

Minutes
Board of Zoning Appeals
Belle Meade City Hall
Tuesday, April 21, 2020

Call to Order

The "Zoom" platform meeting was called to order by Chairman Joe Dughman at 5:00pm.

Board Members present

Joe Dughman, Chairman Pete Zabaski, Vice Chairman
Gloria Sternberg Haley Dale

Staff Members present

Beth Reardon, City Manager Doug Berry, City Attorney
Lyle Patterson, Assistant City Manager and Building Official
Edie Glaser, City Recorder

Conflicts: None

Old Business:

1. The application of Colin Barker (20022), 4401 Georgian Place for a variance permitting the construction of a swimming pool outside the building envelope.
 - A. Swimming pools require BZA approval.

Presentation:

Gavin Duke with Page Duke Landscape Architects stated they moved the pool about 2 feet. It was mentioned in the last meeting (February 18, 2020) that is was located only 3 feet from the rear terrace.

Board Questions and Comments:

- Dughman, the pool is still outside the building envelope?
- Duke, Yes, it is a little over 2/3 outside the building envelope.
- Zabaski, is there a wall around the terrace?
- Duke, it is elevated three feet to be on level with the rear covered porch. There is a railing around the terrace but not a wall.
- Zabaski, it is 6ft tall?
- Duke, there is a 3ft wall on the South side with a 3ft railing on top of it. That would meet the 6ft.
- Zabaski, L. Patterson does that need board approval?
- L. Patterson, not on a corner lot. My only concern is a foot hold or toe hold from the 36 inch wall to the handrail. This needs to be flush.
- Duke, we can make that flush. We have also added evergreen screens to the rear of the lot.
- Zabaski, is there a locking gate near the steps?
- Duke, yes, there will be a self-latching locking gate.
- Zabaski, is the pool equipment sitting on a pad or enclosed?
- Duke, it will be fenced with a screening element.
- Sternberg, I realize this is an odd lot, but we have not approved a pool outside the building envelope in a long time.
- Duke, we originally had the pool pushed in towards the house, but it was a tripping hazard from the covered porch area. We have an adjacent

touching lot that has a pool that is in further violation of 60ft of the property line. We were hoping we could get a small entertaining element like a pool because there is nowhere else to put it on the property.

- Sternberg, when was the neighbors pool built?
- Patterson, we do not have this information at this time. It is not in the minutes from the last meeting.

Board Discussions:

Zabaski, at the last meeting it was decided that the application should come back as a variance because we have never approved a pool as a conditional use outside the setbacks. This board has authority to approve a pool outside the setbacks on a variance but not outside a variance. We instructed Gavin Duke to consider coming back as a variance. We also suggested when coming back to make the pool fit the house better and not try to push it so close to the house to get it in the building envelope.

Ted Mayden, 4414 Herbert Place, commented that his wife Barbara spoke at the last meeting about their concerns regarding the pool. They also submitted a letter to the Board of Zoning Appeals. Our concern is the close proximity of their bedroom and bath to the pool as far as noise and bright lighting. Our concern is entirely assurance that the potential for these disturbances will be minimized to the fullest extent practical. We have an engineering concern that if there is any grading or any other engineering that does occur with the process of constructing a pool, we would ask for assurance that it will not create water conditions on our property.

Dughman, the application is back as a variance request.

Duke, the civil engineering and stormwater study are required for the pool. We will be adding landscaping that will be in the 12 to 14 ft range and will wrap the area around Herbert Place so that there is adequate screening for the pool.

Zabaski, if the wall with the rod iron fence around the pool was a solid wall would that help eliminate the noise from the back?

Duke, that may cause an echo chamber with that bouncing off that wall and the inside of the covered porch. We could consider a second layer of planting along the wall, another buffer planting.

Emily Barker, 4401 Georgian Place, homeowner and applicant, commented that they are happy to do anything that is necessary in terms of screening. She had a conversation with her neighbor Barbara Mayden, and she expressed they did not want a brick wall.

Ted Mayden, we are not opposed to a wall.

Zabaski, under the ordinance for a conditional use one of the standards is that the board has to find approval of a conditional use that will not interfere substantially with the use and enjoyment of an adjacent property by its owners and occupants. I am concerned with the neighbor. I do not know if there is a plan in place right now that would ensure that the neighbor's property would not be affected by the pool. I would like to know that there is something else that can be done if not determined in this meeting than another meeting to make sure this is not going to cause a nuisance for the neighbor.

Dughman, the variance requirement is that it has to be an extraordinarily unusual shape, size or topographic feature as compared to other properties in the immediate neighborhood (L. Patterson showed the picture of the neighboring properties).

Dale, I believe they have cause for a variance based on the irregularity of their lot size. It is a huge lot and not to have a swimming pool seems bazar. I defer to the board on the decision.

Sternberg, did they look at another location to the pool?

Dale, they did look at another location and the neighbor was not in favor of that either.

Zabaski, my suggestion is that if we approve it make it contingent on the Mayden's agreeing that the landscaping is adequate to stifle the noise. If they agree we can issue a building permit. If they do not agree this would have to come back before the board and the board would have to revisit the issue.

Berry, I would advise to vote on two motions. To vote on the variance you are saying you can build it in this circumstance outside of the building setback because of the unusual shape of the lot. You can then consider the conditional use.

Zabaski, if we don't agree it is a variance then we cannot approve the pool. Berry, that is correct.

**Motion to approve this property qualifies for a variance: Dale
Second: Zabaski Vote: All aye**

Dale, are we able to make conditional approval on conditional use?
Berry, yes

**Motion to approve the pool with the condition that all efforts are made to make an appropriate buffer and keep the noise and disturbance down to the neighbors: Dale Second: Zabaski Vote: 3 yes, 1 opposed
Motion passed**

New Business

1. The application of Don Cochran (20031), 414 Ellendale Ave., for a conditional use permitting the construction of a swimming pool and pool cabana, a special exception for wall in front and around pool, and footprint over front setback. Appendix F, non-conforming accessory structure is more than 50% of the as-built cost of construction. The building permit has been denied for the following reasons.

- A. Swimming pools require BZA approval.
- B. Pool cabana requires BZA approval.
- C. Wall in front is over allowed height.
- D. Wall at pool is over allowed height.
- E. Structure's footprint is over allowed front setback.
- F. Non-conforming accessory structure (garage) is more than 50% of the as built cost of construction.

Presentation: Ed Tessier and Ben Page with Page/Duke Landscape Architects, we would like to table the existing garage structure for now (item F) and focus on the main structure of the house. One of the reasons we are here before you is because we are encroaching on the front set back. The new zoning code is

set at 102 feet from the property line. The existing house was 74 feet from the front set back. When we did calculations 412 Ellendale is 86 feet from the front property line, 404 Ellendale is 75 feet from the front property line, and 416 Ellendale is 130 feet from the front property line. We are asking to encroach on the front set back by 8 feet. Our new proposed set back will be 94 feet from the front property line. The old house is 27 feet inside the new setback. We will now be 19 feet behind where the old house used to sit.

The other item we are discussing with you today is replicating an old brick arch detail that is part of the original house (visuals shown).

Ben Page commented that one of the beautiful aspects of the existing landscape imagery on this property is the existing gate and overthrow in the back. The HZC asked us to replicate that detail which we are thrilled to do. This detail is slightly above the zoning requirements. It begins at 7ft and peaks out at 9ft in the middle. The beautiful detail of the jack arch is 9ft. There is a small wall that encapsulates the motor court to the left of the property. This is a brick wall that replicated another small detail. It is 9 inches above the requirement of 3 feet.

There are two retaining walls that are part of the landscape imagery on the right side that are necessary to accommodate the grades. The first one is 3 feet that evolves into a series of turf steps. There is an enormous beech tree that requires us to have a retaining wall at the end of the pool. It starts out at 3ft then rises to 4 ½ feet then descends again to 2 feet. The new driveway is less impactful than the existing driveway that is there. We are under the square footage with the new driveway. It is predicated on being very careful around the trees in the front yard.

L. Patterson commented that this home came before the Historic Zoning Committee (HZC). They approved the demolition of the existing home and the architecture.

Board Questions and Comments:

- Sternberg, is there a way to lower the arch or the 6 ft walls and the motor court back down to 3?
- Page, if we bring the arch down any lower you could hit your head going through the gate.
- Tessier, the equipment area wall is 7ft due to a tall generator being placed in there. The switches and control panels will go above a 6 ft wall. We need additional height to hide this. The pool equipment will also go in this area. This area is located behind the garage.
- Zabaski, the 7ft wall runs down the side of the back yard, is that correct? Are you going to remove any of the wall?
- Page, yes, the serpentine wall is going to be removed, it is unstable in a significant part of it.
- Zabaski, the entire house will be demolished, is this correct?
- Tessier, yes, the house will be demolished, and we are salvaging the brick to reuse on the new project.
- Zabaski, I do not see a compelling reason why the structure has to be in front of the footprint by 8ft. Are you stretching it forward to give more space between the house and the pool? If your tearing it down and you are starting from scratch it seems it should be in the building envelope.
- Tessier, we are trying to give it more breathing room in the back yard for the big oak tree and more room between where the garage structure

is going to be and the pool. Also, to keep in the same kind of character as the neighbor's setbacks.

- Zabaski asked Berry, do we have the authority to approve a brand new house on a non-variance lot outside the Belle Meade envelope?
- Berry, one of the exceptions of the ordinance provisions says a new residential structure may be allowed as a special exception so long as it does not aggravate what existed. This is not a variance lot. As long as you are building it and do not make it any worse.
- L. Patterson, this is an improvement as far as the set back from the street.
- Zabaski, is it necessary to put it in front of the building envelope? I do not believe I have ever been asked to approve a new home outside the building envelope.
- Berry, (read the ordinance) this does come within your existing authority under special exceptions.
- L. Patterson, read definition C.
- Zabaski, there is one house that skews the average set back.
- Tessier, yes, the house is 416 Ellendale Avenue. This is the home that has the 130 foot front dimension to the property line. That house is probably out of compliance. We are proposing a 94 for our front setback.
- L. Patterson, how many homes did you use for the averages? Did you go block to block?
- Tessier, yes, we did block to block. We are just showing these five homes.

Public Comments:

Bill Blaufuss, 409 Sunnyside Drive, we live in the lot directly behind 414 Ellendale. How will the wall between the two properties be adjusted to six feet?

Tessier, we need to have a six foot dimension from the outside to the property. We will most likely do a rod iron detail on top of the existing brick wall to make it compliant. We are keeping the wall just building upon it to make the pool enclosure.

Blaufuss, there is a fireplace fixture in the wall along our side of the property, is the fire fixture going to be retained? If so, will it affect our side of the property?

Page, we intend to leave that corner intact.

Blaufuss, is the power line going to be buried?

Page, yes, our first goal is to put all the power line underground. This will eliminate any unfortunate pruning from the electric company.

Blaufuss, will any blasting be required in order to facilitate the pool? Is there any limestone under the dirt?

Page, we have not done any investigating at this point.

Blaufuss, we have limestone on our side.

Don Cochran, homeowner of 414 Ellendale Avenue, as I understand it the set back becomes a function of averaging and the house at 416 Ellendale is considerably further back than the houses on the left. The houses on the left are more consistent with the distance we are proposing to place our house. The front of our house about 4 or 5 of that 8 feet are some nice cantilevered windows that protrude out in front of the house. If we moved the house back, we would be closer to our back neighbors and the large beautiful trees. I think more consistent with the character and use of that lot is slightly forward. A letter was submitted by Dr. Eskind in support of the project.

Christopher Moran from JP Shaffer, Project Manager for 414 Ellendale Avenue, I wanted to add that the pool is beyond where a set back for a pool would be and so it is almost a nonconformance of a nonconformance.

Board Discussion:

Sternberg, in terms of a new build and the positioning of the pool and the height of the walls, in a new build you would think you would work with in the code. The code is put there for a reason. My concern is because it is a new build codes could have been followed.

Berry, under your current ordinance, it allows for this board to grant special exceptions under the conditions. It is up to the board.

Zabaski, asked L. Patterson if he thought the street is skewed by that one house, other houses would still be in front of this house with that one exception?

L. Patterson, it is definitely skewed by the house to the right as you face this house.

Zabaski, and this house will not be more in front of the other houses on that street?

L. Patterson, I could not speak to that directly. I do not have the averages in front of me, but we are looking at a 19 foot 9 inch improvement. It is further back than the two houses immediately to the left and close to the one two houses to the right.

Zabaski, if there were no other houses on this street then you would go back 75 feet and that would determine the building envelope, is that right?

L. Patterson, yes.

Zabaski, their compelling reason is that the houses are skewed and their house, even with the additional 8ft is still further back than the other houses on the street.

L. Patterson, yes.

Zabaski, is the pool equipment inside the building envelope?

Public Comment re-opened

Page, our intention is to fully bring that into compliance. All portions of that wall will be 6 feet with an addition of a rod iron cap on top of that wall. We do not want to alter in any way the character of that brick wall. Zabaski, the wall on the left side of the property will be removed, is that correct?

Page, yes that will be replaced with a 6 ft rod iron fence.

Board Discussions:

Motion to approve A and B as submitted: Zabaski Second: Sternberg
Vote: All aye

Motion to approved C requiring them to keep wall at 3 feet: Sternberg

Motion to approve C and D as submitted: Zabaski Second: Dughman
Vote: All aye

Motion to approve E as submitted: Zabaski Second: Sternberg
Vote: All aye

2. The application of Matt Perkins (20032) 414 Lynwood Blvd., for a conditional use permitting the construction of a pool and pool pavilion, a special exception for grade change, and a variance for wall over allowed height.

A. Swimming pools require BZA approval.

B. Pool pavilion requires BZA approval.

C. Grade change inside 20 ft buffer zone around property is over the allowed amount of 21".

D. Grade change outside building envelope is over allowed amount by 18".

E. Grade change inside building envelope is over allowed amount by 24".

F. Terrace wall is over allowed height.

Presentation: Gavin Duke and Mamie Finch with Page/Duke Landscape Architects, this is a narrow lot with a lot of grade change that descends to the back. We are within the building envelope for the setbacks. The pool and cabana are within the building envelope. The pool equipment is under the cabana. The main grade change issue is in the front. We are trying to get some additional parking in the front with the circular drive. Our numbers are well within the allowable for a front driveway and for the overall driveway but to get in and out of the garage area and to have some parking we are retaining some grade on either side of the property. We are exceeding the 24inch grade change allowable with some low retaining walls. Our retaining walls will not exceed the 36 inches on the two parking areas, but we do move more dirt than 24 inches. The walls are under 3ft. We have a pool enclosure that will be at 6 feet. By the pool pavilion there will be a gate and some steps. We will be planting on the south and north side of the property for screening.

Board Questions and Comments:

- Dughman, please explain why you need the grade change?
- Finch, in the front we are over the allowable grade change, the front two areas within 20 ft of the property line there is a 24 inch maximum grade change allowable. To get a parking pad and in and out of the garage we need some reverse room to move a car and to level that pad out so there is not a significant sloop from side to side. We are trying to level that area out and it exceeds the 24 inches.
- Dughman, by how much?
- L. Patterson, 21 inches, 45 inches total. The retaining wall will be 36 inches.
- Duke, we are 5 ft off of the property line to stay within our code requirements.
- Sternberg, in the rear what is the height of the wall.
- Duke, the wall is 6ft of wall with 3ft of railing.
- Finch, it is outside the building envelope but inside the 20ft buffer. We are over the height of grading within the building envelope.
- Sternberg, stormwater?
- Finch, the stormwater has already been done on this project.

- L. Patterson, this is a very sloped lot from front to back and poses a real challenge to not only build a house but to meet the wall requirements and the grading. They have done a good job. They have gone through stormwater and any drainage issues will be addressed by our City Engineer, Steve Casey.
- Zabaski, are both front parking pads 5 feet from the property line?
- Duke, yes both parking pads and the driveway.
- L. Patterson, you are 5 feet off on the South side but not the North side so that will be corrected.

Board Discussions:

Motion to approve as submitted: Zabaski Second: Sternberg
 Vote: All Aye

Motion to defer the approval of the February minutes until next meeting:
Zabaski Second: Sternberg Vote: All aye

Motion to adjourn meeting: Zabaski Second: Sternberg Vote: All aye

Meeting adjourned at 7:05pm

Joe Dughman, Chairman

Edie Glaser, City Recorder