

Minutes  
City of Belle Meade  
Board of Zoning Appeals  
May 18, 2021

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

**Board Members present**

Joe Dughman, Chairman	Pete Zabaski, Vice Chairman	Gloria Sternberg
Chris Tardio	Doug Hale	

**Staff Members present**

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

**Consideration of the Minutes March 16, 2021**

Motion to approve:    Hale                      Second:    Tardio                      Vote:    All aye

**Old Business:**

1. The application of Jeff Orr (21041), 311 Jackson Boulevard, for a variance permitting the construction of an addition. The building permit has been denied for the following reasons.

A. The addition is outside the building envelope but inside existing footprint.

Motion to defer at the applicant's request:    Zabaski                      Second:    Sternberg  
Vote:    All aye

**New Business:**

1. The application of Tim Rupert (21051, 0 Canterbury Drive, for a conditional use permitting the construction of a swimming pool. The building permit has been denied for the following reason.

A. Swimming pools require BZA approval.

**Presentation:** Gavin Duke, Page/Duke Landscape Architects, the pool, pool equipment and fence are all within the building setback and in compliance.

**Board Discussion:**

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

2. The application of Polly Ryerson (21052), 4500 Malone Place, for a conditional use/variance permitting the construction of a tennis pavilion. The building permit has been denied for the following reasons.

A. Accessory structures require BZA approval.

B. Over on allowed accessory area of 15% by 1.4%.

**Presentation:** Wade Rick, landscape architect, this is a strangely shaped lot. The house was originally designed in the early 60's by architect Neil Bass and built by Phillips Construction Company. It was built before there was a zoning ordinance in place. There is an existing tennis court in the back left hand of the property. What we are proposing is a small tennis pavilion at the corner of the tennis court. It is a very contemporary structure which is very much in

keeping with the architecture of the house. There is about 500 square feet of the pavilion itself and then a small open air gazebo that is adjacent to it that is roughly 196 square feet in size. The current existing conditions today is 15% accessory structure, roughly 16% of the entire site. We are asking to go 1% over 16. Currently there is no landscaping by the tennis courts, and it is very visible. We are planning to add some screening with plantings of tall evergreens and hollies.

**Board Questions and Comments:**

- Sternberg, what is Mr. Patterson's recommendation on this application?
- Patterson, I am hesitant on them being over on the accessory area.
- Zabaski, the gym area is a structure inside the setbacks, is it over on FAR?
- Patterson, it is not over on FAR.
- Zabaski, the gazebo is approved without board because it is an accessory structure outside the setbacks but under 250 square feet.
- Hale, can you elaborate on the accessory on the overage?
- Rick, the existing site, as it sits today, that was constructed before the zoning ordinance was in place, is currently over the allowable 15%. To add a small accessory structure, we would again be over the allowable percentage.
- Patterson, the accessory structures consist of pool, tennis court, pavilions, separate structures, the total of that is 15% total square footage of the lot. They area asking to be over by 1.14%.
- Tardio, you are currently already over?
- Rick, yes, we are asking for 1.14% over.
- Patterson, the application is showing the allowable is 11,748 square feet, existing is 12,588 square feet, so they are asking to go over another 881 square feet which would put them over the allowable 2.1%.

**Board Discussion:**

**Motion to approve as submitted:**    Zabaski                      **Second:** Sternberg  
**Vote:**

Tardio, what is the basis for the approval?

Zabaski, the shape of the lot. The lot does qualify as a variance.

Sternberg, the shape of the lot.

**Motion to amend the motion:**    Zabaski                      **Second:** Tardio                      **Vote:** All aye

**Motion to approve based on that this meets the requirements of a variance:**  
Zabaski                      **Second:** Tardio                      **Vote:** 3 approved, 2 opposed

Rick, the unusual shape of the lot does create an unusually shaped building envelope and to fit within that building envelope we have an accessory structure that we have to squeeze into that spot that we have shown. The house and the garage were developed prior to the zoning ordinance being in place. We could not put that tennis court today where it is shown currently given the unusual shape of the lot.

Hale, we are not questioning the location of accessory structures, whether they are in or outside the building envelope. My issue is why add on 881 square feet, how is that additional square footage being impacted by the irregularity of the lot? Where is the hardship?

Rick, this particular house, being a one story house does not have room for an indoor gym within its footprint.

Hale, if the gym were connected to the house, it would not be an accessory structure. You chose not to add it to the house and as a result the overage that exists is now greater.

Rick, yes.

3. The application of Chris Holmes (21053) 402 Ellendale Avenue, for a conditional use permitting the construction of a swimming pool, a special exception for pool equipment outside the building setbacks and driveway over on allowable footprint. The building permit has been denied for the following reasons.

- A. Swimming pools require BZA approval.
- B. Pool equipment is outside building envelope but inside existing building.
- C. Drive is over allowed footprint but under existing driveway.

**Presentation:** Gavin Duke, Page/Duke Landscape Architects, we are wanting to bring the driveway in from its original position while protecting the zone of substantial large oak trees on the property. The large oaks range in size from 38 inches to 48 inches. We do not exceed what the original square footage is for the drive, but we are over what is allowed. We are preserving some pretty substantial trees for the City of Belle Meade. By bringing the drive in it gives us larger lawn space that you can see from the street and protects the trees in the process. We have been through the Historic Zoning Commission, and everything has passed through there within building setbacks on the house. The second item on the agenda is the pool area. The pool is within the building envelope. All our numbers are good on the square footage and the allowable. We have an existing structure that the pool equipment is in now that is over the building envelope. We would like to transfer that pool equipment to within an existing structure that is already on the property but that sits outside the building envelope. The pool equipment would be enclosed, contained, and muffled of noise to the surrounding neighbors.

**Board Questions and Comments:**

- Patterson, you are removing footprint from the driveway, but you are technically still over.
- Sternberg, you are over 562 total but under in the front about 2000.
- Zabaski, on the pool equipment what is your second choice? We could probably grandfather in the building where it is now but to move it, we don't really have the authority to put it outside the building envelope.
- Dughman, what is the building that exists there now?
- Duke, that is an existing pool pavilion with pool equipment under it. It will be taken out because a portion of it is outside the building envelope.
- Zabaski, keeping it where it is now is that not a possibility?
- Duke, it is pretty unattractive and open. The grades are not working with it and what we are wanting to do.

**Board Discussion:**

Motion to separate the pool equipment separate from the pool and separate from the driveway: Zabaski Second: Sternberg Vote: All aye

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

Motion to approve the driveway as submitted: Zabaski Second: Hale  
Vote: All aye

Hale, the reduction in the driveway still results in an overage of the footprint of 1.7% is that correct? When you reduce the amount of 54 square feet, you still end up with an overage of 1.7. Do you know what you brought the overage down from to what it is? We have a pre-existing condition that resulted in an overage of footprint. You mitigated that by what you're doing and in so doing your hopefully resulting in no damage to the trees, and overall reduction.

Duke, correct.

Zabaski, in the past the board is usually appreciative of the applicant decreasing the amount of hardscape, even if it results in an overage of the ordinance. I applaud your efforts on that and appreciative of the trees not being removed. The board has also been very concerned about the number of trees being removed.

Patterson, we have an existing structure that is currently a garage that will become a livable space heated and cooled with an air handler in that building. Air handlers are supposed to be inside the building envelope, but we have an existing structure outside, just like we have the pool pavilion with the pool equipment, outside the building envelope. They are asking to trade one for the other. They are asking to move the pool equipment in the existing structure, outside the building envelope over to another building.

Doug Berry, I don't see anything in the zoning ordinance that addresses whether or not if you're moving one accessory structure that is outside of the building envelope to another accessory structure that is outside the building envelope that you're changing the use both of which will be permitted. I do not see any authority against that. This has been brought up as a special exception which deals with new construction where a portion of it is already outside and in violation. You can consider the criteria for a special exception. Both structures are outside the building envelope. You are not aggravating the problem because both structures are out of the building envelope anyway.

Zabaski, what is that structure going to be used?

Duke, we will be converting it into a guest room.

Zabaski, Mr. Patterson are you saying they are not supposed to put an air handler in that structure, but you are allowing it?

Patterson, if it is an existing structure which it is, they have to have heating and air, the air handler will be in that building. They are not asking to build a new structure outside the building envelope. The pool equipment is already in a structure outside of the building envelope, they just simply want to move it to another building.

Duke, we are also decreasing the number of structures on the property.

Hale, the violation does exist already, we are in our right to ignore those violations and make changes to those? My thinking is it is already bad. We are not being asked to make it worse, but we are being asked to maneuver within the violation to create different messes.

Doug Berry, in our zoning code we have special exception as it is listed in the agenda. When there is new construction, and it is in existing violation of some standard there can also be a special exception allowed for principal structure if the granting of the special exception will not adversely impact other properties. Both of these structures are out of compliance. They are wanting to move equipment from one to another. You are not aggravating the violation, and that is the standard of which this board considers to be special exception.

Motion to approve the pool equipment as submitted: Hale Second: Tardio  
Vote: All aye

Tardio, I think it meets the standards that Doug Berry explained. It does not cause any disharmony with the neighborhood, does not adversely impact surrounding properties, does not aggravate the violation and the overall intent of the zoning plan  
Zabaski, I do not believe this should have come before the board.

Meeting adjourned at 6:00pm

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Chairman Joe Dughman

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City Recorder Edie Glaser