

**Municipal Planning Commission Meeting
City of Belle Meade
September 20, 2022**

Board Members Present

Chairman, Steve Horrell	Rusty Moore
Larry Wieck	Karen Rich
Gavin Duke	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 May 17, 2022:

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

Old Business

None

New Business

1. The application of Brian Brown (22051) 515 Jackson Blvd., for the following.
 - A. Establishment of front and rear setbacks and the designation of a specific building envelope on a proposed lot at 515 Jackson Blvd.
 - B. For the subdivision of lot 6 of the Davis Estate into two lots. Lot 6-A 2.10 acres (91, 671), and Lot 6-B 1.16 acres (50, 449).

Presentation, Josh Burgener, attorney with Dickinson Wright, representing Brian and Vivian Brown

I know that this is a matter that this commission has considered in the past and there has been a considerable amount of time spent on it and I don't want to belabor any points; I'm sure you will have reviewed what has been submitted and are intimately familiar with this property. This is an unusual circumstance in the sense that the clients find themselves in a situation where it's sort of the chicken and the egg as far as first subdividing a piece of land on one hand while also getting the approval for a building envelope. And you can't have one without the other based on the prior comments and prior issues that have been raised. With that in mind we have come to you to ask for a building envelope for a hopefully to be approved subdivision.

Now, there are two key criteria for what we are proposing. (Burgener used submitted plans to aid in the presentation). The first criteria: Is the proposed lot big enough? Does it comply with existing regulations within the city of Belle Meade? And the answer to that question is yes. A 1.16-acre lot is in compliance with the applicable codes and regulations of the City of Belle Meade and is in keeping with other lots that have been subdivided in the area. The next question is: Is the proposed building envelope big enough and does it constitute a buildable lot? And the answer to that question is

yes, it does. Respectfully, those are the two primary inquiries that this commission should look at and is really the only basis on which the commission should make a determination on whether or not to approve these requests.

The Browns have done everything that has been asked of them throughout this process. When they came before this commission earlier this year, much was made of the fact that they didn't have a building envelope, there was the idea somehow that there was a mystery, there was some confusion as far as what they were trying to do or what their proposal was. It's worth noting that at this point, the Browns have no immediate plans to build or even sell the proposed subdivided lot. They are simply asking for the ability to do so at some point in the future. But recognizing that issue and that the neighbors wanted, and perhaps are entitled to see what would potentially go on the property they have presented and submitted for your consideration the building envelope that you see on the on the screen. The critical piece here is that the setbacks or requirements of the corner lot variance are met. And so, because that is the case, they are entitled to the subdivision.

A lot of issues have been raised previously and frankly I am reluctant to anticipate what some of the concerns the neighbors may raise. I would request the opportunity to address issues that are presented after they are raised so that we can address them, and not take up too much of the commission's time. I know there are concerns but again from our perspective, and based on the applicable rules and regulations and codes in play here, the two critical issues the commission should look at or consider is the lot that is proposed big enough, and is the lot buildable and does the building envelope conform to existing regulations? The answer is yes. And as a result, and we respectfully request that commission approve, both items on the agenda of the establishment for the building envelope and then subsequently for the subdivision of this property.

Unless the commission has questions, I will preserve the rest of my time to address any issues.

- Duke: The question came up about compliance. Does the existing lot meet all compliances with stormwater if this is subdivided.
- Burgener: Yes, it will meet all existing stormwater compliance issues and again, to the extent that there were issues or concerns that came up in the future, those could be addressed. This this will certainly not be the end of whatever happens on this particular lot. If at some point the Browns do opt to sell and someone does end up building, any plan would need to come back to the city for approval and will be required to meet all existing regulations with respect to stormwater, landscaping and all the other lot issues.
- Duke: Do you have the square footages of the existing driveways, and everything for the new lot to be in compliance with the future driveways?
- Burgener: At this point, the driveways themselves have not been drawn in but the designed submission would leave room for conforming driveways to not be a safety risk for ingress and egress.
- Duke: I'm referring to the existing house and driveways.
- Burgener: Yes, the existing houses is in full and complete compliance.
- Duke: With the subdivision?
- Burgener: Yes.

- Duke: Do you have the square footages of the driveways all the hardscape and impervious surfaces, solid surface ratios?
- Burgener: No, but they are well within.
- Duke: Within the subdivision?
- Burgener: Yes.
- Duke: But we don't have those numbers.
- Burgener: I did not know we needed those.
- Duke: On the subdivisions of other lots, we needed to have everything to be compliant for the new lot and the one that was being subdivided. We need that information to know if the lots will be in compliance.
- Burgener: We have submitted what we believed was required in order for the commission to have the information that it needed in order to approve the plan in working with Mr. Patterson and representatives of the city. If the commission is saying that the plan also needs to include specific drawings and measurements for driveways and existing conditions ...
- Duke: If the property and existing property is going to be in violation, I cannot approve that.
- Burgener: Is the question whether the existing property is in compliance?
- Duke: The existing property may be in compliance, but that was with a bigger lot. And now you're subdividing that lot and the square footages that you need for the existing lot and the other lot need to meet the requirements in order to be subdivided.
- Rich: As well as all the setbacks and frontage. If they had built on this particular lot from the beginning, would it be in compliance? That is the question.
- Duke: You have certain requirements for the existing lot, and if you are close on the square footage for that one, you still have the same hardscape there now.
- Burgener: Correct?
- Duke: If you subdivide it out, that doesn't come into play, you have to take something away if you're even close, and we have no idea where the numbers are.
- Burgener: Based on the plan as submitted there is no need to change any of the existing hardscapes on the existing lot, 6A. The only modification that would occur is with respect to the retention pond that would need to be moved.
- Duke: I am asking for the data, as far as what you have that is existing.
- Burgener: And I don't have that information.
- Chairman Horrell: Speaking of the retention pond, a neighbor voiced a great deal of concern about existing water coming off of the front of the total property onto their property. If you are going to rework the retention pond, we would hope that it would do a better job than currently it is doing.

- Burgener: There has been a lot of discussion with respect to water runoff. I had an opportunity to walk the property both yesterday and a couple of weeks ago with my clients. The retention pond is almost always dry, so to the extent that there is water impacting other properties on the street, respectfully I would submit that it is not coming from our property. With that said, based on previous reviews with the city the retention pond as it exists is inspected yearly to make sure that it is in compliance with all stormwater regulations and is doing its job. And that would continue to be the case with the subdivision. The retention pond might actually be modified and there will be plans to create a new space that would, perhaps to the extent that there are concerns, should actually alleviate them to make the situation even better with respect to water runoff and being able to maintain water and keep it off of the new subdivided property as well as other properties on the street.
- Chairman Horrell: In particular it is running off on the Gerald Place side. Is that neighbor here who has the issue? We'll hear from him in just a minute. It is a real issue. And we would like to see that issue addressed properly, so as to mitigate their issues.
- Burgener: Certainly. And the Browns are more than willing and eager in fact to work with the city and the neighbors to address any concerns that they have with respect to a subdivided property. But our concern is that some of these issues are being used as a mechanism to stop what would otherwise be an approval and should be approved under the regulations. But certainly, we would be more than willing to address the specific concerns and have any subdivision meet any suggestions or requirements that the city and commissioners may have.
- Chairman Horrell: In discussion with Mr. Patterson or anybody associated with the city, there is a difference between Mr. Patterson telling you, you have to do this this, this, and this on the list in order to come before this commission. This commission has the ability and the right to come back to you and the Browns and say, you know there are these issues that have been raised before this meeting. Many of which we think are valid and need to be addressed. If we keep coming and doing the same thing over and over again, we've got the same problems over and over again, we are not getting anywhere.
- Burgener: Respectfully, the primary concerns, the primary issues that were raised at the last meeting were with respect to the building envelope, and the proposed setbacks and so we have we have addressed those issues.
- Chairman Horrell recognized City Attorney Berry.
- City Attorney Berry: Let's see if we can get this back on track. It is difficult to deal with, we have the circularity of process here. The chicken and egg problem. Right now, all the applicant is asking to be considered is this building envelope buildable under your corner lot ordinance. All the questions that the commissioners care about, the compliance with surface water and other issues, those would be raised on Part B here when you are talking about the actual plat. Right now,

as I understand, the only issue before you is, is this a good building envelope under the zoning ordinance and then once that's approved, hypothetically, that is, if this were a separate lot, this would be a proper building envelope then all this other stuff comes in. It's hard to consider the things separately I know because they're all here in front of you today, but I think that might be a more orderly process.

- Duke: Can we ask how they got the front setbacks?
- City Attorney Berry: Yes, I think the questions right now ought to have to do with the setbacks, and the building envelope as opposed to the other requirements of the greater plan is what I am saying.
- Wieck: May I ask a question about the municipal ordinance. (Wieck read the ordinance pertaining to a corner lot). This ordinance tells us we have to have a corner lot before we can give the approval as a corner lot.
- Rich: That is my concern, that this is not already a corner lot. It is part of a piece of property that was considered initially for its initial plans and initial building as a corner lot. Now this is just part of this property that is not in and of itself a corner lot already and therefore we are not obligated to weigh in on it as a corner lot.
- Attorney Berry: Then based on the commission's ruling in May, then you're precluding them from coming before you at all. The ruling in May was you have to show a building envelope and the lot they were going to use had not been created yet. So that puts it in a circular process forever. It seems like to me, the only way we get to the finish line is to hypothesize that this is going to be an approved first, and then come back and show, if you subdivide this you've got all these problems.
- Wieck: I thought your direction last time was we cannot approve it unless by right they can build on that lot.
- City Attorney Berry: That is correct.
- Wieck: And by right, this gets into the setback, and the setback on Gerald Place is 124 feet and they are proposing a lot that is 58 feet. I think they have to prove, from the last hearing, they have to prove that by right they can build on that lot with the existing setback.
- City Attorney Berry: It is not a lot yet, that is the problem. If it becomes a lot; can they build on that lot?
- Wieck: I did not think we have the authority to subdivide unless they could build on it by right.
- City Attorney Berry: Correct.
- Wieck: Anything they are asking for now, they've got to come back and ask for something more. They're asking for a different setback. And with this it is not going to be a corner lot.
- City Attorney Berry: So, what do you think should be done Mr. Wieck?
- Wieck: That's what I am asking. The ordinance says if it is a corner lot; for us to apply corner lot flexibility that is in the ordinance it has to be a corner lot. The idea when we installed this originally the concept was that there are lots of lots in the city that are corner lots and are not buildable. We were trying to resolve what can the city

do with those empty lots? I don't think it was ever contemplated that this, at least as it was presented to us, that the intent of the corner lot ordinance was to let us subdivide a lot and make a non-compliant lot, that then comes back to the planning commission or the BZA.

- City Attorney Berry: If the lot is large enough by the zoning board why is it a non-compliant lot?
- Wieck: Setbacks. We can't change the setbacks until it is a corner lot.
- City Attorney Berry: And that is what I am saying, it is a circular process.
- Wieck: We did not write this.
- City Attorney Berry: Then you are saying they could never develop the lot by that rationale.
- Rich: Well, it's not currently a lot.
- City Attorney Berry: We have another hearing at 5, so why don't you continue the hearing and hear from the neighbors on both issues and then we can have that discussion and this dialogue at that time.
- Wieck: We can't approve it because it is not a corner lot.
- City Attorney Berry: Do you want to make a motion right now to dismiss the case?
- Wieck: I am asking your interpretation of what this ordinance says, repeating from the ordinance: "An application by the owner of a lot that is a corner lot and determination by the Planning Commission that standard provisions make it impractical . . ." then we have four or five things we are allowed to do.
- City Attorney Berry: I understand that. I'm not on one side or another here. I am only trying to give you advice. When it came before in May, it came in with just the plat and I gave the commission the advice that until you establish the building envelope, you could not permit the subdivision for what they submitted. And what they needed to do was to come in and somehow get a building envelope established. And that would be hypothetical because you don't have a lot. I don't agree, I don't think that any lot you created would be necessarily a non-conforming lot.
- Rich: Well, we haven't even discussed that. It is really hard to read these numbers on here (referring to documents submitted by the Browns) if we want to spend any time looking at what is labeled as the envelope. It looks to me like there's not even enough frontage.
- City Attorney Berry: I would think we could let the Building Codes Official, Mr. Patterson address some of these questions.
- Moore: I have three questions for Mr. Patterson. My three questions are:
 1. Why is the lot line between these two lots a curved line instead of a straight line?
 2. What is the dark line that is on the side of the existing home, it is labeled but I simply can't read it. Now that it has been enlarged, I see it is an existing wall.
 3. Where on the existing lot is the current retention pond.

- Vivian Brown: The curved line is the existing driveway.
- Moore: It is odd to create a property line that is curved. Was it done to create more acreage for the smaller lot.
- V. Brown: Yes, and the street curves and it provides more frontage.
- Rich: What is the frontage on Jackson Boulevard? Am I reading 113 feet?
- Burgener: Yes.
- Rich: So that does not meet our minimum of 124 feet does it?
- Moore: There is a curve there. Where is the retention pond?
- Burgener: Using the plans submitted indicated the location of the retention pond.
- Wieck: What is the average setback of the houses on Gerald Place.
- Burgener: I believe it would be 120 feet.
- Wieck: Setbacks require the average of the existing setbacks of the homes on the same side of the street.

Chairman Horrell: Let's open up for public comment. If you want to speak, step up, tell us who you are and where you live. And let's make this as concise as possible with as little emotion as possible. And let's just stick to the facts.

Public Comment

John Hooper, 4410 Gerald Place, provided an image to the commissioners, applicant and city staff.

Hooper stated that he and his wife's property was adjacent to the proposed subdivided lot. Hooper stated that the front setbacks on Gerald Place are 125 feet, and the Browns are asking for 56 feet, almost 70 feet in front of our house. Using the image he provided, he indicated the side of his home, and the deepest setback on the proposed property, stating that the front of a home constructed would be right in front of his home. Hooper stated he did not believe the proposed lot was compliant. Hooper also stated that with the size of the envelope and the constraints within that envelope that anything built there would be wildly inconsistent with the neighborhood.

Walton Denton, 533 Jackson Boulevard stated that he is directly across Gerald Place from the proposed new lot. Denton stated that he had submitted a letter but wanted to make three points.

1. If there are no plans to sell or build, then why are we wasting time and effort on this? This is a constant repetition.
2. If there is any concern or question about the regulations and how they should be interpreted then surely for the sake of the city, we need to be taking a conservative interpretation of those regulations. And if for some reason they don't satisfy the applicants application in this regard, then they can make a case for changing the regulations. I don't think we should be relaxing those just to suit a single application.
3. As a point of procedure, having been here in May, the applicant was asked whether or not you'd like to appeal the ruling in May. And they said no. That is my recollection, that was quite clear. It is the same acreage so it feels like an appeal.

Elizabeth Nichols, 416 Jackson Boulevard. I very much care, after living in the neighborhood since 1985, about the integrity of the neighborhood. And my question is when I look at the building lot, I can't tell what the square footage of the footprint upon which a house could be built? Could someone provide that information? I'm just curious to know what would be the total building size that could be allowed.

- Chairman Horrell: Mr. Patterson, could you answer that?
- Building Official Patterson: The footprint for the first floor only would be just over 6000 square feet. So, you're probably looking at an 8000 square foot home, roughly.

Kathy Follin, 4416 Gerald Place, asked if the square footage stated was for a one-story house.

- Building Official Patterson: The footprint for just the first floor is over 6,000 square feet.

Follin: Are there height restrictions for a second floor?

- Building Official Patterson: Yes, and some of that would depend on the topography, explaining height restrictions based on setbacks.
- Wieck: Is the calculation of the square footage based on the total lot?
- Building Official Patterson: Yes
- Wieck: The building envelope presented seems smaller than total use.
- Building Official Patterson: Twelve percent of the 50,449 square feet of the lot is 6,053 That would be total allowed for first floor footprint You're probably looking at an 8,000 square foot house that could be built. (Mr. Patterson went on to explain the ratios for the driveway, pool); stating all of those would have to conform if someone came to the city with a building application.
- Duke: Is the data for the front setback configured on 1500 feet or how far does it go? I mean, as far as along Jackson?
- Building Official Patterson: Well, it is from block to block, so the Brown's house would dictate the front setback. And the envelope for the existing home is appropriate if this lot were subdivided.
- Duke: Was it a corner lot when it came before?
- Building Official Patterson: It has two corners.
- Duke: This may be more of a BZA question, I know that sometimes you can get leniency from the BZA because of an oddly shaped lot. And are we creating a problem by creating an oddly shaped lot?
- City Attorney Berry: Let's keep the BZA out of this for a little bit. You can't obtain a variance if you create a non-complying lot.
- Chairman Horrell: Mr. Berry, it appears to me that we have an applicant that wants to do this.
- City Attorney Berry: The applicant did request time for rebuttal.

- Burgener: I would like to address a couple of points briefly. First with respect to the concerns about stormwater and runoff. TDEC and the city have come out and inspected the retention pond and the way water flows off of the property, and we are repeatedly in compliance. With respect to one of the issues raised as far as feeling like an appeal again, my clients came before the board back in May, the issue that was raised was the lack of a building envelope, which is the reason the commission denied it, so we came back to the commission tonight and we have presented a building envelope, which in our view, complies with the regulations, assuming the corner lot variance applies. Obviously that's a point of contention. The third issue that I would raise and directly address the photograph that was taken and presented. It is not uncommon in this area for houses to sit in front of other houses. To be said there is a concern about that, that is not unusual for the character of the neighborhood. I would also point out that issue of prospective blockage could be addressed through landscaping at a later time, again this is sort of the first step in the process. Any subsequent architect in the event the property was sold indeed would need to come back to city and receive approval and make sure that it complies with all regulations, whether it be stormwater, driveway, landscaping, etcetera.
- Duke: Do you have any examples of those houses in front of other houses you can present?
- Brown: Our house on lot A sits in front of the Brunger house, I attempted to get a photo but could not because of the landscaping. If you look across the street the entire Denton house sits in front of the Stengel house next door. Every corner lot is like that due to setbacks.
- Chairman Horrell: Counselor, can you tell us where we are, we need to make a decision.
- City Attorney Berry: I would like to know from Mr. Patterson: if the corner lot ordinance is invoked at the request of the landowner, what would have been, in your judgement, the front yard of this lot if they had not sought relief of the corner lot ordinance.
- Building Official Patterson: The front yard would be Jackson and would be determined by the front of their existing home, which is what they are showing here.
- City Attorney Berry: Do you say that the resulting proposal complies with the zoning ordinance?
- Building Official Patterson: They have checked a lot of boxes.
- Moore: Does it comply with Gerald Place?
- Rich: And the frontage. Where are we going to stop at the intersection of the two streets? Is that considered the corner?
- Building Official Patterson: Yes.
- Rich: So, what is that number?

- Building Official Patterson: I don't know, but it's way over 125 feet. That's not the issue. I'll just list the boxes if that's okay, that they've checked.
 1. The front setback has been determined by the existing home.
 2. The rear is 60 feet up to 25 feet and then 85 feet to the second floor.
 3. They've got the minimum of a 40,000 square foot lot.
 4. They are showing, according to this, a buildable envelope.
 5. The right side is 20%
 6. The left side looks like they're treating it as a lot in the middle of the block which would be 30%.

So, this is like five boxes checked and the question in my mind, when I have talked to the Browns about this, is obviously the left side is out closer to Gerald and the houses facing Gerald. That's where the commission would come up with is it a buildable envelope or where they determine a building envelope.

- Moore: If this house were fronting on Gerald Place, is it 124 feet?
- Building Official Patterson: I believe that is the minimum, Yes.
- Rich: Because we do not have any more information on the water runoff of this potential lot, how can we designate a building envelope if we do not have that information?
- Building Official Patterson: Once it is determined to be a lot, once someone submits architectural permits, hardscapes and all the impervious surfaces; that determines the stormwater plan and where it is located. Whether it's a retention pond, underground retention, level spreader, whatever it may be.
- Rich: Well, it is part of us approving this as a lot and we don't know all of the answers. And I remember from our meeting, it wasn't just a concern about the building envelope. It was very much a concern about all of these things. The water runoff, the retention pond, the neighbors concerned about something going in here. It was a combination of all those things. I feel like we're still, unlike other cases that we've been on where we've heard about subdividing, we were presented with a complete and full plan with the potential split of the property with the house plans. And that made it very easy to see that we were approving something of right.
- Kendall: There's also the integrity of the neighborhood. This building envelope needs to comply with this special estate lot neighborhood. That's what we wanted to see, and this doesn't comply. It doesn't comply with the setbacks along Gerald Place, if this was an interior lot, what I'm understanding this would comply, but this is a corner lot. And it's at our discretion if this will meet the requirements Belle Meade, and this does not.
- Duke: Without knowing, how they will deal with the hardscape if the impervious surface is over the allowed; will they just come and saw everything out if it doesn't comply?
- City Attorney Berry: It was my assumption as far as today's hearings was concerned was the first decision would be whether or not a

footprint could be established per the corner lot ordinance. The question you just raised I would think would be in consideration of the subdivision, and we've yet to hear that yet. This is a two-part decision, and we are on one-A. So that's the way I think of it. And there is nothing in the corner lot ordinance that talks about hardscape. It is purely a matter of where you draw the line and can you create the building envelope within the setbacks.

- Rich: Well, back to the question about the curve line. I personally don't like that at all. But I know why you're trying to do it because you're trying to get more square footage and more frontage on Jackson Boulevard. But to me aesthetically it is a weird thing to do. I don't know if that's my opinion or as a board we can say what would it look like as a building envelope if that weren't a big curve line right on the edge of your driveway.
- Moore: Generally, in real estate you don't create a curved line between two neighbors because right now you own both sides, but in the future there will be two different owners, and that's a very odd line to landscape, to maintain, to do everything. I don't know of another situation where I've seen a lot like that.
- Duke: I think we're just starting to create an odd shape lot and whether it's not us, but the future, down the road, somebody is going to come in and say well, I don't know why they did it, but it's an odd shape lot and we need a variance.
- City Attorney Berry: That is not a bad point, but your job here is to create a building envelope that designates the orientation of the dwelling and designates the relationship to the front, rear and side setbacks. So, it is within power to set the envelope any way you want. It doesn't have to be what is proposed. I think you're already in discussion and I'm happy to answer your questions.

Chairman Horrell: We will close the public hearing. I'm looking for a motion. I'm looking for direction. We need to go either up or down on this. Where are we?

City Attorney Berry: One more detail. It has been raised, fairly, why are we hearing this again. We do not have a bylaw that deals with resubmission of a plat or plan. And they were instructed by staff, by myself and by Mr. Patterson, and I think the message they got from the commission in May was, if you supply us additional information it might be considered. Perhaps we need to consider a bylaw that stipulates how often you can come to the commission. You can't forever keep someone from seeking relief from the Planning Commission. In many cities it is six months or a year. This is just for your information.

Chairman Horrell: So, do we have to vote?

City Attorney Berry: Yes, you have to take action.

Chairman Horrell: So, I am looking for a motion.

- Weick: I think we are in the exact situation we were last time. And as I read, we apply the corner ordinance on a corner lot. We don't have a corner lot. The charge last time was we could not subdivide a lot that

was not buildable by right. What we were asking to see was not a proposed lot. But there was a lack of information last time. And we were really asking for the Browns to come back and prove a buildable lot with the existence of their house. Not a lot buildable by right, and we were directed we can't approve something unless it is a lot by right. And take the next step, I think we have the chicken before the egg because the ordinance as I read it clearly says you may make application on a corner lot. We have not created a corner lot yet. They haven't proven that by right they can build on that lot. That is not to say they can't come back and show us the setbacks, you end up with a very triangular shape lot that is virtually under square footages that I think would never be approved by the Historic Zoning Commission.

- Duke: I also think we are creating an odd shape lot and we're also creating hardship for neighbors. And it is out of character for the city in this presentation.

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

Meeting adjourned at 5:01 p.m.

Steve Horrell, Chairman

City Recorder, Rusty Terry