

**Minutes
City of Belle Meade
Board of Zoning Appeals
January 18, 2022**

Board Members present

Doug Hale, Chairman Erick Clifford Chris Tardio Pete Zabaski

Staff Members present

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

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

Consideration of the minutes December 21, 2021

Minutes approved by poll: Tardio: Aye Zabaski: Aye
 Clifford: Aye Hale: Aye.

Old Business: NONE

New 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, stated they are requesting permission to construct a wall and set of gates in an other than approved location and at a height taller than permissible. Using exhibits, Kaiser showed the existing conditions on the property and a plan view illustrating the configuration and location of the proposed wall and gates. Kaiser stated that both sets of gates are positioned off Belle Meade Boulevard to allow a delivery vehicle to pull in, fully off the roadway. There will be a gooseneck keypad on the northern set of gates to promote one way circulation in a counterclockwise direction. The gates themselves will be five feet five inches in height. The wall connecting between the two sets of columns will vary in height and at its tallest it would be three feet 11 inches because the grade falls from south to north. The columns themselves supporting the gate are proposed to be six foot seven inches.

Part of the reason relief on the height is being requested is that the grade drops 18 to 24 inches from Belle Meade Boulevard down to the location of the gates.

With visual aid, Kaiser presented the proposed plantings that will accompany the new wall and gates. Holly hedges on either side of the front yard, a simple boxwood hedge behind the wall that connects two sets of gates and then clusters of box woods on the front, north and south boundaries.

Kaiser presented an illustration, depicting the wall, column and gate design pointing out that the gates will be a simple set of wood gates with pickets,

painted white to complement the detailing on the front of the home. The columns would be stone with gas sconces mounted on the front face of each. The objective, even though the yard slopes, is to use plantings to create the illusion that everything is level from south to north.

Board Questions and Comments:

- Zabaski: The highest point of the wall is three feet 11 inches?
- Kaiser: That is correct.
- Zabaski: How tall is the lowest, west end, of the wall?
- Kaiser: One foot ten inches
- Zabaski: It slopes from one foot ten inches up to three foot eleven inches?
- Kaiser: That is correct.
- Zabaski: They are about three feet by right, is that correct?
- Kaiser: Correct.
- Zabaski: And the column is six feet seven inches. The code allows six feet with an eight-inch cap. Is that correct, Lyle?
- Building Official, Patterson: That is correct.
- Zabaski: The gate is five feet five inches, that is the part of the application I have a problem with. There aren't any gates along Belle Meade Boulevard in that in that area that are five-foot five inches. You would have to go out on a different road, Chickering probably being one. I think you had some comps listed in the application. If this board were to approve a gate higher than three feet, then we would be establishing a new precedent. And it would have to be an ordinance change before this board could approve a five-foot five-inch gate.
- Kaiser: I brought in an additional exhibit that I would like to show the board. Kaiser displayed photographs of a house that is being renovated at 1201 Belle Meade Boulevard which has an existing masonry wall with columns that are six foot eight inches tall, and what appears to be stub outs for a gate that may be at the end of the construction process. If there will be gates, Kaiser stated it would be interesting to know if they've been permitted stating he understood the concern. Kaiser asked the board to look at an illustration showing the elevation of Belle Meade Boulevard in relation to the gates as the driveway dips down. This is purely an aesthetic argument; however, our hope is to get some relief because a three-foot gate two feet below the road surface would look ridiculous. And while not relevant, the owners have a legitimate desire to contain their property; recently a vehicle was taken from the front of the house, even though keys had been left in the vehicle. Could we do the three-foot gate, yes, but I personally do not think it would be befitting of the stature of this house, nor would it aesthetically complement the harmony of the neighborhood even though there are no gates that height immediately close by; but there are other precedents in Belle Meade.
- Zabaski: Let me address two issues. One, the house at 1201 Belle Meade Boulevard that has the columns with stubs where a gate may have been at one point in time. I do not know if this board would approve or deny or grandfather in a gate. That is a different issue. There are three-foot

gates throughout Belle Meade. And it would take an ordinance change to get six feet in height. It was the desire of the commissioners not to have that happen. When we look at an ordinance and an application, we look at the intent, this was mentioned in the opening statement by Chairman Hale. And the intent was not to have six-foot gates throughout the city. It is a difficult request, from my point of view.

- Chairman Hale: On the illustration, I cannot see the far-right number, instead of three foot 11 does it say four-feet two inches? Is that the correct height of the wall?
- Kaiser: At that end, yes. What we have, is that the walls are level, to the south of the gate and to the north of that set of gates and then the wall in between the set of gates slopes to follow the grade. There are precedents of the gate question notwithstanding these two precedents. One at 1201 Belle Meade Boulevard and one at 1101 Belle Meade Boulevard. Both have existing walls that are five feet or taller. There's a precedent for the wall. Irrespective of the gate.
- Zabaski: I would imagine if we checked the walls at 1201 and 1101 Belle Meade Boulevard were approved prior to the ordinance change in 1997.
- Tardio: Is the intent or the plan to have the gate closed at all times, other than when someone's going in and out?
- Kaiser: My expectation is that in the daytime when the owners are there and don't leave keys in the car, they will be open. And they will be closed at night.
- Tardio: Are there any other gates at that height on Belle Meade Boulevard?
- Kaiser: I am aware that there is one further north at 507 Belle Meade Boulevard, a very grand Italianate home, and I think those gates are taller than six feet.
- Tardio: What is the staff recommendation?
- Building Official, Patterson: I will leave it to the board.
- Zabaski: I just want to confirm, The highest part of the wall four feet eleven inches?
- Kaiser: At the north end as currently designed, yes.
- Clifford: How far off the street are these gates?
- Kaiser: 24 feet 10 inches, which is far enough to pull a delivery truck completely off Belle Meade Boulevard.
- Clifford: Is this cut-out to turn around?
- Kaiser: The cut-out is existing.

No Public Comment

Board Discussion

- Zabaski: I would like to divide the request and treat each item separately. And deal with the fence first. Typically, when the topography gets in the way, we work with the applicant.

Motion to approve the fence/wall as submitted: Zabaski
Second: Clifford **Vote:** All aye.

Motion to deny approval of the gates as submitted: Zabaski:

Second: Tardio

Board Discussion

- Tardio: Our hands are tied by the way ordinance is written. It must be established by the applicant that the use will not be out of harmony with the existing development in in the neighborhood. In this case I would take the neighborhood not to be all of Belle Meade, but the surrounding homes. In that sense they have not met one of the elements of the statue.
- Berry: You could amend the motion on the floor, denied as presented. If the board is inclined to go in that direction, maybe withdraw the motion to deny and say there's something else that's acceptable. And this is a small group and I think you can talk informally about it. You probably need to hear from the applicant what they would consider.
- Tardio: I would like to ask Chairman Hale to ask the applicants what would be acceptable both aesthetically and with safety concern. I'm not saying it would or would not be approved. I'm asking if that would be an option.
- Berry: I do not think your hands are tied because of procedure or the way it was presented.
- Clifford: I want to make sure I understand. The ordinance that we are dealing with is from 1997, and before that there was no restriction on gate height?
- Building Official, Patterson: I don't know.
- Clifford: I ask what we think about the timing of when the ordinances were written. And I do know that there are two gates that are on Belle Meade Boulevard that to me appear to be above three feet. I don't know when they were built. But does that set precedence? In other words, we're talking about the neighborhood and we each define neighborhood differently. And I don't know where you draw that line. What do we consider to be conforming to the neighborhood, is it three houses down? Is it a block? To me, that is a judgment call for this group. But it also seems to me that you've got a couple of gates on Belle Meade Boulevard that in fact probably are in line with this. It's just they're not next door.
- Chairman Hale: The burden is on the applicant to establish harmony, not on us. It is awkward for us to enter negotiation with an applicant over anything, at any time. Perhaps withdraw that part, then establish harmony and bring it back to us.
- Zabaski: I agree with that. I do think if the applicant can establish precedent, which doesn't mean it would be approved, but it would give us more information to consider.
- Chairman Hale: We have a motion on the floor for denial. We would entertain the applicant withdrawing the request and returning if they choose. Is the applicant interested in that?
- Kaiser: I will withdraw the application for the gates and return.

Motion to withdraw denial of gates as submitted: Zabaski

Withdrawal of Second: Tardio

**Motion to defer gate height variance for up to 60 days: Zabaski
Second: Tardio Vote: All aye.**

2. The application of Margaret Lovett (21012) 604 Lynwood Blvd., for a variance permitting the construction of a driveway. The building permit has been denied for the following reason.

A. Driveway is over allowable.

Presentation:

Jennifer Bagwell, designer, assisting Margaret Lovett with the addition to her home, and this includes some work on the front of the house. The features of the site make this a unique opportunity. The Lovett house has about 30 feet of back yard behind the house. We have done an addition to the back, which is within allowable limits. At that 30 feet, there is a 24 to 30 inch retaining wall and the property slopes up into a wooded lot. They have never had parking behind the house, and there is no plan for parking behind the house. The residents always park in the front, which can be a challenge for visitors attempting to back down the drive and out into Lynwood Boulevard. As part of this addition, we would like to continue the drive in a circular fashion, leaving the existing parking area as it is. The front yard is wooded, but the expansion of the driveway will fit right in between the trees. Whereas if we enlarged the parking pad, we would need to add a retaining wall as well as remove a large tree. We are 207 square feet over the allowable front yard driveway but in the overall driveway we are well under the limit.

Board Questions and Comments:

Zabaski: The parking pad is going to remain the same size?

Bagwell: That is right.

Zabaski: What is the width of the driveway?

Bagwell: It about 10 feet.

Zabaski: You are five percent over?

Bagwell: Yes.

Zabaski: For total lot you are under as well?

Bagwell: Yes, by two thousand square feet.

Building Official, Patterson: They are being penalized because the house is so far back.

Zabaski: What is the staff recommendation?

Building Official, Patterson: Staff recommends approval.

Chairman Hale: Is it acceptable to remove part of the parking pad to bring it in to compliance?

Building Official: You could, but in my opinion again, they are being penalized because of the depth of the lot and how far back this house sits. They are under on their aggregate. They are over just on the front yard. You are allowed 22% of the front yard for driveway.

Zabaski: If you eliminate parking pad, where would you park, in the loop?

Bagwell: Yes, and I don't think 10 feet is quite enough to park two cars.

No Public Comments.

Motion to approve as submitted: Zabaski Second: Clifford

Vote: All aye.

OTHER BUSINESS: NONE

Chairman Hale: If there be no further business, then without objection, meeting is adjourned.

The meeting adjourned at 5:41 p.m.

Chairman Doug Hale

City Recorder Rusty Terry