but that the proposed scenario would realize a reasonable return; and

WHEREAS, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding community is characterized by detached single-family homes; and

WHEREAS, the applicant further states that the proposed home on Lot 16, with a floor area of 1,491 sq. ft., would be similarly sized to the homes in the surrounding area, which range between 1,000 sq. ft. and 2,000 sq. ft.; and

WHEREAS, the applicant notes that the proposed street wall height of 20'-0" and total height of 27'-4" are consistent with the existing homes in the surrounding area; and

WHEREAS, the applicant states that the proposed home is compliant with floor area, height, front yards, open space, lot coverage, parking, and all other requirements of the underlying R2A zoning district, with the exception of the minimum distance between buildings, the side yard requirements for a corner lot, and the open area requirements; and

WHEREAS, the applicant represents that if the site had a lot area of 7,600 sq. ft. rather than 7,536.8 sq. ft. (a difference of only 63.2 sq. ft.), it could create two zoning lots which satisfied the minimum lot size requirements, and the required minimum distance between the two buildings would be reduced from 40 feet to 13 feet, and therefore the proposed home would be compliant with this requirement; and

WHEREAS, the applicant states that the proposed minimum distance between the two homes of 13'-0" is consistent with the existing homes located along the east and west side of 216<sup>th</sup> Street; and

WHEREAS, the applicant further states that the requested waiver for a side yard with a width of 5'-0" along the western lot line will not have a negative impact on the adjacent home to the west because that home is setback more than 20'-0" from the lot line and is further buffered by an existing garage; and

WHEREAS, therefore, the Board finds that this action will neither 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 applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's irregular shape and the location of the existing home; and

WHEREAS, the Opposition contends that the subdivision of the lot is a self-created hardship and that the applicant is not entitled to construct two homes on the site; and

WHEREAS, in response, the applicant states that the zoning lot is not being subdivided, and that the tax lot subdivision is not relevant to the zoning analysis as no waiver is being requested related to the subdivision of the tax lot; and

WHEREAS, the applicant further states that the development of a second home on the subject site is expressly permitted pursuant to the density regulations of ZR § 23-22; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, as noted above, the applicant originally proposed to construct a two-story home with a street wall height of 21'-0" and a total height of 28'-0", but reduced the proposed height of the building to a street wall height of 20'-0" and a total height of 27'-4" at the Board's direction; and

WHEREAS, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, thus, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21.

*Therefore it is Resolved* that the Board of Standards

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and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, in an R2A zoning district, the construction of a two-story single-family home that does not provide the required minimum distance between buildings, minimum side yard on a corner lot, or minimum open area, contrary to ZR §§ 23-711, 23-461, and 23-89; *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 September 27, 2011"- (5) sheets; and *on further condition*:

THAT the parameters of the proposed home shall be as follows: 1,491 sq. ft. of floor area (0.45 FAR for Lot 16), for a total of 2,975.6 sq. ft. of floor area on the zoning lot (0.39 FAR for the zoning lot); a side yard with a minimum width of 5'-0" along the western lot line; and a minimum distance of 13'-0" between the proposed home on Lot 16 and the existing home on Lot 13, as illustrated in the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed home shall be as reviewed and approved by DOB;

THAT there shall be no habitable room in the cellar;

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;

THAT significant construction shall proceed in accordance with ZR § 72-23; 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 plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 18, 2011.

**A true copy of resolution adopted by the Board of Standards and Appeals, October 18, 2011.  
Printed in Bulletin Nos. 41-43, Vol. 96.**

**Copies Sent**

**To Applicant**

**Fire Com'r.**

**Borough Com'r.**