



The City of New York

Queens Community Board 11

Serving the Communities of Auburndale, Bayside, Douglaston, Hollis Hills
Little Neck and Oakland Gardens

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To: Board Members
From: East Flushing/North Bayside Zoning Committee
Christine Haider, Chair
Re: BSA Cal. No. 252-12 BZ -
39-39 223 St. & 223-01/15/19 Mia Drive, Bayside
Date: October 17, 2012

The Committee met on Monday, October 15, 2012 to discuss the above-referenced application to the Board of Standards and Appeals. Present from the Committee were: Christine Haider, Chair, Henry Euler, Ocelia Claro, Christina Scherer, Daniel Berrios, Anthony Koutsouradis, Janet McEneaney, Mel Meer, Mohan Jethwani, community member Dina Quandamatteo, District Manager, Susan Seinfeld, Mark Scott from the Queens Borough Presidents' office and Dawa Jung for Senator Tony Avella. The applicant, Mia & 223rd Street Management Corp., was represented by Calvin Wong. Eight community residents attended.

Mr. Wong explained that the applicant applied to BSA for a variance, pursuant to ZR 72-21 and Section 666 of the NYC Charter, based upon the "good faith reliance" principle, in order to legalize an existing non-complying rear yard at Block 6343, Lots 154 through 157, otherwise known as the Mia Drive subdivision on 223rd Street.

This variance request hinges on the definition of what is known as a "through lot" and whether it applies to this particular property, due to its proximity to the Cross Island Parkway, as well as whether this situation meets the definition of the "good faith reliance" principle. In 2004, the then-Buildings Commissioner of Queens, Magdi Mossad, determined that the property met the criteria for a "through lot" and allowed a subdivision to proceed with a rear lot of only 15'.

Eight years later, a new Queens Buildings Commissioner reversed the decision; DOB revoked the permits for this site and placed a Stop Work Order on the entire property. This has left the rear house non-compliant, as zoning regulations requires a 30' rear yard for an interior lot.

Board Member Mel Meer stated that there was case law in a recent St. Mary's Hospital lawsuit in which DOB determined that the area between the lot in question and the Cross Island Parkway was parkland and, therefore, not a "through lot" at all. The court decision made it apparent that this now applies to all properties adjacent to the Cross Island Parkway in Bayside.

Several Board members expressed the view that if the Department of Buildings gave its approval in error when development began almost a decade ago, that was not a reason to subject the neighbors to the resulting higher density construction at the site and that the fourth house should be demolished. This would also leave the owners with a possible remedy to sue the City under the Article 78 provision. Mr. Wong stated that the owner was required to pursue an administrative remedy with the BSA before an Article 78 proceeding could begin.

An adjacent resident, Pat Martin, questioned the legality of the permits that were issued in 2004 and pointed out that the topographical map from 1956, still presently in use by the Borough President's Topographical Bureau and the one used by the now-deceased Consulting Engineer,

Tom Campagna, at the time the original building permits were approved, made it clear that the area between the lot in question and the Cross Island Parkway was mapped parkland, not a right-of-way or road of any kind. In response, Mr. Wong stated that there were numerous audits at that time by DOB and permits were granted and its general counsel had issued a letter that the permits were legal. Additional discussion ensued on the questionable ability of the architect, Angelo Costa, to self-certify whether the property was a "through lot" or not.

Board member Henry Euler and the Chair also pointed out structural problems and maintenance issues with the homes and that the property is an attractive nuisance that should be fenced off for safety. Mr. Wong pointed out that they are not allowed to work on the homes because a Stop Work Order exists due to DOB's determination that the buildings violated the Zoning Resolution; they were only allowed to pave and install drywells. No Certificates of Occupancy have been granted.

A motion was made by Mel Meer to approve the application, seconded by Henry Euler. The committee voted unanimously to recommend disapproval of the application.

The following is an addendum submitted by Paul Graziano:

After extensive examination of the application, it appears that the applicant has based his entire case for the "good faith reliance" principle on BSA Cal. No. 302-08-BZ (4368 Furman Avenue). This case, which was denied by the BSA and the denial upheld at Bronx Supreme Court, makes it clear that the applicant does not meet the standards of the "good faith reliance" principle. While municipal officials (specifically the Department of Buildings Commissioner Magdi Mossad in 2004, since deceased) stated that the permits were valid, it is clear from the topographical maps in question that the initial approval was based upon (as described above) that these permits were released in error, not as a result of changed interpretation of zoning laws. Therefore, the applicant's position that "the change in Department of Buildings policy is from a change of interpretation of the Zoning Resolution rather than a mistake" is completely false as well as fabricated and his variance request should be denied.