

**Municipal Planning Commission Meeting  
City of Belle Meade  
May 17, 2022**

**Board Members Present**

Chairman,	Steve Horrell	Rusty Moore
Vice Chairman	John Eason	Karen Rich
	Nina Davidson	Bob Weigel
	Gavin Duke	Larry Wieck
	Scott Kendall	

**Staff Members Present**

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

Meeting called to order at 4:00 by Chairman Steve Horrell

**Approval of the Minutes:**

Minutes from the regularly scheduled meeting held March 15, 2022:

**Motion to approve:**            Eason                    **Second:**    Wieck                    **Vote:**    All aye

**New Business:**

1. The application of Brian Brown (22051) 515 Jackson Blvd., for the subdivision of lot 6 of the Davis Estate into two lots. Lot 6-A 2.10 acres (91,671), & Lot 6-B 1.16 acres (50,449).

Presentation Brian Brown, resident at 515 Jackson Boulevard  
Brown asked that the commission approve the application to subdivide the property at 515 Jackson Boulevard. Brown stated that they believed they were in compliance with the requirements of subdivision and that the commission should be able to approve the application as submitted as they had other requests to subdivide other properties. Brown stated that he would like to address some of the letters that had been submitted and posted to the Belle Meade website prior to the meeting. Addressing a letter from Attorney Chris Whitson and his clients, Brown stated they had the right to object to the application as long as those objections addressed the application currently before the board. Brown stated that the letter did not raise or address any features of the application currently before the commission that would prevent the approval of the application.

Brown cited specifically

- This is a different and recently submitted application; the size of the subdivision meets and exceeds the Belle Meade application requirements minimum one acre. At 1.16 acres it was larger than properties within sight distance; the Follin property on Gerald Place is 1.12 acres and the Eskind property on Jackson is one acre. There was also a subdivision approved by this commission at 533 and 537 Belle Meade Boulevard last year with property of similar size at 1.15 and 1.2 acres.
- Mr. Whitson refers to the 2016 application rather than today's application as we have no plans to build anything, there is no judgement needed from this commission as to setbacks, building envelope etc. Those potential items are not before the commission today. Only the requested segmentation.

- Mr. Whitson refers to the cutting down of 140 trees, please be aware that the Browns did not cut down those trees. A prior owner of the property took that action before we purchased the property. Furthermore, we have added back to the property some 37 trees and plan to add more in the future. We have not created a perceived stormwater runoff issue as we did not cut down the referenced trees, frankly as to stormwater as you most likely know, any development must now meet certain requirements from Belle Meade, Metro and TDEC. Working with city engineer we gained required approvals and constructed what was required. We also maintain an agreement with the city to annually inspect and certify continued compliance. Some neighbors have indicated stormwater issues and we too experienced issues when we lived at 4420 Gerald Place, as most homes that exist are not required to update stormwater management unless construction is undertaken. Some of the issues can seem never ending. I suggest that anyone who has concentrated issues contact an engineer and create a mitigation plan, even if not required. Taking control of the issues on a property and addressing any problem directly would seem to be a good solution.
- Mr. Whitson's letter attempts to cloud the issue by citing deficiencies in our submission. After thorough review and discussion with city officials over several months, we have submitted what we believe to be an entirely appropriate plat as outlined in the code, detailing the required items for subdivision. It has not been signed by us at this point as we have not been granted approval by the commission. Our surveyor advised that the procedure once approved would include filing with all signatures including an official of this commission with the proper authorities in Metro and Belle Meade.
- In the future, any building that is proposed, the neighbors maintain the protection of the myriad Belle Meade boards and commissions. The objections from the neighbors mistake the action of this commission in 2016. The motion was not voted on in 2016 as it failed to gain a second when called for. This amounted to a non-decision by the Commission, as no member went on record. The minutes indicate application denied due to a lack of second.

In closing, Brown stated: the facts are we did not cut down 140 Plus trees. We engineered and installed a compliant stormwater solution. We are not greedy, but rather as most who reside in Belle Meade have estate financial and tax planning objectives that are actively managed for proper outcome. The prior application was not really voted on. Common Sense shows property values will most likely increase in the area. They always have. For guidance one only need to look at the Reed's subdivision of their property for their daughter at the corner Jackson and Belle Meade Boulevard years ago, and more recently, this commission approved the subdivision of the Doss property at Leake and Belle Meade, neither of which have proven detrimental to the city. We will be happy to address any questions you might have, and we certainly appreciate your approval in this application.

#### **Board Questions and Comments:**

- Davidson: If you are not planning on building something why are you dividing it?
- Brown: The plan from the beginning was to sub-divide when we purchased it.
- Duke: Does this create any hardscape issues that would prevent the future lot from complying when it is sub-divided. While it may be a BZA question, would the lot comply?

- Brown: Yes, and there is no disturbance planned on the property.
- Duke: Is the stormwater all on your property or the proposed property?
- Brown: It straddles both.
- Duke: How will that work?
- Brown: As long as we own both properties it satisfies the needs of both properties. If it is subdivided, and someone wants to build on it, we would have to address that issue specifically.
- Duke: If we have to comply with everything for the lot to be subdivided, that means your lot would need to comply with stormwater now.
- Brown: All the water feeds into a bio-retention pond. I don't know what compliance issue there would be.
- Chairman Horrell: To Official Patterson: Mr. Patterson, would you address this issue.
- Building Official Patterson: If the detention holding pond is on the proposed lot 6B, if the commission votes to subdivide, the detention pond would need to be moved to 6A.
- Brown: I did not understand the question, and I have already engaged Dewey Engineering to devise a conceptual plan to move the detention pond fully on to 6A.
- Duke: Is there any documentation in relation to square footage that supports your existing square footage with this lot? When you turn in your calculations, those calculations have to be for that lot. Do we adhere to that square footage of that lot with the hardscape you have?
- Brown: Well, I don't know that we have turned in any documentation to that. We have checked the floor area ratio and it would accommodate almost 19,000 square feet.
- Duke: We have hardscape issues and that relates to run off and driveways, I just want to make sure we are in compliance with setbacks and driveways, and things of that nature.
- Brown: As far as I know it is in compliance.
- Rich: Have you considered drawing a plan? When we considered the subdivision at the corner of Leake and Belle Meade Boulevard plans were also submitted.
- Brown: We have no plans to build anything.
- Duke: To Building Official Patterson: Do we need to see setbacks so that we can see what type of house can be built on the new lot if subdivided?
- Building Official Patterson: To create a lot in Belle Meade the lot must have 40,000 square feet minimum, this is over that. If someone were to purchase the new lot 6B, if it is approved, that person would have to come up with a building envelope, and more than likely they would have to come to this planning commission to get the setbacks.
- Wieck: Do current setbacks apply to this lot?
- Building Official Patterson: This lot is from Truxton to Gerald, it is from block to block; the current home on the lot would be used in determining the setback. For this it would be 60 feet off the rear, the average on the other homes on Jackson would be the front setback.
- Rich: What is the minimum requirement in Belle Meade for frontage?
- Duke: 125 feet.
- Building Official Patterson: That is typically the road frontage.
- Rich: How do you define the road frontage?

- Building Official Patterson: Technically there are two front setbacks since it is on the corner.

### **Public Comment**

Chris Whitson, resident at 802 Westview Avenue, attorney with Sherrard Roe Voight & Harbison, the attorneys that represent the members of neighborhood that surround 515 Jackson. Many of those members have come today. SRVH was also the law firm that represented these exact same neighbors in 2016 with respect to an application to subdivide the same property by the same owners. That application was denied, and it was denied because the proposed house violated the setbacks. That is very important because this plan is largely identical to that plan, except for three points.

I. The new lot is much smaller than the one originally contemplated in the first application. Since that application was denied, the Browns have built a bigger house than was contemplated in the original application. But more importantly, this time, they're just not telling you where they're going to build the house or what house they're going to build. You can't determine whether it's going to violate setbacks or anything else. The neighbor's original position would be that this ought to be denied simply on the fact that it was determined by this same board, same property, same owner in 2016. Except they've come back with a worse plan. And so should the landowner be rewarded for:

- i. Re-litigating an issue that you have already decided
- ii. Proposing an even worse plan for the neighbors
- iii. And I hate to put it this way, but kind of hiding the ball from the Commission, because the commission really can't determine what's going to go there.

II. I'm not a stormwater expert. But the neighbors are actively complaining about the stormwater flowing down Gerald through the Hooper's yard, how it's created I'm not entirely sure. If we asked the neighbors to speak I think they would tell you that it's definitely increased since 2016. The subdivision rules, specifically section 209, says no land shall be subdivided for residential use if such land is considered by the commission to be unsuitable for such use by reason of flooding or improper drainage. Further, the 2021 Belle Meade Together Master Plan states that stormwater is going to be a focus of the city of Belle Meade. The neighbor's position is until that stormwater issue is solved, there should be no subdivision.

III. There are deficiencies with the application. Under the subdivision regs 201 reads that no property will be subdivided unless the homes can be granted a permit by right. That does not exist here because there is no delineation of where the property could go. Further 201 says the proposed use of the property ought to be delineated. It certainly doesn't note where the water, drains, sewage, everything else would go. And section 202 does require an owner's certificate which has not been submitted yet. So, there are technical violations. But going further than that. The subdivision rules grant you discretion. And in fact, they ask you to use your discretion. Section 212 says that the Planning Commission in its judgement will promote the health, safety

and welfare of the community at large and secure substantially the objectives of these regulations. Even more pointedly in 2016, the Planning Commission should look at the facts in a particular case so that the public health safety, welfare, morals and prosperity may be secured and preserved in harmony with other developments here or located in the vicinity of such parcel or parcels. And that's the crux of the problem for the neighbors. In 2016, it was decided that there wasn't quite enough lot to build the house that was proposed. The new plan is more opaque and has an even smaller lot. The neighbors request that you deny the application.

- Eason: If a plan were presented for a house on the property, with stormwater and other items addressed, would that be a problem?
- Whitson: If the plan could be given a permit by right, and the stormwater is addressed then I think it could be built, the problem is right now it is a bit of a mystery.

#### **Public Comment**

Peter Zimmerman, resident, 600 Jackson Blvd.

I don't think you have enough information. You don't have setbacks; you do not know what's going to be built there. I don't know why you would divide a lot without the intention of selling it later. And I think that was the original intention and is the current intention of the Brown's.

Haley Dale, 601 Enquirer Ave.

Asked for information on corner lot status and questioned where the detention pond for stormwater would be moved to if subdivided.

Kathy Follin, resident, 4416 Gerald Place

Addressed the stormwater and concerns that it is increasing and doesn't believe the current detention pond works properly. Follin also questioned the size of the lot and where a house might fit in with setbacks.

Brian Brown, addressing issues raised

Stated that they were not there to discuss 2016, noting misinformation provided stating that the plan presented at that time was a conceptual plan only to provide information for the potential of subdividing the lots and having two homes built on the respective properties. That plan was denied. The change was cause and effect. Brown stated they are not hiding anything, they have only submitted a subdivision request and have no intention of building, they simply want to subdivide the property. Brown stated that they have done everything required and requested to be done to address the stormwater issue, noting they have reached out to an engineer and that if the subdivision occurs they will make the necessary changes.

Leslie Hooper, 4410 Gerald Place

Expressed displeasure about the requested subdivision, pointing out the loss of trees, and stormwater issues that are prevalent in the neighborhood.

John Hooper, 4410 Gerald Place

Addressed the subdivision and his concern that the lot would be sold if the request were approved by the commission. Stating that once sold, additional trees would need to come down for a new build, and the hardscape issues alone would create more stormwater issues.

Walton Denton, 533 Jackson Blvd.

Expressed concern over the size of the second lot if the subdivision were to be approved and the inevitable change to the character of the neighborhood. Denton noted that while a small lot might be appropriate in one area of the city, it is not appropriate for all areas, and to do so would change the character of the city as well as individual neighborhoods.

#### **Public Comment Closed**

Chairman Horrell stated that the commission would seek some guidance from the City Attorney, Doug Berry.

City Attorney Berry: Your discretion is limited, section 2.03 of the subdivision regulations talks about making a decision based on harmony with other developments in the neighborhood; that's if you place conditions on the subdivision, which you have the power to do. I don't know what they would be, as nobody suggested that but that doesn't mean that you can't on the front end, say yes or no based on discretionary decisions.

The important decision you've got to make is in Section 2.1 of the subdivision regulations. And that says no plan of subdivision will be approved, which includes any lot for which a building permit could not be issued of right, under any ordinance of the city. That is the key inquiry. That sounds straightforward, but it's problematic because you're asking yourself to look at the zoning ordinance and see what is permitted by right. The resulting lots are both large enough for the residential B zone. The other part, even though you don't have plans for a home, the zone restrictions do define setbacks.

The question would be, can a home be built there today without going through the corner lot variance? It would be incumbent on the applicant to explain to this commission how you could build a house on the property today within the setbacks. That is the safest course. Otherwise, you have a judgment to make based on the information presented.

- Rich: Isn't the corner lot variance only applicable to existing corner lots with houses on them?
- Berry: It does not seem to be.
- Eason: Looking at the application and while it might be legal, there seem to be stormwater issues and other concerns from the neighborhood. Is it within our right to request the applicant to come back with plans?
- Berry: You do not want to continue a hearing on subdivision, because by state law, the subdivision would become effective in sixty days if you failed to act on the request. The applicant would need to withdraw their application. The question today is do you know that the lot you are creating is buildable without a special variance, special exception or corner lot variance.
- Wieck: Could you re-describe the existing setbacks that would apply to that property?

Using a map of the property, Building Official Patterson provided information on the setbacks that would be required.

- Eason: To Berry, so you are saying that we should approve the subdivision because it complies with everything right now?
- Berry: No, I said it is up to you.

- Wieck: The information we have, with the current setbacks, I do not believe a buildable building envelope exists. We would be approving a lot that is not buildable.
- Duke: Should we defer until we have the information on the setbacks and the building envelope?
- Berry: I recommend against deferral; if you feel you do not have enough information you should deny the request unless the Browns want to withdraw the application.
- Eason: I would think the Brown's would want to know if a house could be built on the property without getting a variance.
- Horrell: If we deny this request, do they have the right to come back later?
- Berry: Yes, but I don't think you should re-entertain the request.
- Horrell: I don't think we have enough information. I see our choices as, the Browns withdraw, or we deny, and they return at some point.
- Berry: You can defer for 30 days, but you must act within 60 days.
- Brown: We are not building anything on the property, we believe the lot is buildable. Through the Planning Commission, the Board of Zoning Appeals and the Historic Zoning Commission, there is a procedure for variances.
- Horrell: Mr. Brown, would you be amenable to withdrawing.
- Brown: No, we are here for a solution.
- Horrell: Is there a motion?

**Motion to deny:**            Wieck            **Second:**            Duke            **Vote:**            All aye.

Meeting adjourned at 5:05 p.m.

---

Steve Horrell, Chairman

---

City Recorder, Rusty Terry