

104

MINUTES
BOARD OF ZONING APPEALS
THE CITY OF BELLE MEADE
DECEMBER 20, 2016

Call to Order

The meeting was called to order by Brian Smallwood, Chairman, at 5:00pm.

Board members present

Brian Smallwood Pete Zabaski Mary Ann Blaufuss
James Edwards

Staff members present

Lyle Patterson, Building Official Kemishia Sadler, City Recorder
Beth Reardon, City Manager Bob Patterson, City Attorney

Conflicts - Smallwood to recuse himself from the Hart appeal.

OLD BUSINESS

1. Bunny Blackburn - 4409 Harding Place (16111)
Conditional Use- Construction of a Pool.
Special Exception- Construction of a Fence
Building permit has been denied:
 - A. Swimming pool requires BZA approval.
 - B. Fence is other than permitted location.

Presentation:

Gavin Duke - Landscape Architect

The pool with hardscape meets all the requirements of the ordinance. The fence comes off of the back of the house over part of an existing fence. There is an existing easement that is a part of the sidewalk area stating that the Blackburns own that property. The homeowners would like to put a black fence with gates behind an existing boxwood hedge that is about 5 ½ to 6' in height in front of the stone wall.

Board Questions/Comments:

Q: Where is the fence running from?

A: Against the stone wall.

Q: The survey that we saw earlier appeared to indicate that the property line did not include that strip of land, correct?

A: Yes. Our surveyor did get the deed documents and it described that area as part of the property. We may have to have the property surveyed to read as one property.

Q: Is that a question of surveying or a question of parcel?

A: B. Patterson: I did go and read the deeds on the property. It shows as one parcel on the metro property maps, it is in fact two separate lots in terms of recorded subdivision plats. So the dotted line across the page is a lot line. In the City of Belle Meade, we calculate building envelopes on the basis of a lot. It is to the homeowner's advantage, with any application, to combine the two lots.

Q: So am I correct that the fence line that they are proposing has not been recorded to their property?

A: The fence line along the bottom of the diagram appears to be on the property line of the lot in the lower part of the picture.

Q: Is there fence also on the other side of the property line?

A: Yes.

Q: G. Duke- Could we make it contingent upon this approval? We could have that surveyed.

A: From a procedural standpoint, I would like to determine whether the Board could approve a fence as a part of a pool enclosure on a lot that is not a part of the application being presented to us.

C: B. Patterson- There are two elements to this application: the pool has to fit within the lot lines and it doesn't because there are two lots. The two lots have to be combined to create a building envelope and the fence has to be along the property line. The applicants have represented that their surveyor confirms that the fence other than the section coming off the house is on the property line. That is a matter of right. The issue with the fence is whether they can bring the fence off the front of the house or off the back of the house. That determination is made without reference to a lot line. This property was platted in 1916. In 1925, the neighbor deeded to the homeowner at the applicants address that 10' strip.

Q: With regards to your area calculations, did you calculate the bigger lot or the smaller lot?

A: I did calculations on the whole lot.

C: In regards to the pool, the side setback is not accurate due to the parcel being broken down into two lots.

A: I am pretty sure that these are the side setbacks. We worked on the original project so we were just going by the setback lines that we had earlier during construction.

Q: If they own the property is there a way to combine them so that it is reflected in the deed?

A: There should not be any problem with that.

C: B. Patterson: You have two options with the pool; you can either grant a permit conditional to combine the two lots or you can defer the application for a month so that the applicants can appear before the Planning Commission.

Audience Questions/Comments: NONE

Board Discussion/ Questions:

- Does the Board have any reservations on approving a pool that's based on lot parameters that are not accurate?
- I would rather see the applicant combine the lots.
- I know of at least two other locations where we have asked the applicant to do that.

Motion to defer 30 days: Smallwood Second: Zabaski Vote: All aye

2. Nathan Lyons- 108 Belle Meade Blvd (16113)

Conditional Use- Construction of a pool.

Special Exception- Construction of a wall and fence.

Variance- Construction of a house.

Building permit has been denied:

- A. Swimming pool requires BZA approval.
- B. Fence is in other than permitted location.
- C. Wall other than permitted location.
- D. House is outside building envelope but within existing setback.

Presentation:

Nathan Lyons- Homeowner

The original design was outside the building envelope but within the existing setbacks. The setback next to 106 Belle Meade Blvd was about 39 ½' beyond the property line. The new design was brought back 112'. The house was designed around the tree on the front of the property by moving the house back an additional 10'. The original pool will be removed and a smaller pool will be placed within the setback and building envelope. The fence that is not along the property line forms an enclosed courtyard at the front of the house. The height of the fence is 6'. In the pool area, the fence is no more than 6' tall.

Board Question/ Comments:

Q: The height of the wall that defines the courtyard is no higher than 6'?

A: That is correct.

Q: How high is the entry door?

A: About 12-14'

Q: Is that a breezeway?

A: Yes.

Q: Does it follow the same pitch or step down?

A: It follows the same pitch from the front.

Q: What is the total height of the wall for the pool enclosure?

A: It is about 6' plus another 6' or so at the drop off. There is a significant elevation change from front to back. From the front of the setback to the back there is about 28' of change.

Q: Is there a modified plan to show the changes to the pool house?

A: Our last plan showed that. We decided to eliminate the pool house altogether and make it a home office.

Q: Have we seen this plan?

A: You have not seen this plan.

Q: Was it your intention to keep the wall that encloses the pool at 6' above the pool deck or were you trying to satisfy the criteria?

A: We were trying to be within 6'. We have not decided that we want it to be 6'. It will not go above that.

Q: The previous plans showed a thick wall and an expression on the front courtyard wall. Has that been eliminated?

A: The roof that looked like it was on that wall was actually the overhang from the living room. The wall was higher but we have lowered it to 6'.

Q: Regarding the tree on the front, has someone told you that moving the house back further from the tree as previously proposed would maintain the tree health?

A: I have met with an arborist and several landscape architects and they were confident that we could save that tree.

Q: If the house is moved back an additional 10' how much distance would that be from the tree in total?

A: Right at 20'.

Q: Is that from the center line?

A: I am not sure.

Q: Where is the pool equipment?

A: Tucked within the setbacks.

Q: Do you have stairs there?

A: No. We have stairs under here (in reference to the plans).

Q: Is the breezeway actually going to be 12' tall?

A: Yes. It will follow the same pitch to the front door.

Q: Do you have an expression of acknowledgement from the next door neighbor?

A: Mrs. Garret at 106 Belle Meade Blvd. came to the last meeting to meet me personally and she was in agreement with the plans.

Q: We don't have any comments from any neighbors on the other side?

A: They are excited that we are going to do something there but we don't have anything in writing.

Q: Will you have a shower in the office?

A: No.

Audience Questions/ Comments: NONE

Board Discussion/ Findings:

- I respect the modifications that you have made in regards to our comments from the last meeting.
- I agree. I commend you on changing the plans reflecting the conversation from last month.

Motion to approve: Zabaski Second: Edwards Vote: All aye.

3. Rusty Moore- 4422 East Brookfield Ave (16114)
 Conditional Use - Construction of a swimming pool.
 Special Exception- Construction of a fence.
Building permit has been denied:

- A. Swimming pool requires BZA approval.
- B. Wall other than permitted location.

Presentation:

Moore Russell- Contractor

The fence does not come off of the rear corners of the residence. There is a privacy wall on the southern side that extends 10' further than shown to the front corner. The homeowner is proposing to expand the wall between the house and connect to it. It is a 6' privacy wall and the materials will be matched with the neighbor's fence. The northern side of the property has an aluminum fence separating the property line. The proposed fence on that side will be matched to the neighbor's fence and brought up to the property line. There is a chain link fence at rear side of the property. We plan to replace that with a 6' tall wooden fence to tie in the back corners.

Board Question/ Comments:

Q: Can you show me the relationship between the bottom portion of the fence in regards to your client's property line?

A: On the corner of the property there is a 6' tall wooden fence up to where the proposed pool would be. The neighbor to the south has a transition to a 6' tall brick masonry fence up to the corner of the appellant's house and the corner of the neighbor's house. We are proposing to tie in halfway back on the house with the same material.

Q: The wall coming off of the house looks like 1 or 2' from a consistent jog with the house?

A: Yes.

Q: So 1 or 2' toward the street from that corner.

A: Yes. There is also a concrete patio that they were hoping to enclose.

Q: The existing fence does not sit on the property line?

A: It is 1 or 2' off. On the northern side, that fence is 1 or 2' off the property line. We are getting the property surveyed with the final drawings of the house.

Q: Have you had any conversations with the neighbors regarding this?

A: Not yet.

Q: Is there an issue if the 6' fence is not on the applicant's property?

A: B. Patterson: Most people would address that by entering into an agreement with their neighbor.

Q: Is the patio already there?

A: Yes.

Q: On the east property line you said that there was a fence that was falling down and the proposal is to replace it. Does your application show that?

A: Yes. These are different materials so we tried to clearly show what would be used. "Section C" is the rear property line showing 48' of a 6' privacy fence.

Q: Do you know the width of your lot at the pool itself?

A: It is a 47' setback on the northern side, 47' on the southern side, and it has a pie shape so it is roughly 100 - 110'.

Q: Is there a reason why the site plan depicts the swimming pool moved back to the limits of the setback boundary?

A: They were trying to allow for as much room as possible.

Q: What is the size of the pool?

A: It is 15x32'.

Q: Have you had any discussions with the neighbors regarding the pool?

A: No.

Q: The wire fence is also 6' tall?

A: Yes.

C: Regarding the pool, it is an odd shaped lot to put a pool. It is pie shaped so the neighbors share a back yard. You need to talk to the neighbors about it.

Audience Questions/ Comments:

Boyd Bogle, of 1221 Chickering Road, suggested that the appellants notify the neighbor responsible for installing the chain-linked fence. He expressed concern about an existing 6' diagonal gap that the plans do not show. Mr. Bogle would like for a portion of the fence to enclose that particular area as well.

Board Discussion/ Questions:

- When the fence comes to the lot line, we have to make sure that the neighbors have an agreement. As far as the pool, I am concerned about putting a pool on that lot. It is along the side of their neighbor's house. It seems to be in a spot that will interfere with that neighbor.
- One could argue that the 6' fence prevents visibility except from the second floor of the neighbor's house into the pool area. The neighbor to the south or to the north would not be able to install a pool either because it would appear to be in the back yard of the Hart residence.
- I am uncomfortable with the size of the pool. 15x32' is a long pool.

Q: Mr. Bogle how do you feel about this?

A: B. Bogle: The pool is farther from me than it is from any of the other neighbors.

Q: What are the smallest dimensions from the proposed pool to the nearest side neighbor?

A: To the north it is 107' and to the south it is 95'.

- Based on the size of the yard, I am reluctant to say that he cannot put a pool in his yard because the lot converges and it is slightly pie shaped. I don't see a danger of setting a precedent here.

Q: What is the size of the lot?

A: 1.158 acre.

- The one situation that is difficult for this lot is the geometry. In more of a rectangular lot situation the houses are side by side and the back yards are directly behind them. In this situation, you are establishing more of a communal relationship between all of the back yards.

Q: ^ Was there a pool on that site previously?

A: There was a house there but it was torn down. So it was an empty lot.

Motion to defer item A 30 days: Blaufuss Second: Edwards Vote: All aye.
Motion to approve item B with the stipulation of a neighbor to neighbor easement: Edwards Second: Zabaski Vote: All aye.

- 4. Rodes Hart - 425 Westview Ave. (16115)
Conditional Use - Construction of a swimming pool and accessory structure.
Special Exception- Construction of gates.
Building permit has been denied:
 - A. Swimming pool requires BZA approval.
 - B. Accessory structure requires BZA approval.

Presentation: Ann Daigh- Landscape Architect
The pool and the pool house are within the building envelope and in compliance with Belle Meade code. Pool equipment is within the building envelope. There will be no grade changes over 21" and no walls over 6' in height. There will be a fence off the back corner of the house to enclose the property.

Board Question/ Comments: NONE

Audience Questions/ Comments: NONE

Board Discussion/ Findings:

Motion to approve: Zabaski Second: Edwards Vote: All aye.

NEW BUSINESS

- 1. Belle Meade Plantation- 5025 Harding Road (16121)
Conditional Use - Addition to the winery.
Building permit has been denied:
 - A. Construction and alteration of the Plantation under the zoning ordinance Appendix C, historic home or site, requires BZA approval.

Presentation:
Alton Kelley- Executive Director
The winery was started seven years ago in an existing building on the property. An annual inspection prompted the need for additional space due to the Belle Meade Winery not producing enough product to call itself a winery. The Belle Meade Plantation incurred a \$35,000 tax for not producing onsite. A portion of wine is required to be stored in a tank or barrel on site to avoid future annual taxes. They are requesting a 40x20' addition to the winery to hold up to 20 barrels and two small tanks to meet the federal requirements. The addition will not be visible from Leake Avenue or Parmer Avenue.

Board Question/ Comments:

Q: You have existing structures that are blocking the view from the Belle Meade residents in the area?

A: Yes. The only people that could possibly see are the Peffens at 516 Parmer Avenue.

Q: Is this going to be open to the public?

A: No. Only staff will be allowed inside.

Audience Questions/ Comments: NONE

Board Discussion/ Findings: NONE

Motion to approve: Zabaski Second: Blaufuss Vote: All aye.

2. Jackie Crabtree - 429 Lynwood Blvd (16122)
Conditional Use - Construction of a swimming pool.
Special Exception- Construction of gates.
Building permit has been denied:
A. Swimming pool requires BZA approval.

Presentation:

Alan Ray- Landscape Architect

Home recently built with intention of having a swimming pool in the court area along the side of the house. There is an existing 5' brick wall that is unfinished. The size of the pool is 12x36' with 5x5' paver blocks. The pool will be completely enclosed with a gate. The pool equipment will be stored inside the building envelope.

Board Question/ Comments:

Q: To L. Patterson: Has this application been before the board previously?

A: I do not recall.

C: The wall is non-compliant.

C: B. Patterson: The wall has been built in other than permitted location and now they want to increase the nonconforming use of the wall. If you want to grandfather the existing wall in, you will still have to address whether you want to increase a non-conforming use.

Q: There is a drive from the street back to the garage?

A: Yes. The garage is built into the back side of the house.

Q: So that is vehicular access to the rear of the property in order to access the garage?

A: Yes.

Q: What is the width of the lot?

A: 100.15'

Johnny Paulk - General Contractor

- My understanding is that the architectural components were all reviewed and approved. All of the drawings had that wall in them.

Q: What is the actual size of the water?

A: 36' long.

Q: How deep?

A: A maximum of 5'.

Q: Was the builder who built this also the owner of the property?

A: Yes.

B. Patterson stated that this wall is a nonconforming use and the ordinance states that it cannot be enlarged or extended. We have not noticed this as a non-conforming use. At the minimum, we need to defer and re-notice as a non-conforming use.

Q: Is it possible to go back and look at the building permit to see if it was listed?

A: Yes.

C: B. Patterson: It does not matter. Under the law, if a public official makes a mistake, the government is not bound by that mistake.

Audience Questions/ Comments: NONE

Board Discussion/ Findings: NONE

Motion to defer 60 days: Blaufuss Second: Edwards Vote: All aye.

- 3. Jeff Webb- 235 Deer Park Circle (16123)
Special Exception- Construction of a fence.
Building permit has been denied:
A. Fence is other than permitted location.

Presentation:

Jeff Webb - Homeowner

Mr. Webb would like to extend the fence from the back property line to the setback in front of the house. It is a 4' metal fence that matches the material from the back. It will enclose the yard for the homeowner's dog.

Board Question/ Comments:

Q: Can you tell me the rationale for pulling the fence off the property line by 6'.

A: There is a hedge there that is about 6'. It is the most convenient place to put it.

Q: How do you propose to maintain that sliver of property?

A: The hedge is accessible from the road. There is a gate in the front.

Q: The proposed fence is close enough to the existing hedge line and there's not a turf maintenance issue. The issue is to propose connecting the fence from the front to the side?

A: It is the most natural. It will run parallel to the house.

Q: Instead of the back two corners of the house?

A: There is no particular reason why we chose the front from the back. We could have chosen either.

Q: Are you aware that the ordinance does not allow that?

A: No. Mrs. Webb spoke about mature trees on the property that would make it difficult to place the fence directly from the rear of the house.

Audience Questions/ Comments: NONE

Board Discussion/ Findings:

- It may be that you have to come off the back corner of the house towards the rear property to clear the trees. As long as you can maintain the area off the property line where you are placing the fence off 6', I don't have a problem with that. I do have a problem with the fence coming off the front of the house. I think that should be located as close to the rear corner as possible.
- I looked at the property but I did not specifically notice the trees. I would like for the applicant to submit something that clearly shows window and tree locations.
- If there were trees in the corner of the property, would that be a compelling argument to put the fence in the proposed location?
- I would have to see that.

Motion to approve with the exception that the fence is to be located within 3' of back corner of the house with the specific path coordinated with the Building Official: Smallwood Second: Edwards
Vote: All aye.

Consideration of the Minutes:

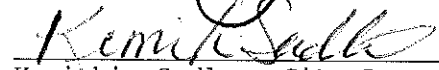
Minutes 11/15/2016

Motion to approve minutes as corrected: Blaufuss Second: Zabaski Vote:
All aye.

Meeting adjourned at 7:11 pm.



Brian Smallwood, Chairman



Kemishia Sadler, City Recorder

**THIS PAGE INTENTIONALLY
LEFT BLANK.**