

**BZA Minutes
December 15, 2020
City of Belle Meade**

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

Board Members present

Joe Dughman, Chair	Pete Zabaski	Gloria Sternberg
Chris Tardio	Erick Clifford	

Staff Members present

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

Consideration of the Minutes October 20, 2020

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

Old Business:

1. The application of Jerry Hancock (20101) 213 Paddock Lane, for a variance permitting the construction of a new single family home. The replacement of a residential structure with a new residential structure is permitted in the zoning ordinance provided that no pre-existing non-conforming use, structure, and/or variance from the provisions of the zoning ordinance will be extended closer to the property line by reason of construction of such a new structure. The building permit has been denied for the following reasons.

- A. House is over allowed footprint.
 - B. House is over allowed F.A.R.
 - C. House is outside building setbacks in rear.
- Staff recommends approval

Presentation: Catherine Sloan, architect, this is a new construction house. There is currently a small rental house that is in poor disrepair and is not of historical significance. We went before the HZC and they approved the design and were pleased with it and felt it fit in well with the neighborhood. We are working hard to fit this into the fabric of the street as far as going with a style that looks like it has always been there and original to Belle Meade. I wanted to clear up a little bit of a concern last month. The concern was that it was too big from the street, too close to the rear setback, and some people felt the house was too big. I have decreased the footprint and the F.A.R. and pulled it off of the rear property line a bit more. We are now 20 feet off of the rear property line. The footprint is down to 3359. The F.A.R. was decreased about 300. The total under roof square footage is 5042. The F.A.R. is actually 4825. The total square feet of the living space heat and cold is 3991. We did not shift the house forward. We were able to squeeze in the house a bit three feet more from the rear. From the street, you can see in the illustration, the house looks a good bit narrower from the ones on either side. The style of the home is Dutch Colonial. We designed the house as a one and half story instead of a two story again, to keep the massing as small as possible.

Board Questions and Comments:

Sternberg, Mr. Patterson why did you recommend approval?

Patterson, they have made a great effort in keeping this house in the building envelope in the front and on the sides. The front is within the front setback. The sides are within their side setbacks. There is 30 foot yard on each side of the home. They are over in the rear. Most of the houses on this street are over on their setbacks. They are over on their rear setbacks and the side setbacks and they are over on footprint. Taking a look at all those homes and the challenge of a smaller lot I recommended that this be written as a variance.

Public Comment

Charles Barrett, 2011 Paddock Lane, the issue is the back of the house. That house is 20 feet. My house is 40 feet. If you move the house in 20 more feet, I think that is a big difference. On the square footage I still think it is a lot of house. Our concern is the rear. Assume this gets approved and it goes forward my question to the Board is what does this mean to the rest of us moving forward?

Dughman, Mr. Barrett, we are here to listen to your comments. I do not have an answer to your question. I think we have to take it on a case by case basis.

Sloan, as far as the garage being 20 feet off of the rear property line, the way to avoid that is to move the garage to the side of the house and have a front facing garage. I know front facing is not ideal and then we would be over on the side setbacks. It would be a wider house and larger from the street. We chose to do it off the back. We are 20 feet off of the back and the neighbors to the left of us are 12 feet off of the back. There is one on Scotland Place that is about 7 feet off of the back. The garage was designed short and non-imposing from the rear.

Joel Galanter, 215 Paddock Lane, our home plans show 22 feet from the back. How are you getting 12? How did you shrink the house from last month?

Sloan, the 12 feet came from Metro Property Maps. Not sure what the discrepancy is there. I pushed the garage in 18 inches, took 18 inches out of the family room, 6 inches to 8 inches out of just about every room.

Tightening up as much as possible. That cut down on the footprint and the square footage and then on the upstairs squeezed in as well. So that made the F.A.R. smaller on the first and second floors.

Galanter, is the lawn storage 3 feet deep?

Sloan, it is three feet deep. Unfortunately, they do their own lawn, so they need a place for their lawn mower.

Ed Kelley, 210 Paddock, I'm concerned about the precedent. Are there stairs going downstairs?

Sloan, there is basement storage downstairs. It does not have plumbing.

Kyle Neal, 208 Leake Avenue, my concern is on the rear. This would be the most aggressive move into the backyard along the street.

Sloan, it seems that any house that would go on this lot would be over to be buildable.

Patterson, this is a challenging lot and that is why I wrote it as a variance. It is up to the board to deliberate and make determinations from that.

Galanter, is there a way to get it within the 22 foot precedent on the street?

Sloan, we would be happy to move it forward two feet.

Stephanie Galanter, what if you moved the garage over to the right side of the property?

Sloan, there are two doors on the rear wall of the family room. That is the only visibility to the backyard. To watch the children play and to get in light and views in the rear.

Dughman, it seems like it has been mentioned multiple times that this house will set a precedent by being 20 feet instead of 22 feet. Is the one on Scotland closer?

Sloan, yes, according to Metro Maps there is a detached garage on the left that is 7 feet from the property line and the one on the right is 20 feet. There is one on Paddock that is 2 feet.

Board Discussions:

Sternberg, I would like Doug Berry to address the precedent issue.

Berry, I don't think you are stuck with it like you are on other legal contexts, but it will be an argument that will be made by somebody sometime. Every piece of property is unique with unique set of circumstances. I think you have to consider what the neighbors have said and what the response has been on this issue of the rear setback that falls under the heading of is their detriment to the public good from granting the variance and also whether or not the proposed construction is in harmony with the other houses on the street.

Dughman, did the HZC approve this on first reading?

Sloan, yes, they did, they liked the massing and the scale of it as far as being a one and half story versus a big two story. They liked that the dining room on the right was pulled down to just one story to break up the scale and massing. They appreciated the materials that are going to be used and just the thought that went into making it just look like a traditional Belle Meade home.

Tardio, does the HZC consider the fit onto the lot and the neighboring houses or is it just looking at the design of the house?

Patterson, that is part of their consideration. Yes, they are not as concerned about setbacks as they are about scale, ratio, and matching with other houses on the street.

Tardio, Mr. Patterson why did you put this as a variance. What about the lot qualifies it for that part of the code?

Patterson, (pulled up images of the lot) Between these two lines you can go to a height of 45 feet. Between these two lines here you can go to 25. You can see there is not much square footage to put a house in here and keep it in the setbacks. When I see this lot, and we have this all over Belle Meade, when the building envelope is practically unbuildable it can be considered, in my mind, a variance just as if a lot you had is irregular shape.

Dughman, what about house height with the current regulations?

Patterson, the house is 30 feet, you can go to 40.

Zabaski, we have to have a variance to build a 4200 square foot house. I do think the lot qualifies for a variance due to the size. I am not sure about detriment to the public good. But I would still be in favor of a house outside the setbacks but within F.A.R. Do we have any proof of the other houses being in violation? What is the square footage of those other houses and F.A.R.?

Patterson, there is not way of knowing what F.A.R is without having a set of drawings or going into an attic. I did do some research on my own. I went to Zillow and 209 is 5293 square feet, 211 is 4391, 210 is 4891, according to Zillow.

Sloan, I want to point out on Zillow that is the heated and cool square footage. Our heated and cooled square footage is 3991 not the 5000. The 5000 includes the garage and attic that is not included in Zillow calculations.

Sternberg, is the calculation for lots less than 40,000 feet equivalent to what was originally in that ordinance?

Patterson, it is relatively close, that was volume and then we switched from volume to F.A.R. This way was easier for everyone to understand. Volume like F.A.R. does not include any room under the first floor so basements are free. Berry, whoever makes the motion please state the basis for your motion relative to the variance standards and the evidence you have heard.

Tardio, I am not struggling with the first part of the variance but with the second part, that this relief can be granted without substantial detriment to the public good. Seems like a nearly unanimous opinion from the neighbors that there will be detriment to at least the public good on that street.

Sternberg, I would agree with that. The front and side setbacks make the house feel appropriate from the street. But the fact that the neighbors are concerned about setting a precedent when there are clearly other houses that are going to be torn down and rebuilt, and it's going to come back to us in the future. Is there any consideration to not have garage?

Patterson, you have to have a garage it is in our ordinance.

Clifford, is there a legal definition of detriment to the public good or is that left to the interpretation of the board?

Berry, I would say that is left with the interpretation of the board based on the testimony you hear and the facts that have been presented.

Dughman, (read aloud the HZC policy and justification) this application passed the HZC. The concerns I have heard from the public relate to the back, and we are talking about a two foot difference. The gentleman on Leake Avenue is actually not in the back he is on the corner. I am trying to understand what the concern is with this house. What is the detriment that people are talking about?

Zabaski, I heard the neighbors say that the house is going to appear to be larger than the other houses and is going to change the character of the neighborhood.

Dughman, I don't think they said that this time. It was mentioned last time and we were also missing the understanding about the size of the house. We now know the footprint of the house is smaller than the house to the right and to the left.

Clifford, those are excellent points. I think we all agree it qualifies as a variance. We do have the footprint information and its consistent. If you look at the visual on the second floor, and Catherine did a nice job pointing out that, you can make a reasonable assumption that the F.A.R. is likely in keeping. We would prefer not to, or we cannot have front facing garages like the one to the right. But we do have precedent to the right so they could consider that, but I don't think that is the preference. On the left we see a set back that is 22 feet and we are at 20 and I think the concession was made by Catherine Sloan to solve that by moving the storage shed.

Motion to approve as drawn subject to moving the storage shed to somewhere that solves for less than 20 feet and meets with staff for approval:

Clifford Second: Sternberg Vote: 4 - yes, 1- opposed

Tardio, I think the HZC approving the design and the house is important to me in deciding that the house remains in harmony with neighborhood. As I read the code, its substantial detriment to the public good, while there may be some unhappiness with how close it is to the back, I don't think it is substantially detrimental to the public good. I don't think by approving this lot we are setting any precedent. We are free the next time to consider the testimony and make a different decision.

New Business:

1. The application of Lee Noel (20121) 305 Lynwood Boulevard for a variance/conditional use permitting the construction of a swimming pool. The building permit has been denied for the following reason.

- A Swimming pools require BZ approval.
Staff recommends approval

Presentation: Lee Noel, son of Lee and Emily Noel, 305 Lynwood Boulevard, Stephen Wells is the architect on the project. Part of the pool and decking is outside the building envelope which I believe is the reason for the variance request. The house was bought in 1976. The back portion of this lot is an odd shape and does create an issue with the side setback.

Board Questions and Comments:

Dughman, why was this recommended for approval?
Patterson, again we have an unusual shape lot. The house was built before the setbacks were in place. The corner of the pool is out in the triangular area shown. It was written as a variance due to the shape of the lot.
Sternberg, what is at the bottom of the pool on the plane?
Noel, that is all grass on the back left side of the lot.
Sternberg, is there any possibility of shifting the pool in that direction to get it inside the building envelope?
Noel, I don't think that is totally out of the question but for the layout I don't think that will be the most visually pleasing. It is perfectly centered between the garage and the house.
Zabaski, is that a conditional use when it's a foot deep pool? Does that need approval from the Board?
Patterson, 18 inches or deeper needs approval. I don't know how the Board looks at this since its connected to the pool. It could be a pool feature since it is less than 18 inches.
Noel, the sundeck will be one foot.
Zabaski, where is the pool equipment?
Noel, it is outside the building envelope next to the existing HVAC unit. There may be a little place that is better for it beside the chimney that would place it inside the building envelope. On this set of plans it is outside the envelope.

Board Discussions:

Motion to approve the plan as submitted with the exception of the pool equipment, and it needs to be moved inside the building envelope: Zabaski
Second: Sternberg Vote: All aye

Motion to adjourn at 6:25pm: Zabaski Second: Zabaski
Vote: All aye

Chairman Joe Dughman

City Recorder Edie Glaser