

**Minutes
City of Belle Meade
Board of Zoning Appeals
July 20, 2021**

Board Members present

Doug Hale, Chairman Joe Dughman, Vice Chairman Pete Zabaski
Gloria Sternberg Erick Clifford

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 June 15, 2021

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

Old Business: None

New Business:

1. The application of Margaret Greathouse (21072), 218 Deer Park Drive, for a special exception permitting the rebuilding of a garage and additional driveway. The building permit has been denied for the following reasons.
 - A. Garage/addition is partially outside the building envelope.
 - B. Garage/addition is over the allowed footprint by 25.43%.
 - C. Existing drive is over allowable by 128 feet, requesting additional 312 square feet of driveway which is now over allowable by (440ft.) or 11%.

Presentation: Steven Wells, architect, we would like to request a deferral for sixty days.

Motion to defer for sixty days as requested by the applicant: Sternberg
Second: Zabaski **Vote:** All aye

2. The application of Jeff Orr (21073), 311 Jackson Boulevard, for a variance permitting the construction of an addition. The building permit has been denied for the following reason.

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

Presentation: Ron Farris, Farris Concepts in Architecture, this home was constructed in the early 1920's by Mr. W. A. Benson. Lori and Jeff Orr have owned the home since 2011. The original lot size was 3.77 acres with the physical structures consisting of a main house and a detached garage with caretaker quarters. In the 80's or 90's the 3.77 acres was subdivided, and 1 acre was carved off to create a lot at the rear of the residence. This lot subdivision placed the existing residence in non-compliance in regard to the rear setbacks. The original detached garage and caretaker quarters were built outside the current ordinance setbacks. When the current ordinances were adopted the detached garage and caretaker quarters were grandfathered in. Prior to the Orr's purchasing the residence in 2011, former owners performed renovations and made improvements that required BZA review and approval. A

pool was added, and the existing detached garage and caretaker cottage were connected to the main house with a loggia on the first floor and a master suite on the second floor. The garage was expanded towards Belle Meade Boulevard with one bed. All of these improvements were granted a variance by the BZA, and all the improvements were outside the allowable building envelope but within setbacks established by existing conditions similar to our request this afternoon. The owners would like to renovate the home to meet current and long term needs specifically having their master bedroom on the first floor. In addition, they would like to maintain a caretaker guest suite that can better accommodate their four children, spouses, and grandchildren as well as a live in healthcare provider should that be necessary later in life.

We would like to raise the roof 7ft 6inches at a portion of the existing garage and caretaker quarters and renovate the garage. By raising the roof, the caretaker quarters can be relocated to the second floor. The existing two car garage would be relocated to the current caretaker quarters and the current garage would be converted to a master suite enclosing the existing loggia. With the exception of the small bath in front of the master bedroom these improvements are occurring within the footprint of the existing garage and caretaker quarters. The work would not extend any portion of the existing structure closer to the side yard property or closer to the rear yard property. The distance from our current structure to the corner of the side yard is 27 feet and 30 feet at the front corner. We are not asking for any variances on footprint or FAR. Raising the roof 7 feet 6, is 25 feet, which is the City's one story max height. We originally submitted a request to raise the roof 10 feet but after speaking to the neighbor Mrs. Mathews and her attorney Sean Henry and her concern that the addition would be too visible from her side yard. We deferred our original submission to address this feedback and the Orr's engaged landscape architect Gavin Duke to consult on adding additional screening along the common property line. Mr. Duke is proposing the addition of five single stem magnolia trees. When planted they will be 18ft tall and will mature 22 to 23 feet. These landscape additions along with the landscaping currently in place will screen in the entire side and view from Mrs. Mathews property.

We are asking the board to consider our variance based on several contributing factors. Allowable building envelope of this property places most of the existing structure in noncompliance. This leaving minimal area, if any, to expand forward or towards Belle Meade Boulevard. Because this property was subdivided the rear setbacks place the rear of the residence in noncompliance. The residence was originally oriented far left, causing the left side to also be in noncompliance. In the past the BZA has recognized the hardship of current side setbacks. We are not proposing to be any closer to the side yard neighbor. All three residences between Deer Park and Jackson have existing structures located outside the current ordinance setbacks and all three are located very close to neighboring property lines. The allowable footprint for a house on this size lot is 9,290 square feet. Our proposed work is at 4,354 square feet. This is under the allowable and under the FAR. The FAR for a lot this size is 15,174 square feet, with proposed improvements we will be at 7,970 square feet. With a minimal height increase of 7 feet 6 and an addition of five single stem magnolias to increase the landscape buffer the Orr's hope is to be able to make these improvements by working within the current existing footprint.

Board Questions and Comments: None

Public Portion:

Alice Mathews, 405 Belle Meade Boulevard, we are the next door neighbor. When we bought our house, we did extensive renovations and restoration. We did not change the footprint or add any additional volume. We worked with Carolyn Summer and later Ben Page to develop a landscape plan that would create an oasis of privacy around our property. Our thirty five year old privacy plan is at risk and will be changed significantly if the proposed second story variance is approved. My daily entrance, the kitchen, dining room, and sitting room, all look towards the proposed second story construction in question. I spend a good amount of time enjoying the many different views of the garden. This variance request is on top of a previous variance in 2001 which we did not oppose, that extended the garage and changed the garage access to face my property. A front yard swimming pool was added as well. Had we known then that agreeing to that initial variance would put us in this position now with a second variance being requested we would have objected. The addition of a two story guesthouse will completely intrude on the light, air, and visual space of my house. There will be continuous impact of someone looking down on my home. If the benefit to one property comes at a cost of the neighboring property, the entire community suffers the cost. I respectfully ask this request for a variance be denied because of the hardship it will cause.

Lisa Bohannon, I am the daughter of Alice Mathews speaking on behalf of the Leigh Beath with Beath and Company, the management and design team at her residence. They have worked on the property since 2014. The proposal of planting five eighteen foot magnolia trees to screen the new addition from Mrs. Mathews perspective has several issues. There is not enough planting space available for the 5 magnolia trees. The length of the available planting space is 36.6 inches and the available depth that goes from the edge of the garage to the brick wall is 2.4 inches at the narrowest point to 4.2 inches at the widest point. An eighteen foot magnolia typically has a five foot root ball and is recommended to do the hole two times the diameter of the root ball. Most magnolia trees grow to be 10 to 15 feet in width. The fibers root system of a magnolia planted this close to Mrs. Mathews existing brick wall could eventually destabilize the wall. It is recommended to place the plant five feet away from the edge of a driveway or wall. Debris from the leaves and seed pods will be a constant maintenance issue. The magnolias would overwhelm the limited planting spaces on both sides of the adjacent properties impinging on the established screen planting on Mrs. Mathews side of the property.

Sean Henry, 500 11th Avenue North, Attorney for Mrs. Mathews, the standard in which Mr. Orr has requested a variance from you is whether or not there is a physical hardship that is preventing an expansion of this home and a construction of a guest house that complies with your zoning code. They have requested a variance. On the application they completed it asks the question, was the condition from which relief is sought the result of action by the applicant, i.e., a self-imposed hardship, such as converting the existing garage to living space and now seeking to get a variance to construct a new garage and a required setback. The answer was no. Well, that is exactly what they are doing. They are building a second garage on top of the garage, it has living quarters, it is a guest house. They are doubling what this board granted to them twenty years ago. They talk about in their application that the existing structure is non-conforming as to setbacks. But they have not asked for a special exception for this board to consider the criteria to expand a non-conforming structure. They have asked for a variance, the legal

standard for a variance is very straight forward. What are the physical constraints on the property that prevent them from complying with the existing development requirements? In this case setbacks. They have not provided you with any justification for that. The justification is there is a structure there, we got permission to build in 2001, we want to add on top of it. That's it. If they were going to ask for a special exception and I understand why not. It is because your zoning code states that any preexisting non-conforming structure or variance, shall not be expanded, unless the owner establishes to the satisfaction of the board. There are five criteria that they must meet. One of the criteria is surrounding context and the relationships of buildings and structures off site have no bearing on the variance. The variance is peculiar to the property itself. It looks at the four corners of the property and determines topography, are there trees in the way, what physical alterations or changes are preventing compliance with the zoning code. They cannot meet that criteria. You don't know if the 2001 approval was strictly complied with. That is important because your zoning code says you have no authority to take consideration of areas if what was previously approved has not been strictly constructed. There is not an engineer survey that has been reliable to verify compliance with a prior approval. The proposed driveways to be added must be a 25 foot by 25 foot turn around as the zoning code requires. The maneuverability here cannot be accomplished, it does not comply. The landscaping that is being proposed is inadequate. The prevailing pattern is irrelevant to the consideration of the variance. There will be a wall of windows in the upper story level that will look out over her property. In the zoning code the definition of a side yard is an unobstructed open space. They are proposing to build more construction in the open space. It is going more vertical now. Mrs. Mathews would be supportive of an addition to this home if it was on the back yard not on the side yard.

Jeff Orr, 311 Jackson Boulevard, we are the owners of the house. We would like to add a downstairs master bedroom so my wife and I can stay in the house long term and keep the caretaker quarters. We contacted our neighbor Mrs. Mathews before we submitted the application, and she was very receptive to it. We then received a call from her attorney Sean Henry. He explained that his client is concerned with the height of the addition. She thinks it is too tall and she does not want to see it. We then pulled our application and had our architect resolve the concern by lowering the height from 27 feet down to 25 feet. The two story caretakers roof line is only going up 7 1/2 feet from what is there now. To address her concern that she did not want to look at it I hired a landscape architect who proposed 5 magnolia trees that will fit in the space between my driveway and her wall where we have trees now. They will not knock her wall down. They will block her view of our addition. We have tried to address all her concerns. We are not proposing to do anything to her gardens. Everything we are going to do will be on our side of the wall not on her side of the wall.

Gavin Duke, landscape architect, we can use a product called green blue which is an inground grading system that allows us to get larger roots in them. We can get a fifty inch root ball tree in there. There is a root growth regulator we can add as well. We have arborist that can apply that on a regular basis to control some of the growth. We can add root barriers if Mrs. Mathews is concerned with the wall that will protect the wall from any damage. We have the size for the root ball. We intend to keep the trees maintained and tipped pruned. These trees are a very compact solution to help with neighbor issues. There are other solutions available as well other than this magnolia tree.

Ron Farris, architect, my understanding of the variance and the hardship is it has a building envelope that puts the house in noncompliance that is its physical characteristic. The variance hardship is a common path for considerations like this. The physical characteristics that create the building envelope that create the hardship. The driveway was mentioned earlier, and it does meet the requirement. The back rear corner is 27 feet from the property line. Our driveway would be right at the 25 foot mark. We are meeting that compliance.

Pete Zabaski, do you agree with the 27 foot turn around area on the driveway?

Sean Henry, no.

Lyle Patterson, they have plenty available footprint for driveway. If it is not 25x25 they can add to it.

Pete Zabaski, if this were applied for as a special exception would you have a different feeling towards the application?

Sean Henry, I would be opposed to it because I have not seen the applicant address the five criteria for special exception. The special exception will not adversely impact abutting properties. We submit that this is exactly what is happening here. The physical characteristics of the proposed addition they fail on that with building orientation, landscaping, drainage, circulation, bulk, height, and scale.

Gloria Sternberg, was there any other consideration of building this on the other side of the house?

Farris, any other area would further extend non-conforming conditions. The other location would reduce the distance between the property lines.

Lyle Patterson, this is an existing structure they are merely requesting to go up. They are not encroaching on the neighbor any closer.

Pete Zabaski, any solution to the window problem?

Jeff Orr, I would be open to it, my primary focus would be to make sure the addition is in keeping with the style of the house and does not adversely affect either the value of my house or any surrounding neighbor's house.

Ron Farris, the windows could be shuttered. We would be open to some modifications to the windows.

Gloria Sternberg, should we be concerned with the 2001 technicality of was it in compliance?

Lyle Patterson, 2001 the garage was connected to the home. That portion was outside the building envelope but within the existing setback of the home.

Doug Berry, it is past the twenty years.

Doug Hale, would the irregular building envelope, that is so irregular that it creates significant challenges in possibility of utilizing the property of construction of new improvements. Is that a hardship?

Doug Berry, it is up to you to determine weather or not you think they have made that case and weather the proof really supports a hardship. We have many nonconforming structures in Belle Meade given the size of the lots and the time when the houses were built before the zoning ordinance.

Motion to approve the application and the application meets the criteria for a variance: Dughman Second: Zabaski Vote: All aye

3. The application of Russell McLean (21074), 1206 Nichol Lane, 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, landscape architect, we are within the building setbacks and square footages. The fence will be a six foot enclosure.

Board Discussion:

Motion to approve as submitted: Sternberg Second: Clifford
Vote: All aye

Motion to adjourn meeting at 6:20pm: Zabaski Second: Sternberg
Vote: All aye

Chairman Doug Hale

City Recorder Edie Glaser