

MINUTES
MUNICIPAL PLANNING COMMISSION
CITY OF BELLE MEADE
NOVEMBER 15, 2016

Call to Order

The meeting was called to order by Steve Horrell, Chairman, at 4:00pm.

Board members present

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| Steve Horrell | Jim Hunt | James Hastings | John Eason |
| Alice Mathews | Gloria Sternberg | Bob Weigel | Larry Wieck |

Staff members present

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

Agenda Items

1. Approval of Minutes from October 17, 2016

Motion to approve: Sternberg Second: Weigel Vote: All aye

2. The application of Mr. Brian Brown (PC16101), 515 Jackson Blvd. for the subdivision of lot 6 Davis Estate into two lots and determining the building setbacks for the building envelopes.

As Chairman, Steve Horrell provided a brief introduction to the process to be used with the application. There were no objections to this process.

Presentation:

Jason Callen, attorney at Butler Snow Law Firm, spoke on behalf of the Browns. He stated that after researching the property located in Section 1 lot 6 of Davis Estates, the restrictive covenants listed in the deed restrictions expired in 1993. He concluded that nothing was found that limits subdivision of the property. The minimum for lots in Residence B is 40,000 square feet. The proposed subdivision exceeds the minimum set by Belle Meade ordinances; whereas the largest portion is 82,000 square feet and the smaller is 60,000 square feet. The proposed subdivision of the property is consistent with and supported by the Belle Meade ordinances and consistent with the neighborhood.

Board Questions/Comments:

Q: On the 60,000 square foot lot, what is the proposed setback from Gerald Place?

A: 69'

Q: What is the setback from Jackson?

A: From Jackson it is 120.5'.

Q: What are the average setbacks on Jackson Blvd?

A: Five houses on the street have the average of the proposed setbacks on Jackson Blvd. They are 1000' in each direction from the center of 515 Jackson Blvd. There are two other averages; 1000' from the center line of the property creates an average of 109.3' between Gerald Place and Howell Place. 1000' from the center line of the property towards Belle Meade Blvd on Jackson has an average of 203'.

Q: B. Patterson was asked whether he determined that all restrictions on the property were expired.

A: B. Patterson:

Mr. Patterson responded to the question and then addressed the powers of this board.

There is a restriction on the subdivision of the property that is set for the plat in reference to the restrictive covenants and there is a restriction on the setbacks on the plat. The language is circular in that the plat refers you to the ~~restrictive covenants and the restrictive covenants~~ expressing why expire in 1993 except for any restrictions that are contained on the plat. My best guess would be that a judge would rule that the restriction on the subdivision of property expired in 1993. The restrictive covenants do not express or address the expiration of the setbacks and the plat draws setback lines. There is some ambiguity on whether those lines are average or minimum setback lines. The restrictive covenants do not seem to specifically address setback lines so that issue to me seems much more uncertain. I am not concluding that everything expired in 1993. I think that it is likely that a court would rule that the restriction on the re-subdivision did expire but the restriction on the setbacks did not expire.

The planning commission has the power to rule without regard to the ambiguity on the restrictive covenants and if there ends up being a conflict between the neighbors, then they can resolve that. You are not restricted in ruling by the restrictive covenants and therefore the ambiguity in those restrictive covenants is irrelevant.

Q: What were the restrictions before 1993?

A: Jason Callen- There were a variety to the extent on whether these still apply. Many neighbors would be surprised. There's a restriction that prohibits any construction or structure of improvement of the property without obtaining approval of the grantor or grantor's agent. There is a restriction on selling the property without giving the grantor, the Davis' or their agent, the first right of refusal. There are restrictions on vegetable gardens and temporary buildings. There are about ten paragraphs all of which we believe has expired.

Q: On the 60,000 square foot lot, are you anticipating the house to be facing Gerald Place?

A: No, we are anticipating that the house will face Jackson Blvd.

Q: It is going to be 69' from Gerald Place to the side of the house?

A: For the side setback as proposed on the building envelope.

Q: Would you clarify the 1000'. Is it 1000' from the center line on the property in each direction?

A: Yes.

Q: Thinking about the corner lot setback reservations, how does that play into this?

A: In this case you've got a building envelope that will stay closer to Gerald Place and Truxton Place. We had thought about if that ever happened maybe a stipulation of putting heavy landscaping across the back out to the right of way so you wouldn't notice that the house envelope is stepped out further than the one on Gerald Place or the one on Truxton Place.

Audience Question/Comments:

George Dean, attorney representing the Parkes of 4411 Truxton Place, spoke in opposition of the subdivision. He stated that the average setback towards Harding Road was 120' and in the opposite direction, it is 200'. He argued that this setback is much greater than the proposed. Since the property sits on Jackson Blvd., the averages should have been taken from Jackson Blvd. rather than Gerald Place and Truxton Place. Dividing this property in half has a dramatic effect on the streetscape and overall feel of the neighborhood. 60,000 square feet is roughly 1.3 acres and many of the properties in the general vicinity are much larger than that. 2.25 acres is the general average and many are much larger than that. Another concern that others may have is that once you start this, other people will come before the board with similar requests.

Leslie Hooper of 4410 Gerald Place: Spoke against the subdivision. She had concerns about where the houses would be placed with respect to the outline of the

property and the proposed setbacks. She feared that the subdivision could set a precedent for other lots to be subdivided to accommodate smaller homes built in the City.

Kathy Rolfe of 505 Jackson Blvd.: Spoke about concerns that the proposed setbacks would possibly cause the house to step out further than her house on Jackson Blvd. She stated that all of the houses should be in line and that the setbacks on one side of the street have been taken into consideration and not the houses across the street.

Elizabeth Nichols of 416 Jackson Blvd.: Stated that every modification made to their home included notifying their neighbors of such modifications in the spirit of neighborhood harmony. She was concerned that the properties on both sides of Jackson Blvd would not be considered when considering averages.

Ellen Martin of 610 Belle Meade Blvd.: Stated that she has always felt protected living in Belle Meade because of the green space and the acreage surrounding some of the homes. She was concerned about setting a precedent to subdivide lots to build smaller homes.

J. Callen: Because the issue of precedent has been raised, this board has the authority to approve and deny applications. Looking at a little bit of history here in the 1990s there were several properties that were subdivided but two that we have identified. 401 Belle Meade Blvd. was a 2.84 acre lot divided into two parcels; 401 Belle Meade Blvd., which is now 1.7 acres and 307 Jackson Blvd. that is 1.07 acres. The second is 405 Jackson Blvd. that was a 3.24 acre lot. It was subdivided into 405 Jackson Blvd. with 2.32 acres and 407 Jackson Blvd. with .92 acres. Mr. and Mrs. Brown are not developers. What they are looking to do is to ~~subdivide the lot and build a home that is appropriate to the size that they are~~ looking for and live in that neighborhood. They have just as much incentive to want to build a nice home that's in keeping with the neighborhood.

Q: Do you have any information on the setbacks on those lots that were split? And whether those setbacks stayed the same or whether they were altered?

A: I do not have that.

Board Discussion:

- When you're talking about the size of the lots, specifically the 60,000 square foot lot- looking at the map, you still have several homes on that street that are under 60,000 square feet, under 3.78 acres, and also going down Jackson Blvd. I am trying to justify the conversation of how all of these lots are larger than 1.3 acres. There are some but looking at the averages, we are not necessarily seeing that.
- The only thing that is concerning me are the setbacks. Less than 70' off of Gerald Place is a fairly significant difference. The 120' is pretty close.
- He gave us the setbacks on the seven houses which would be 2,000' along. If you average that, the average setback is 149.4'. The Gerald Place side wall setback when you average the 1, 2, and 3, on Gerald Place is 124.3'. So what normally would have been interpreted as 124.3', we are asking to change it to 69.3'. What would have been 149.4', we are asking 120'. The two houses on Truxton Place in average would be 114' setback and we are asking for 75'.
- The setbacks from Truxton Place and Gerald Place are a part of the corner lot ordinance. You take the average front setback. 50% of that is your building envelope. I asked Ron Farris, architect, who drew this if he would put 30% as much green space as possible on Truxton Place and 30% as much green space as possible on Gerald Place. That is where those numbers came from.

Q: Those allow us to consider that but it doesn't dictate?

A: No.

Q: That ordinance granted us the ability to look at these corner lots and change that?

A: This one is a little unusual in that it is its own block. I don't know if you would measure down Gerald Place and go around Truxton Place or across Jackson Blvd. I asked Ron Farris to show the averages on Jackson because I didn't know how the board wanted to see them.

Q: Is there any way that a building envelope could have been put on these two lots?

Q: Under the old ordinance?

C: City Attorney- The zoning ordinance regulates corner lots. If somebody bought a house and tried to build it on a 60,000 square foot lot, the existing zoning code ordinance could have constrained the building envelope to the size that would make the construction of a new house impractical.

The commissioners gave the potential to the planning commission so that you can come into that situation and should you desire, redraw a building envelope for those lots that would work and you can impose such conditions on those building envelopes that you might desire in the best interest of the City.

Q: On the 60,000 square foot lot how big of a house can someone build on that 11,625 square foot envelope approximately?

A: The footprint would be 12% of the total lot size with the current ordinance.

A: So 7,200 square feet approximately.

Q: The lot could have been subdivided prior to the ordinance but the setbacks would not have allowed it to be built on. Is that more accurate?

A: It is not. It has always been the case that the planning commission could hear an application to subdivide the lots. What changed is that the ordinance gives the planning commission the right to custom design a building envelope for that lot.

Public Comments:

- My biggest concern is the setback in relation to the Rolfe house and where this house is going to sit in relation to that setback.
- Kathryn Brown of 4410 Truxton Place: When I pull out my driveway coming down Truxton Place, will I be looking at part of the back and the side of the new home? If the garage is on my side, I will be able to see the neighbors bringing in the groceries.
- Vivian Brown of 515 Jackson Blvd.: Before the corner lot ordinance was passed we looked at putting two houses on the lot. You can get two houses on there but they were just such an unusual size that are not in keeping with the neighborhood so we chose not to do it. When we disregarded our last plan, this ordinance passed and then we could start over. We did have the concern of two tiny houses and we are aware of the fact that we do not want that in our neighborhood because we are going to live there.
- L. Hooper: A house is going to sit further up on Gerald Place and Jackson Blvd. All of the homes on Gerald Place face Gerald Place and now we are going to have a side and part of the back on Gerald Place. It is not consistent with that corner, on both sides, and across the street.

Board Deliberation:

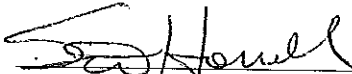
- Evidently we need to defer to make sure that we all understand the ramifications and how the setbacks actually works with the neighborhood.
- We would like to defer this to give the neighbors as well as the Browns the possibility to get together to see if there is any solution that can be worked out on a mutual basis. After that, they will bring it back to this committee and, we will make a final decision.

- I understand the difficulty of finding a building envelope that is buildable. I know we have the authority to do that, but even with talking about the ordinance I struggled with it. If someone bought the 60,000 square foot lot and they asked us to set the Gerald Place and Jackson Place setbacks, how would we look at it the old way and what are they asking for? So a 149' setback on the front and they are asking for 120'. There is an average of 125' down Gerald Place and they are asking for 69'. That puts the side of the house at 54.5' in front of the average of that street. When we passed the ordinance, I was thinking maybe we would allow 5' and 10' differences but I don't think I would ever anticipate cutting an average in half to allow someone to move their house on the corner.

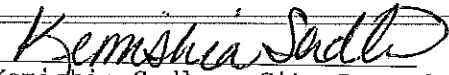
Motion to call the question to vote: Eason Second: None
Motion failed due to lack of second.

Motion to defer: Hastings Second: Mathews Vote: All aye except
Eason who was opposed

Meeting adjourned at 4:57pm.



Steve Horrell, Chairman



Kemishia Sadler, City Recorder