

Minutes
Board of Zoning Appeals
Belle Meade City Hall
December 17, 2019

Call to Order

The meeting was called to order by Chairman, Joe Dughman at 5:04pm.

Board members present

Joe Dughman, Chairman Gloria Sternberg Haley Dale
Pete Zabaski Charlie Atwood, alternate

Staff Members present

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

Conflicts: None

Consideration of the Minutes - November 19, 2019

Motion to Approve:

Old Business: None

NEW BUSINESS:

1. The application of the Belle Meade Plantation (19121), 5025 Harding Pike, for the construction of a 40-seat deck/veranda to the existing restaurant. The building permit has been denied for the following reasons.

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 of Belle Meade Plantation, is requesting an addition of a deck to the side of the restaurant. The deck will be located off the side of the restaurant facing the parking lot. It will have forty seats. It is designed with the same type materials as the original building.

Board Questions/ Comments:

Q. Does the deck face Leake Avenue?

A. No, the deck faces the parking lot. There are four trees that will be in front of it. We are not cutting down any trees for the deck.

Q. Appendix C reads that anything built or added to needs to be consistent of the original structure. Explain why it is consistent?

A. We started with an architect to make it compatible. We feel like it will be very unobtrusive. Materials being used are exactly the same that were used in the building originally. There is no stone in the design. The steel is the same from the original building. We are using a bronze, aluminum metal that will tie in with the original building. The deck will be painted the exact same color as the restaurant. Our goal is to make the deck disappear.

Q. How much does the deck increase your seating capacity?

A. The deck will not increase our seating capacity. We are moving some seating from one side of the building to the other. We currently have 70 seats and 210 parking spaces.

Audience Questions/Comments: None

Board Discussions:

Charlie Atwood made the comment that Belle Meade Plantation did a wonderful job to the neighbors when it closed off the back gate to the public. It reduced the traffic.

Motion to Approve: Zabaski **Second:** Sternberg **Vote:** All aye

2. The application of The Belle Meade Plantation (19122), 5025 Harding Pike, for the construction of bathrooms to the existing Garden Cottage. The building permit has been denied for the following reasons.

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 of Belle Meade Plantation explained that they have four bathrooms for three hundred thousand visitors, and it is overwhelming. Not from the visitor's viewpoint because they come in at the gift shop. We try to re-route all school traffic to come through the bus parking lot next to the Jewish Temple. The first thing the kids want to do when they get off the bus is find the restroom. The kids walk basically from The Temple all the way through the plantation grounds to use the restroom. We have outgrown the current use. Fortunately, in front of the Garden House there is sewer and water. We are looking at doing a 220 square foot addition putting a small shed, much like the one that is on the back of the Smoke House, that will house two unisex restrooms. These will be small bathrooms, mainly for children's use. It will duplicate the one at the Smoke House. Exterior will be lap siding, painted grey with a tin roof. We chose the least obtrusive location and it already has sewer in place. We would begin the work in off Season probably in November.

Board Questions/ Comments:

Q. Do you have any idea of what materials you will use because we do not have any pictures?

A. I am sorry, and we can come back with pictures. It is wood lap siding, with two doors and a black tin roof. It is a very small space.

Q You are on City sewer, right?

A. Yes

Audience Questions/ Comments: None

Board Questions/ Comments: None

Motion to approve: Sternberg **Second:** Dale **Vote:** All aye

3. The application of Belle Meade Plantation (19123), 5025 Harding Pike, for the construction of stone hardscape to the existing wedding garden area. The building permit has been denied for the following reasons.

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 of Belle Meade Plantation, said when we started having weddings it was a third of our revenue source. We are trying to distance ourselves from the majority of the wedding business that it was. So as of this year we go from seven days a week to two days a week. Weddings will be on Friday's and Saturday's only. Wedding vows are exchanged in the Wedding Garden. They then go inside the Carriage House, stables or tent. The Wedding Garden eroded after last year. The space is under fourteen trees and we have spent a lot of money trying to grow grass

there. We have given up. We asked Harry Peffen, of Peffen and Cline Construction, to help us find a way to stop erosion and put something there permanent. Also, trucks come up and down that area to deliver chairs. What we want is one space out of stone where you sit, no chairs are brought in, nothing is moved, and is a stone enclosure with gravel surfaces throughout. Harry Peffen joined Alton Kelly at the podium and explained the photo of the space shown. The area that is existing is the Isle, with steps that need rebuilding badly. Alter will be raised up on steps. The benches will be made of limestone and will sit up out of the ground. Five feet permeable concrete pavers will go around the perimeter and in between the isle. Mr. Kelley added the area is level so will produce some water. Mr. Peffen explained the purvis pavers will have a twelve to sixteen inch cut out for gravel that will be able to store water then allow it to perk back into the ground.

Audience Questions/ Comments: None

Board Discussions:

Zabaski asked Patterson if there was a stormwater created for this? Patterson replied no.

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

4. The application of Patrick Lowery (19124), 215 Lynnwood Terrace, for a conditional use permitting the enlargement of an accessory structure previously approved by the BZA, April 16, 2019. The building permit has been denied for the following reason.

A. Pavilion/Accessory structure inside building envelope requires BZA approval.

Presentation: Presenter stated the BZA approved the swimming pool and pavilion. We are back to get approval for an interior stair to access the unfinished space for storage. There is a height increase of twenty-three and a half feet. The footprint will increase by ninety-seven square feet.

Board Question/ and Comments:

Q. Is the interior stair to access the unfinished space for storage the only difference in the April approval?

A. Height increase to twenty-three and a half feet, footprint increase by ninety-seven square feet. Lyle Patterson, City of Belle Meade Building Official, commented that the design was approved in April however anytime there is an approval then a change is made in size or volume it has to come back to the BZA.

Q. Is it a detached structure to the house?

A. It is not connected by structure to the house. The footprint of the garage was 1415 square feet.

The footprint is now 1512 square feet. The square feet was 1532, this submittal is 2258.

Audience Questions/Comments: None

Board Discussions:

Dale asked Berry if it was correct that we are not voting on the structure itself but on if we are ok increasing the size by ninety-seven square feet? Berry responded that is his understanding of the issue brought before this board.

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

5. The application of Shea Ghertner (19125), 4420 Forsythe Place for a conditional use permitting the construction of a swimming pool. The building permit has been denied for the following reasons:

A. Swimming pool requires BZA approval.

Presentation: Gavin Duke with Page/Duke Architects explained they are under all the allowances square footage wise and within the building envelope. The complete perimeter is fenced. Existing now is a large fountain in the courtyard. The pool equipment is behind the house. We are requesting to put the pool equipment in place of the fountain.

Board Questions/Comments:

Q. Will it be surrounded by a six-foot enclosure?

A. Yes, a fence.

Q. Where else could you put the pool equipment?

A. We would have to do some constructive things inside the garage.

Q. Does the pool equipment stay in what is currently being shown with the wall? Will it be more sound proof?

A. It will be more sound proof. The fence that will go around it will have insulation board on the inside to reduce the sound.

Audience Question and Comments: None

Board Discussions:

Lyle Patterson commented that if this was HVAC equipment that was outside the building envelope and they were replacing it we would not be here.

Motion to Approve: Sternberg **Second:** Dale **Vote:** All aye

6. The application for St. George's Episcopal Church (19126), 4715 Harding Pike for a special exception governed under the zoning ordinance Appendix A, Churches and Schools, permitting the construction of a Boy Scouts Storage Shed. The building permit has been denied for the following reasons.

A. Accessory buildings and detached structures require BZA approval.

B. Accessory structure is outside building envelope.

Presentation:

Cam Sorenson, Chairman of the Building Committee at St. George's began his presentation stating they were there to request a variance to construct an eight hundred and eighty square feet storage shed for Boy Scout Troop 31. Troop 31 has been an important part of youth ministry at St. George's since 1957. The troop since its origin has seen 470 Eagle Scouts, 137 in just the past ten years, so it is a very vibrant troop. When we met before the BZA in November of 2018, the Parish Life Center was on the other side of the property from where it is being constructed now. We deferred at the November meeting. We came back at the January meeting and relocated the Parish Life Center to the present location where it is under construction. The original Parish Life Center had adequate storage needs to accommodate the Boy Scouts. When we moved the location, we had to shrink the building size to fit and had to take the storage for the Boy Scouts out. They have been storing their troop equipment on Church property for many years.

The proposed facility is eight hundred and eight square feet. The size of a two-car garage. It includes three garage doors, two on the front and one on the rear. It includes a commode and a wash sink for equipment. It will not be air conditioned. It will not be used for regular meeting space or gathering space for scouts in anyway. The Scouts have about 10 camp outs a year.

They typically show up on Saturday mornings to load equipment then return on Sunday's before noon. This is about the extent of the use of this facility. The location is in the rear of the site in an effort to minimize its visibility. Prior to the submittal we met with Building Official, Lyle Patterson, on two occasions to review the proposed location. We also met with Mrs. Nelson and Mrs. Garret. Mrs. Nelson has no objections. The finish floor elevation of the proposed Scout shed is four hundred seventy-two feet. Approximately twenty-eight feet below the finish floor elevation of 106 Belle Meade Boulevard, Mrs. Garrett's home. Overall the structure is eighteen feet tall, which would put the peak of the roof ten feet below Mrs. Garrett home. The structure would be 164 feet from Mrs. Garrett's home. I have submitted some photographs of where the site will be for this facility. There is pretty significant vegetation there now and our plan is to plant additional ever green.

Board Questions/ Comments:

Q. How many Scouts are there?

A. About 110

Q. The building is only twelve feet from the property line?

A. Yes, we recognize it is close to the property line, but we think given the considerable distance from the residence the impact is minimal.

Q. You have a view of the roof from these properties and Mrs. Nelson said she is ok with it but what about the next owner of her property?

A. There is a very large magnolia tree between the property and Mrs. Nelson home.

Q. Compare the height of the Scout shed to the building being built now?

A. Building is about forty feet tall and the Scout shed is eighteen feet.

Q. Any difference in the elevation between the two?

A. Building finished to floor is 469. The Scout shed is 472, so 3 feet.

Q. Was there any consideration of another location on the property for the shed?

A. One of the goals of the building program was to increase our parking. This is the one location we can put that facility that does not consume or reduce our parking.

Q. Did you work with Lyle Patterson on the location? Lyle, can you speak to that? Patterson commented, technically no. They came to me and showed me where they wanted to put it, but I did not work with them as far as try to find a better place.

Q. Is there a retaining wall right behind this proposed shed?

A Yes

Q. The shed is eighteen feet, how tall is the wall?

A. It varies, in this location it is probably about six feet.

Q. Any consideration of extending the plantings to shield the view even more to Mrs. Garrett and anyone else?

A. We can take a look at it.

Q. Has there always been a building to serve this purpose?

A. Yes, it was part of the 104 building I believe in the lower portion of the house, in the basement.

Audience Questions/Comments:

June Garrett, 106 Belle Meade Boulevard, stated her husband bought the house only two years after the scouts started with St. George's in 1959. I am a long-time member of St. George's. I was married there in 1953. My children were Baptized there and attended St. Georges Kindergarten.

I attended a meeting at St. George's in September 2018 about their plans to construct a new building. I did not receive any other information about meetings until by accident I heard that there would be a meeting in January

2019. At this meeting I found out that St. George's had come up with an entirely different plan than what was discussed and shown at the September 2018 meeting. In no way am I opposed to the Boys Scouts of America, but they have no connection with the Episcopal Church. It is not a religious part of the Church activity.

George Dean would like to make a couple of points on Mrs. Garret's behalf. He stated let's forget about the two hundred and fifty-foot set back but just the sixty foot. Ordinarily if you were building a home on this property it would be a sixty-foot set back from the rear. This is twelve feet from the property line. So, if you were putting in a single-family residence with only one family and a couple of cars, you're not going to have nearly the activity at that home that requires a sixty-foot set back. This is twelve feet. This is not a conditional use permit. It is put down as a conditional use under item C. This is a variance. They are asking to vary the required set back of sixty feet. Usually under Tennessee law you take the smallest number for the property owner. Smallest number here is sixty feet. Sixty-foot rear set back, that is a variance. In order to get a variance, you have to show some unusual physical feature. If they applied for a variance there is no unusual physical feature. There is no reason to grant this.

Final thing, is this an accessory use to the Church? It is not customary to have a Boy Scouts facility on a Church site. I am no way opposed to the Boy Scouts or the Church. The problem here is it is not an accessory use by your definition. I would ask the Board to think about that. I do not think this is an appropriate case for this particular use.

Dughman asked Mr. Dean if he knew what Mrs. Garrett thought about the Boy Scout structure? Dean responded he had not talked to Mrs. Garrett directly about that. He feels the real concern is being that close to the property line. The sixty-foot requirement in your zoning ordinance either it means something for everyone, or it doesn't.

Dughman replied we do not have a sixty-foot requirement for this. Sternberg commented we have a two hundred and fifty requirement for this. Dean commented that there is a doctrine in Tennessee Law that says if there is any kind of ambiguity in the ordinance you take the interpretation of the ordinance that goes for the property owner, that is the Church. The two hundred fifty foot is in the section dealing with a Church application. This is not a Church application. This is an application on behalf of the Boy Scouts under item C, not Appendix A.

Dughman asked, this is not a Church application? Dean responded it is for a Boy Scout building. Dughman asked, this is an application for St. George's, right? Dean responded yes, they signed it. A Boy Scout use that is not customarily incidental for Church use.

Dughman asked why does it have to be incidental for Church use? Dean responded, is it legal at all because typically you can only have one principal use on any zoned lot?

Dughman asked is it legal? Dean responded he did not know but if it was a Metro Zoning Ordinance yes, it would be illegal. Dughman responded, this is not a Metro Zoning Ordinance. Dean said the Belle Meade zoning ordinance is a bit odd. Usually in an ordinance there is a definition of principle activity. There is not one in Belle Meade's ordinance from what I can tell. It does have a definition of accessory use. This does not meet that definition.

If sixty foot is required for a home why not for the Church? Atwood responded it is no different than the Plantation. The Plantation has multiple uses that are different from the original use. There are no specific setbacks for the Plantation. Atwood went on to ask, how can you question a use of seventy years after it started? It has been going on for seventy-two years. Dean responded he believed the sixty foot would count in court.

Dughman asked if it was outside the sixty foot, are you saying it would be ok? Dean responded, yes.

Dughman read a letter from Reverend Dr. R. Leigh Spruill, of St. George's Church, dated December 21, 2018.

Mrs. Garret responded after the letter had been read that she never received the letter.

Dale asked the question to Sorenson what the relationship is between the Church and the Boy Scouts? Joe Weaver, Boy Scout Master for Troop 31 for the last ten years, addressed the question saying the Boy Scouts of America Organization requires a charter organization of every Troop or Unit that exists. Most of these are affiliated with a Church or a School. St. George has been the charter organization for our Troop. As far as the religious purpose of the Boy Scouts, many of the boys in the Troop are parishioners' children. We are recognized every year within the Church as being an important youth ministry for the organization. The youth of the Church are served by the Boy Scouts. We have interactive programs with the Church. Dale commented that she appreciates the relationship the Troop has with the Church and asked if the Church would feel the same way about building a facility for example, for the Girl Scouts or a theater group? Weaver responded by using Belle Meade United Methodist Church Boy Scout Troop 87, as an example. This Church has a separate facility in the back of their property for the Troop. The facility is used for storing equipment as well as meetings and other activities. The facility they are proposing will only house equipment.

Dale asked if there was truth to the statement that a drive is being constructed to this? Sorenson responded yes, pavers, it is on the site plan.

Mrs. Garrett asked if anyone had the answer to where the Boy Scouts housed their equipment prior to 104? She commented there has never been a long-time tradition to have a separate building to store the Boy Scouts possessions. She went on to say that the Boy Scouts are paying the entire costs of the building.

Clark Akers, Assistant Scout Master of Troop 31, addressed the Board and public saying the Troop was founded in 1920, at The Church of the Advent which is an Episcopal Church. They had an out building on the Church grounds that was called the Scout Hut. In 1959 the Troop was moved to St. George's Church. I was a Scout then in the Troop. We were a lot smaller then. We had a small room in the Church where we stored our tents and equipment.

Sternberg asked where do the Scouts meet now? Akers answered, in the Church on Monday evenings.

Mrs. Garrett commented that with the parking space, the Life Building and the gym transferred over to the other side, her environment has been completely changed by no fault of her own. She said there is no obligation of the Church to store possessions of a separate organization. Zabaski addressed Mrs. Garrett asking her if she was opposed to the building being built or the location? Mrs. Garrett replied she has nothing against the Boy Scouts she would like to see St. George's build it on another portion of their property. Zabaski replied if you cannot see the building and there is no visual, what does it matter? Mrs. Garrett replied there is no necessity of this building being on my side when I am already barring the other building and the parking lot.

Dughman closed the public portion of the meeting.

Board Questions/Comments:

Berry agrees with Mr. Dean that the issue in this case is not weather the use of the Boy Scouts is the law of RFIA (Religious Freedom Information Act). We are not talking about that and I agree with that.

One question raised is weather this is legitimate accessory use to a Church? Given the definition in our ordinance and just given common sense and given some of the other uses that this Church and others put their profit to, such as a gymnasium for example, that other non-church members are allowed to use. They lease out gymnasium space or space to non-church members. I think the organization like the Boy Scouts of America, particularly with the long-term relationship that Mr. Wheeler has described, think that any organization or civic organization or Church that leases or allows to use their space would fall under the definition of a Church accessory use for purposes of our ordinance. That is just my advice to the Board.

Berry continues saying that weather the variance that this Board may grant in the context of a conditional use permit is the same thing as a variance as you would grant for a setback in a residential setting. If it is not a residential use, residential setback do not apply and the variance provisions of this conditional use ordinance under Appendix A of the zoning ordinance pertain to the use of property by a Church or School. The set back is two hundred fifty foot from the property line. That gives this Board the power to grant variance from that if certain conditions are met. I do not believe that is in conflict with State Law. The advice I can give now is that this variance may be granted under the authority of Section O, Appendix A. Remember to grant the conditional use permit you have very specific standards in the Appendix. In Subsection One, it reads the Board actually has to make findings (reference Subsection One).

If you decide to make a motion to approve this use, then I would advise you to say that we are making findings under Subsection One of Appendix A. Then go on to specific sections about variances under Subsection Five

If you get into location and structure closer than two hundred fifty feet from the property line then the Board must find that there is sufficient distance to insure privacy for the neighboring properties adding protection from noise, congestion and other disturbance resulting from the location of the Church, place of worship or school. Berry went on to say the closeness to the boundary line are definitely important. This is my advice to you.

Dale stated, they did not apply for a variance? Berry replied the variance in this case is not a variance like the other variances under our Zoning Boards. There is a specific provision in this conditional use procedure as I understand it.

Dale stated conditional use is not on the Agenda either. Berry asked what is on the Agenda? Patterson said, special exception. Berry replied, special exception is synonymous with the conditional use. Is anybody under any illusions that this is not to be treated under Appendix A?

Dale replied, when we put something on our Agenda of what we are voting on and then we don't do it I think we are putting ourselves at risk.

Berry replied, that is a problem if the Board and the Public do not have adequate notice of what is being asked. I would question if that is the case.

Dale asked Berry if someone could make that argument and secondly if we go to Appendix A, paragraph 5 (reference Appendix A)? Berry replied, it says, or such shorter distances may be sufficient. If it was the two hundred fifty rule, we would not be here, but it says, or such shorter distances may be sufficient. That is where the Board gets involved to make the judgement call that the shorter distance is sufficient to protect privacy, etc....

Dale commented, so when I read what we are voting on in the Agenda and these documents are delivered to me, what I am looking at is not what we are talking about now? I would have come with a totally different set of thoughts if I knew that what I needed to be deciding on was weather or not twelve feet was sufficient distance from the lot line to insure privacy for another Citizen of Belle Meade. Berry asked Lyle to respond to that but responded o saying, notice it does reference Appendix A, which is the set of standards. I would say it is not fatal to that notice. Everyone is here that wants to be here and seem to understand the issue.

Dughman asked Berry, under Appendix A, number five, you talked about the distance but talked about another finding.

Berry replied he recommended if you want to approve this use, that the required findings in subsection one are incorporated in the motion. If you think they are.

Dale commented, I am just concerned, are we for the purposes of this vote considering this shed a Church or School?

Berry responded, it is my opinion you have jurisdiction over this shed as an accessory use to a Church. If you disagree with that then by all means vote against it.

Dale asked, so we have jurisdiction over an accessory use to a Church? Berry replied yes.

Dughman suggested the Board look at Subsection One. There are seven things to consider. I would suggest the Board look at those things and see if there is anything in there that this building would violate.

Atwood stated what they approved in January was the approval of parking lot construction with the retaining wall. The retaining wall established a distance from Mrs. Garretts property. Almost a year ago a project was approved by this Board a certain distance from Mrs. Garretts property, is that correct? Dughman, yes.

Dale asked, are we naming said use for the Boy Scout Troop and is what is granted specific to the Troop?

Berry, it is on the Church property, if the Boy Scouts go elsewhere the Church would use it for some other accessory use of the Church. I don't think we are approving the use we are approving the structure.

Zabaski asked the question to Sorenson, is there no other locations that would be satisfactory on the property? Sorenson responded this was the site chosen that did not impact our parking. The facility would take up six parking spaces. They currently have eighty-eight parking spaces.

Dughman asked Sorenson what a vote to defer does to the Church? Sorenson replied it would not be an issue.

Atwood commented he senses a tremendous amount of emotion in this case and is hoping the parties will look at possibly another solution. Believes time will serve both sides.

Dughman announced the vote has to be a majority.

**Motion to defer up to sixty days: Atwood Second: Dale Vote: Two aye,
Sternberg and Zabaski One opposed, Dughman**

Other Business: None Scheduled

Motion to Adjourn at 7:13pm: Zabaski Second: Atwood Vote: All Aye

Chairman, Joe Dughman

City Recorder, Edie Glaser