

**Minutes
City of Belle Meade
Board of Zoning Appeals
September 21, 2021**

Board Members present

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

Staff Members present

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

Call to Order: The meeting was opened by Chairman Doug Hale at 5:00pm

Consideration of the minutes August 17, 2021

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

OLD BUSINESS:

1. The application of Margaret Greathouse (21072), 218 Deer Park Drive, for a special exception permitting the rebuilding of a garage. The building permit has been denied for the following reasons.
 - A. Garage/addition is partially outside the rear building envelope.
 - B. Garage/addition is over the allowed footprint by 25.43%.

Lyle Patterson reported the appellant will defer for another 30 days.

2. The application of Tim Browne (21083) 428 Lynwood Blvd., for a conditional use permitting the construction of a swimming pool. The building permit has been denied for the following reason.
 - A. Swimming pools required BZA approval.

Presentation: Matt Hardy, representing the owner, stated he had a full plan set with some revisions since last month. The two comments last month were the issue of light coming through to the neighbors from the Browne's pool area and whether rock hammering was feasible on this lot. There is existing evergreen screening along the side property line and two 8-10 foot tall hollies will be added. In addition, other evergreens and crepe myrtles on this lot will be transplanted to the pool area for more screening.

In regard to the rock hammering causing damage to neighboring properties, a geo tech analysis must be performed. This includes removing a portion of the existing concrete deck and boring down into the ground. There is no blasting allowed in Belle Meade, and we feel the rock hammering is safe and will not cause any damage. We did due diligence and spoke with other engineers and they had no concerns with the rock hammering.

Public portion: - No one spoke to this appeal.

Board Questions and Comments:

- Dughman: Have you shared your landscape plans with the neighbors?
- Hardy: We spoke with both neighbors about this but they have not seen the plans. The plans have been available for public review for about two weeks.

- Tardio: What is the additional tree or shrubbery that has been added since our discussion at last month's meeting?
- Hardy: Two hollies are being added to the plan.

Public Hearing Closed by Chairman

Board discussion

- Sternberg: It appears the pool equipment is in the right area and issues from last month have been addressed.

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

NEW BUSINESS:

1. **The application of Tom Grier (21091), 215 Deer Park Circle, for a conditional use permitting the construction of a swimming pool, and a special exception for a covered porch. The building permit has been denied for the following reasons:**
 - A. Swimming pools require BZA approval.**
 - B. Covered porch is outside the building setbacks but within the existing footprint.**

Presentation: Gavin Duke, Landscape Architect. This is a very unusual lot in that there are two front yards, on Deer Park Circle and Drive. Owners desire additional covered outdoor space at the rear of the house facing Deer Park Drive, off the main living area. This does not exceed further than the existing garage. In addition, there is a separate lot where the proposed pool would be located which has not been combined with the main lot. The owners are willing to combine these. Duke pointed out on the plans where the existing garage and wall are located. There is a small gap that will be fenced and landscaped, in addition to the existing landscaping along the property line. This is a complex and unusually shaped lot, making it difficult to design secure fencing around the pool area. The fence cannot be designed to come off the rear of the existing building and go to the property line. There are driveway entrances on both Deer Park Drive and Circle; vehicles go through the whole property, which makes it difficult to fence off a particular area.

Board Questions and Comments:

- Dughman: Does the applicant own the separate lot?
- Duke: Yes.
- Dughman: What is staff recommendation?
- Patterson: Recommend approval of the covered porch because it is within the existing footprint of the existing garage and does not encroach further on the lot than the existing buildings. Do NOT recommend pool because it is being proposed on a separate lot from the principle residence and not sure if this is legal. I defer to city attorney.
- Berry: Code states any accessory structure must be located on the same lot as the principle residence. But, pool is not listed as an accessory use in the ordinance. This is ambiguous, and I need more time to research, but it would be helpful to have the lots combined. I don't feel comfortable at this point to render an opinion. Lyle, have we ever allowed a pool that was not on the main lot?
- Patterson: Not to my knowledge.

- Patterson to Duke: If lots were combined, what would building envelope look like and would the proposed pool as shown today be within the envelope?
- Duke: Yes, the pool would be within the envelope. I've taken the average of the lots on Deer Park Circle and I kept it within the front, rear and side setbacks in order to see if it would work. We do not have a survey at this time to show this.
- Dughman: Isn't this appeal premature, since you do not have a survey?
- Duke: The owners did not want to go through the time and financial commitment of combining the lots if there was no possibility of getting approval of a pool.
- Hale: So, the owners would not necessarily combine these lots unless they felt comfortable that the pool would be approved?
- Duke: Yes, I believe that is their thinking. We could bifurcate this appeal today if the Board prefers the owners to proceed with the process of combining the lots and go before the Planning Commission.
- Hale: And if the lots are combined, where would the front yard be? Would the pool be in the front yard?
- Duke: That depends on where the setbacks are. If it is within the setbacks, then OK. The Board approved a similar one at 700 Belle Meade Blvd. and one on Jackson that was in the front yard, although it was never built.
- Sternberg: I thought it worked this way, that the front yard was determined by the orientation of the house and where their address is. If the lots are combined, wouldn't the pool end up being closer to the house?
- Patterson: The ordinance states the body of water must be inside the building envelope; it does not state the orientation inside the building envelope; it can be on the side, front or rear of the house. As for fencing, it can be a separate fence to go around the free standing structure, but would require Board approval since it would be a fence "in other than permitted location". Is there a reason why the owners have not already combined these lots?
- Duke: They are new to town and did not have a compelling reason to go through the process until now.
- Dughman: The BZA cannot give advice as to whether combining lots would guarantee approval of a pool.
- Hale: Agree. It is inappropriate for the Board to give advice or opinion as to what the owners can expect if they come back to us.
- Dughman: What is your basis for asking for a special exception to build the covered porch outside the building envelope?
- Duke: The configuration and odd geometry of the lot, having two entrances to the property, and limited space at the rear of the house, which is the main living and entertaining area and is about 75 feet from the adjacent neighbor. Also, there is an existing landscape buffer area in the area.

Public portion: - No one spoke to this appeal.

Public Hearing Closed by Chairman

Board Discussion: Sternberg recommended separation of the two agenda items, the swimming pool and the covered porch. Applicant will have to go before the MPC to combine the lots.

Motion to bifurcate the appeal and approve deferral up to 90 days for the swimming pool: Sternberg Second: Dughman Vote: All aye

Motion to approve the covered porch as presented: Sternberg Second: Tardio Vote: All aye

2. **The application of Cottage House Lane Trust (21092), 407 Westview Ave., for a conditional use permitting the construction of a swimming pool and a variance for over allowed building height in the rear. The building permit has been denied for the following reason:**
 - A. **Swimming pools require BZA approval.**
 - B. **Rear section of home is over allowed height of 25 feet due to topography.**

Presentation: Ann Daigh, Landscape Architect, presented for owners Steve and Lynn Cates. We are asking to construct a pool with conditions which comply with the Belle Meade zoning regulations and also asking to place the pool enclosure in a location other than from the rear corner of the house. The location of the pool in the side yard is in response to the layout of the house, which takes advantage of the beautiful flat side yard with indoor/outdoor access points leading to the side yard. There are no indoor/outdoor access points from the house leading to the sloping rear yard. Due to the location of the pool in the side yard, the location of the pool enclosure had to come off a corner other than the rear corner. The pool and pool equipment are well within the building envelope. The pool is tucked in close to the house, creating a courtyard effect. The pool is one-third the size allowed for this lot and associated terraces are also reduced in size.

Jeff Hammer, architect with Farris Concepts, stated all main living spaces look out at this side courtyard/pool area. No main living spaces look out into the rear yard. The only windows facing the rear yard are in the master bathroom and back stairway. We are asking for the height variance for two reasons: the topography of the lot which slopes steeply at the rear, up to 18 feet, and two, the odd shape of the lot with a rear setback that is not parallel to the front setback. Five other lots in this area have the same issue. If not for this, this building envelope would be in compliance with the rear setback 25 feet variance. This property has a 124 foot front setback, which pushes the building envelope towards the rear, oddly shaped section of the lot. All of the roof eave lines are within the 25 foot height limitation; only a small area of the roof and the hip roof sections over 25 feet. A lower or flat roof in the back would compromise the arts and crafts design of the home. Additional landscape buffering will be added to this lot.

Board Questions and Comments:

- Sternberg: What is the height of the back of the house? The front elevation is 39 feet.
- Hammer: Measuring from the average natural grade, it's about 5 feet lower, about 30 feet.
- Sternberg: Lyle, can you explain the 25 foot restriction.
- Patterson: In the zone between 60 and 85 feet off the rear lot line, the height restriction is 25 feet. But, due to the topography of this lot and the slope from right to left of about 18 feet, it is difficult to stay within the 25 foot limit
- Dughman: What is the staff recommendation?
- Patterson: Because of the challenging topography, I recommend approval.
- Hale: Mrs. Daigh, where is the pool equipment located?

- Daigh: Around to the back of the house.

Public Portion:

Steve Cates, 407 Westview: I am very impressed with the design and in favor of what was presented.

Public Hearing Closed by Chairman

Board Discussion:

Tardio: This would be in compliance if the shape of the lot were different and the topography definitely influenced the modifications presented.

Motion to approve as submitted: Tardio Second: Dughman Vote: All Aye

The meeting was adjourned at 5:54pm:

Chairman Doug Hale

City Manager Beth Reardon