

**Minutes
City of Belle Meade
Board of Zoning Appeals
February 15, 2022**

Board Members present

Doug Hale, Chairman Erick Clifford Gloria Sternberg Chris
Tardio Pete Zabaski

Staff Members present

Beth Reardon, City Manager Lyle Patterson, Building Official
Rusty Terry, City Recorder Doug Berry, City Attorney

Call to Order: The meeting was opened by Chairman Doug Hale at 5:00 p.m.

- Chairman Hale requested the board members to declare any conflict of interest with the items on the agenda. Hale stated he would recuse himself from participating on item number one under new business involving the Belle Meade Country Club.
- Clifford: Mr. Chairman, I have to recuse myself as well.
- Building Official, Patterson: Mr. Chairman, we have an alternate in the audience I believe that would be willing to serve tonight, Pete Zabaski.
- Chairman Hale asked Zabaski to join the board for the entirety of the meeting.
- Chairman Hale stated that before item number one under New Business, involving the Belle Meade Country Club was heard, that he and Clifford would recuse themselves and that board member Chris Tardio would act as chairman for the remainder of the meeting. Hale also stated that item number one, the Belle Meade Country Club application, would be moved to item number two.

Consideration of the minutes January 18, 2022

Motion to approve: Tardio **Second:** Clifford **Vote:** All aye.

Old Business:

1. **The application of Jim Nantz (21011) 1109 Belle Meade Blvd., for a special exception permitting the construction of a gate and fence. The building permit has been denied for the following reasons.**
 - A. **Gate exceeds the allowed height.**
 - B. **Fence is in other than permitted location and exceeds allowed height.**

Presentation

Mike Kaiser, Landscape Architect with Kaiser Trabue, for Jim and Courtney Nantz

Kaiser noted that at the January meeting the appeal was deferred and they were requested to amend the planned gate height, and to gather more evidence of precedence and harmony within the city and the neighborhood. Kaiser stated they had reduced the height of the gates from five-foot six inches to five-foot, noting that the five-foot dimension is to the tip of the stiles and not

to the pickets which are actually about five inches lower. Kaiser stated that aesthetically, it was as low as possible to maintain the desired proportions. Noting that the wall height had been approved, Kaiser moved forward with the discussion on the gates, providing photos of existing gates that exceeded the three-foot height criteria, on Belle Meade Boulevard, the neighborhood, and the city, stating they range in height from six feet to thirteen feet in height. Kaiser also provided photos of those gates that meet the criteria, showing the disproportionate appearance and lack of aesthetic appeal of the gates to the scale of the homes on those properties.

Board Questions and Comments:

- Zabaski: Did you identify the year that these gates were installed at the homes that you're using in the precedence photos?
- Kaiser: I did not. But I know that there are a number of them that our firm designed since 1994. Some of those that exceed three feet were designed in the last 10 years.

No Public Comment

Board Discussion

- Zabaski: I have the same concern that I had last month, and that is that in 1997 the commissioners changed the criteria and gates are not to exceed 3 feet. Yes, this board did approve a gate over that height for a property on Jackson Boulevard, and I believe that was a mistake. And I do not feel we should make the exception.
- Sternberg: The columns at six-foot and the gate at three feet is what our code stipulates, and evidently the perspective is correct if it is within our code.
- Zabaski: Most of the homes that have installed gates that are three feet tall, also have columns that are three feet tall.
- Chairman Hale: What is the staff's recommendation?
- Building Official Patterson: Staff defers to the board.
- Tardio: I am looking at the special exception language, and the first element is that the proposed use will not be out of harmony with the existing development in the neighborhood. I believe that has been established. The other elements, the granting of a special exception will not adversely impact the adjoining properties, and there isn't any notion that that is going to happen; or the characteristics of the use are out of line with the rest of the house or the property. I'm just kind of focusing on the language, the proposed use will not be out of harmony with the existing development in the neighborhood and I think that has been established. It is obviously a very close call and that is why we are struggling with it.
- Clifford: I agree with Chris there is clearly precedent, the applicant did a nice job presenting that precedent. I believe last time we spoke there were some security concerns and that is important to address for an applicant. I tend to agree with the definition reading that Chris provided.
- Kaiser: In terms of precedent on Belle Meade Boulevard in close proximity, that aesthetically are comparable to what we're proposing

but taller than what we're proposing are the gates at 810 Jackson Boulevard, where the gates face Belle Meade Boulevard.

- Zabaski: I want to make sure everybody understands my point of view and that is that most of these columns and gates were there before 1997. The commissioners made the decision, with those gates installed, and the decision was not to have six-foot gates.
- Chairman Hale: Special exceptions to the ordinance create opportunity and problems. The presentation by the applicant of the precedents that are out there, notwithstanding them being in existence prior, denies that the ordinance does speak to the point of harmony.

Motion to approve: Tardio **Second:** Clifford

Board Discussion

- Sternberg: The advantage to this gate is that it is an open gate.
- Chairman Hale: Have you received any comments from neighbors about the gates Mr. Patterson?
- Building Official Patterson: I have not.

Chairman Hale polled each member for their vote:

- **Tardio: I vote to approve based on the special exception language in the ordinance, in that the gates are not out of harmony with the existing neighborhood.**
- **Sternberg: I vote to approve.**
- **Zabaski: I vote no.**
- **Clifford: I vote to approve.**
- **Chairman Hale: The chair votes yes, the motion is approved.**

New Business:

1. The application of Cullen Roberts (22022) 201 Scotland Place, for a conditional use permitting the construction of a pool. The building permit has been denied for the following reason.

A. Swimming pools require BZA approval.

Presentation
Jason Gabbard, JGLA Landscape Architects

Using submitted documents, Gabbard stated that they were able to work within the building envelope that was approved by the Planning Commission last year; the existing house was approved by the Historic Zoning Commission last week for demolition and construction of a new home. They have designed a swimming pool that will also fit within the allowed envelope. Gabbard noted that the pool design will only use 75% of the space allowed for a pool on the property, the swimming pool is centered in the envelope and is tucked close into the house. They have an allowable fence location and height; the pool equipment will be within the envelope. The proposed planting will provide

quite a bit of screening. Gabbard provided images of the types of plants that are being proposed noting they will be Evergreen and tall, and indicating heights shown on the elevation documents provided. Gabbard also stated that he had an in-person conversation with one neighbor providing information on what was being proposed, as well as a phone conversation with another neighbor and provided letters of approval from two neighbors on the proposal.

- Sternberg: Where will the pool equipment be located?
- Gabbard: It will be in the basement or in a vault underneath the pool deck, it falls within our premium building envelope.
- Chairman Hale: Where is the fencing outline on the property?
- Gabbard used the elevation photo to provide the fencing outline around the property boundary, noting that the fence does not go all the way to Scotland Place, sitting back about 45 feet from Scotland.

Public Comment

- Bee Isenhour: resident at 204 Scotland Place, addressed the plantings stating that she wanted to make sure the large evergreens and other landscape plans were on record and would actually be done.
- Chairman Hale: Everything that has been presented tonight is a part of the record.
- Building Official Patterson: Yes, it is.
- Chairman Hale: Is there a detailed landscape plan.
- Gabbard: Yes.
- Chairman Hale: The record is complete with species identified, height of plants, locations of plants, by separate listings in addition to drawings.
- Isenhour: When I met with Mr. Gabbard he indicated some additional plantings to screen from the view of my house on the Scotland side, is that included in the plan.
- Gabbard: When I met with Ms. Isenhour we discussed the plant types, height, and location, and we discussed adding more plants; and I have discussed that with the Roberts; what is recorded today is going forward and there is probably some additional plantings that we could add.
- Chairman Hale: The landscape plan submitted does not include additional planting discussed with Ms. Isenhour?
- Gabbard: No, I believe that what is submitted is adequate. We have 17- to 18-foot-tall evergreens. I do feel like we can work with the owner to add additional, but the plan submitted is adequate for a small pool which is located quite a distance from Ms. Isenhour's property.
- Margaret Davitt: 207 Scotland Place, asked for additional screening on the Scotland Place side of the pool to protect the neighborhood from activity and noise at the pool.
- Gabbard: Provided photos to the board of the plantings that will be used.
- Chairman Hale: Are these plants along the property line?

- Gabbard: Using the elevation diagrams showed the placement of the plantings. These are a tall screening, based on the request of the Roberts.
- Jane Brown: 514 Park Hill, expressed displeasure at the inclusion of a pool into the neighborhood.
- Gabbard: I appreciate the comments from the neighbors, I do want to say, that the pool is small, and it is located quite a distance from the street, more than is required by the building envelope. If in order to have the pool approved, I would be willing to add 3 additional plantings to provide additional screening.
- Chairman Hale: Where would you propose to add those?
- Gabbard: We can add three more, 16-foot high, magnolias on the Scotland Place side, keeping care not to interfere with power lines.
- Ruth Napier: 210 Scotland Place, stated she likes the plans for the house, but it seems large for the lot, and she also believed that you had to have more acreage for a pool.

Public Comment Closed

Board Questions and Comment

- Zabaski: Is the fence around the pool wrought iron?
- Gabbard: Yes, it is.
- Zabaski: What is the reason for wrought iron around the pool as opposed to a solid fence?
- Gabbard: I believe that all that is required is a six-foot fence, no more no less for a pool enclosure.
- Zabaski: Yes, that's all that is required. Are there sound attenuating blocks you could use?
- Gabbard: Like a wall, yes. But currently it is proposed to be iron, with planting.
- Zabaski: Have you considered it?
- Gabbard: No. I believe the wrought iron is what our clients like. They have also asked me to use plants that conceal the pool.

Motion to approve as submitted: Zabaski Second: Sternberg

Board Discussion

- Zabaski: The pool is inside the building envelope. The pool equipment is inside the building envelope. It meets all the conditions. I don't know that that we have any authority not to approve the request.
- Tardio: Usually the only question with a pool, is will the equipment be outside the building envelope. I've heard what the presenting party has said, and this is going to be screened about as well as you could reasonably expect.
- Sternberg: I agree, it meets the requirements of the code, and the screening looks adequate.

- Zabaski: I would like to make one comment to those in the neighborhood. The houses on that street are already taking up most of the building envelope and you cannot put a pool outside the building envelope
- Clifford: I concur with my fellow board members and appreciate the neighbors coming forward to ensure that the planting plan here is adequate, and to let them know their input is valued and we appreciate the landscape architect adding some additional planning to the plan.
- Chairman Hale: Let the record reflect three additional trees are going to be introduced to supplement the landscaping plan. Although it is beyond this board's jurisdiction to require, it is a nice gesture on your client's part to do that.

**Motion amended to approve as submitted with the three additional plantings:
Zabaski Second: Sternberg Vote: All aye.**

Chairman Hale: At this time Mr. Clifford and I recuse ourselves from the vote on the next item, Mr. Tardio will assume the role of chairperson.

2. The application of the Belle Meade Country Club (22021) 815 Belle Meade Blvd., for a special exception permitting the construction/replacement of tennis court lights. The building permit has been denied for the following reason.

A. Under the zoning ordinance, Appendix D, country clubs, construction or improvements upon a country club site requires BZA approval.

Presentation By Alan Oakley, Treasurer of Board of Directors for Belle Meade Country Club and Tennis Chairman.

Oakley stated that the outdoor tennis court lighting poses a safety and playability issue for club members and their guests. They developed a plan for replacing the metal-halide lights and putting up LED lights which comply with the standards of United States Tennis Association, USTA. The plan was approved by all 13 tennis committee members, as well as non-board members. Oakley noted that the USTA only recommends LED lighting. Oakley stated that they also want to raise the pole and the mounted height from 22 feet to 26 feet which is in compliance with USTA guidelines. USTA guidelines call for a mounting height between 26 feet and 39 feet.

Oakley stated that metal-halide lights are no longer recommended by the USTA for the following reasons:

- They are not environmentally friendly.
- Length of the utilization is short; you lose 20% of your effectiveness in the first six months and in a five-year period, you lose over 50% effectiveness.
- Light dispersion from metal-halide is very horizontal, while LED is very directed on the court.

Oakley also noted:

- LED lights are environmentally friendly

- LED lights have a longer life cycle
- LED lighting is more concentrated
- Two Belle Meade residents have put LED lights on their tennis courts
- Last June (2021) Belle Meade Country Club asked and received approval for LED lighting on new Pickleball Courts.

Oakley spoke to the content of two emails received from neighbors stating that the emails claimed that the lumens would increase from 25 to 85 if the LED lights were approved. Oakley stated that the lumens from the LED lights would be 80,000 while the current metal-halide lights put out 75,000 lumens, a 6 percent increase and not a 350% increase.

Oakley also stated there will be 30 poles.

Using photos and diagrams Oakley provided information showing the placement of poles and what the light rim would be with the LED lights.

It was also noted that Belle Meade Country Club had done extensive landscaping to prohibit the courts from being seen as well as to aid with diminishing the light. Oakley noted that the tennis court lights are in operation 6 months (mid-April through mid-October), until 9 p.m. Monday - Saturday and on Sunday until 7:30 p.m., Belle Meade code requires that the lights go out by 10 p.m.

- Sternberg: Stated that USTA guidelines are part of the city residential code, asking the Building Official Patterson: is it the same for commercial?
- Building Official Patterson: Yes, as far as I know.
- Sternberg: The number, location, height, of the poles is defined by BZA may not be luminated past 10 p.m.
- Acting Chairman Tardio: This is oversimplifying, but the lights proposed are going to be brighter but more concentrated. In essence, they're going to focus more on what you want rather than bleeding light out?
- Oakley: The lumens, metal-halide and LED are basically the same. The LED are concentrated where the metal-halide disperses the light outside.
- Zabaski: You are raising the poles six feet.
- Oakley: No, there is the pole height and then there is the arm. Our poles today are 20 feet high, and the arm is two feet, so a mounted height of 22 feet; we're raising to 26 feet, with 24-foot poles and 2-foot arms, which is the minimum of the USTA guidelines.

Public Comment

David Wilds, 824 Belle Meade Boulevard spoke to his concern of light pollution. He and his wife Cindy are also concerned that the photos presented are conceptual drawings and are not the Belle Meade Country Club tennis courts. Wilds stated that his wife bought the property in 1983 and in 2009, they tore down the existing house and built a new home. Our concern is light pollution. He asked the approval to be deferred until other courts under the same type of condition can be evaluated.

- Zabaski: Are the current lights a bother?

- D. Wilds: No, they are not.
- Zabaski: Why would the minimum standards of the USTA not be satisfactory?
- D. Wilds: I don't live across the street from the USTA, sir. Our concern is how it impacts us.
- C. Wilds, 824 Belle Meade Blvd. addressed the concerns as her husband, which included light pollution, the enjoyment of her home and reemphasizing the need to see other courts under the same type of condition can be evaluated.
- Zabaski: In 2013 and 2015, did you and your husband gather information about the lighting at the tennis courts, or did you just accept what was presented?
- C. Wilds: We accepted what was presented. We also had more time to review and meet with the people at the club.
- Zabaski: Can you be specific on what you think this board should do, or what it should expect in the way of more information?
- C. Wilds: Perhaps you could have a site visit.
- D. Wilds: In answer to your question, I respect the USTA standards. We are asking the board to look at the information that's been provided and speak with experts on the information.

Public Comment Closed

Board Questions and Comments

- Acting Chairman Tardio: Mr. Oakley, will this be a neutral impact or will the impact be worse?
- Oakley: The schematics that are up on the screen are from LSI, which is the premier LED lighting manufacturer. This represents the science. There are two families that have active tennis courts in Belle Meade, and they are using the same technology. And you've had zero complaints from neighbors, and I can assure you that the homes are much closer. The lumens, which is the science, 80,000 versus 75,000 is 6% difference. But the big difference is the lights and LED are very concentrated on the court to which the science demonstrates, unlike a typical light ball, which is a horizontal, LED is very focused. And that's the beauty of the technology.
- Acting Chairman Tardio: I assume that working with this group out of Cincinnati, they come in and tell you, this is what we recommend, and you have a discussion with them. And that process is all a precursor to today.
- Oakley: We solicited input from 4 nationally recognized tennis construction companies. They all recommended LED lighting.
- Sternberg: These drawings were done by LSI?
- Oakley: Yes. These came from LSI. And we looked at it because we were we wanted to make sure that we weren't polluting the neighbors.
- Sternberg: And did they rate white noise?
- Oakley: I don't know about that. I can't say to noise. I've been to several of them that you can't hear them.

- Sternberg: Not the noise but the light noise.
- Oakley: The pollution?
- Sternberg: Yes. What is this is based on?
- Oakley: It is a blank sheet to say, there are no buildings, there is no landscaping, there are no elevation changes. This information is showing what you see if you are on top of the courts, at 26 feet, and you can see the bleed is minimal.
- Zabaski: What is your time schedule?
- Oakley: There is a six-to-eight-week lead time, if we are unable to start, we will have to defer for a full year.
- Acting Chairman Tardio: What does staff recommend?
- Building Official, Patterson: I am going to defer to the board.

Board Discussion

- Acting Chairman, Tardio: I think with all of these decisions, there's a trust factor, we are assuming that the professionals who are going to do the project are going to do it the way they say they're going to do; that the representations made by the applicant are true and are made in good faith. There is going to be a trust factor in everything we approve. The applicant here has made the case, at least to me, that this is going to be either an improvement or a neutral effect. They have gone above and beyond. I understand the concern of the neighbor, but I don't know what else we can do as a board other than take what's been presented to us and make the best decision we can based on what we have.
- Zabaski: What has been presented is a matter of record. If there is something that is misleading, that can probably be challenged at a later date. Timing appears to be of the issue. If we defer, we don't defer for 30 days, we defer for a year, which doesn't seem to be fair to the applicant. The presentation was pretty strong, that it is not going actually create any significant difference, and maybe an improvement from what it is now.
- Sternberg: I agree. You are within our code, you are using USTA standards, you're in good faith, not going the maximum height on the poles, but going with the minimum. You turn out the lights at nine o'clock instead of the required 10 o'clock. LEDs are more directed light; your lumens are not significantly different than they currently are. I also support this.
- Acting Chairman Tardio: That is a good point, the guidelines we do have, the USTA standards, the height of the poles, all seem to be within those parameters. It would be different if the request were for something far outside what the USTA recommends, or more pollution, so to speak. I think we're ready for a vote.

**Motion to approve as submitted: Zabaski Second: Sternberg Vote:
All aye.**

Acting Chairman Tardio: The motion carries, the application is approved.

OTHER BUSINESS: NONE

Acting Chairman Tardio adjourned the meeting at 6:28 p.m.

Chairman Doug Hale

City Recorder Rusty Terry