

**MEDINA TOWNSHIP  
BOARD OF ZONING APPEALS  
PUBLIC HEARING  
OCTOBER 20, 2010**

Chair Morel called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:35 p.m. Board members Morel, Becker, Karson, West and DeMichael were present. Alternate Board member Linda De Hoff was also in attendance as well as alternate member Mike Stopa. Chair Morel introduced the Board members and explained the public hearing procedure to those present.

**Shurell variance request-3284 S. Weymouth Rd. PP#026-06B-19-002**

Chair Morel reviewed the application. The applicants/property owners are Robert and Marlene Shurell. The property requiring the variance-.3284 S. Weymouth Rd. PP#026-06B-19-002. Present Zoning-RR. Previous Requests-No. Variation Requested and Reasons: We respectfully request a 70 ft. variance from the 200 ft. frontage resolution requirement of 401.3c along Remsen Rd. for the purpose of subdividing the 7.08 acre parcel #026-06B-19-002 in the most visually attractive and useful manner. **Alternatively,** Serving the same purpose, the Appeals Board could overturn a recent township ruling where the 181.5 ft. of our frontage, that portion running in front of the Weymouth Cemetery, could not be included for the proposed division (discussed below).

The south property line runs approximately 578 ft. along Remsen Rd. from S. Weymouth Rd. westerly to the centerline of Myers Rd. Unique to this property is that it continues uninterrupted in front of the Weymouth Cemetery and totally surrounds it. We have been told by the township that we cannot include the 181.5 ft. that spans the cemetery, which leaves us with approximately 396 ft. of frontage, about 4 ft. short of the division requirement. Furthermore it forces the lot dividing line eastward from the natural tree line approximately sixty feet into the historic back yard of the property's century home.

Dividing the back yard serves no purpose to either proposed property, rather it diminishes the utility and beauty of both: In the first case, we have owned and rented the home at the corner of S. Weymouth and Remsen Rd. since 1986, and have been told repeatedly by our renters that the back yard is a special attraction to the property. It would be significantly reduced in size and function. Secondly, the purpose of this division is to set up a single-family buildable site on the back acreage. Requiring the extra front lands (the yard) which is relatively useless to that property, would necessarily reduce its most important part (the back land) by an equal measure thereby reducing its utility and diminishing its attractiveness and marketability as a residential lot.

**5A) Strict application hardship:**

Strict application would mean the seven years, for lack of approximately 3 or 4 ft. could not be divided. This would defeat the purpose of supporting single family residential development where the spirit and intent of the code are met and would result in a

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negative financial impact. Not granting the 70 ft. variance would diminish the beauty, utility and value of both properties as noted above.

**B) Exceptional Circumstances:**

Unique to this property is that it totally surrounds the historic Weymouth Cemetery. No other township cemetery or property owner has this condition. The tree lined cemetery adds to the rural setting and natural environment. That this cemetery exists within this property should not be reason to diminish the usefulness and beauty of the property. In light of our ownership of this street right of way, in terms of meeting the intent of the resolution, one could reasonably view the back tree line of the cemetery as our properties frontage. Duncan Factor #6 asks if this problem could be resolved in some other manner. In this unique case, it could be resolved by overturning the ruling that disallowed our usage of this 181.5 ft. frontage for division purposes.

**C) No detriment to public interest or resolution purpose:**

Granting the full 70 ft. variance or overturning the cemetery ruling, noted above, will not be detrimental to the public interest; rather, it will enhance both properties in line with the resolution's spirit and intent, while maintaining the grand view of the historic back yard for the neighbors across the street. We believe granting this request supports the public's interest.

**Duncan Factors Owners Perspective**

1. Will the property yield a reasonable return or a beneficial use without the variance request? No. Without the variance, the property's use and value will be diminished: The size, beauty and function of the home's historic back yard would be compromised as an arbitrary 60 ft. section would be parceled off to the adjoining property. This would also have a negative effect on the second property as its most important and substantial part, the rear section would be reduced in size by an area equal to the 60 ft section noted above, which undermines its utility; instead, this property would be stuck with a relatively useless yard or field in the front.
2. Is the variance substantial? No. From the owner's perspective the variance increases the property's beauty, utility, and value while preserving the historic yard and doing no harm. And, because the zoning intent and spirit are upheld, we believe this variance would not be considered substantial.
3. Whether the essential character of the neighborhood would be substantially altered or adjoining property owners suffer a substantial detriment if the variance is granted? No. If the variance is granted, it will enhance the essential character of the neighborhood and, the view of the grand back yard from across the street would not change. However without the variance, the potential for detrimental change heightens.

4. Will the granting of the variance adversely affect the delivery of governmental services? No. Safety vehicles will have full and open access to both the properties.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? No. The property was purchased in 1986, prior to the 200 ft. frontage requirement.
6. Whether the problem can be solved by some other manner other than the granting of the variance? Yes. Unique to this property's approximate 578 ft. Remsen Rd. frontage is the inclusion of 181.5 ft. that span the entire length of the Weymouth Cemetery. This is the only township cemetery with no frontage, completely surrounded by private property. Including this frontage would solve the problem without a variance.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? Yes. This variance to resolution 401.3c. has no negative impact on the amount of green space or on housing density. It does preserve the natural environment and will have a positive impact on the beauty and desirability of both resulting properties.

The applicants, Robert Shurell and Marlene Shurell were sworn in. Chair Morel asked about the statement in the application which read, "the Appeals Board could overturn a recent township ruling where the 181.5 ft. of our frontage, that portion running in front of the Weymouth Cemetery, could not be included for the proposed division..."

Chair Morel asked what board did the applicant appear before that made that ruling? Mr. Shurell stated he did not go before a board he was working with Zoning Inspector Ridgely, Trustee Gardner and the County Tax Map Office. The conclusion was that we could use our frontage and have the property surveyed and an easement created for the cemetery. The Township stated they would contact legal counsel i.e. Mr. Thorne from the Pros. Office to have a legal description of the property drafted. Mr. Shurell continued that when the Township contacted Mr. Thorne, he stated in his opinion that an easement was not needed and they could not use the 181.5 ft. of frontage for the proposed division.

Zoning Inspector Ridgely was sworn in. She stated she did not have a legal opinion in writing from Mr. Thorne just verbal. Trustee Gardner was sworn in and interjected that it wasn't until the zoning resolution was researched that it was discovered that the frontage was measured back from the road right of way and therefore could not be included in the Shurell's frontage for the proposed division. The piece of the road right of way in front of the cemetery does belong to the Shurell's and does not belong to the cemetery.

Mr. West stated the zoning resolution reads that frontage is measured along the right of way line... Trustee Gardner stated Mr. Thorne stated the frontage could not be used for the proposed addition per the zoning resolution. Zoning Inspector Ridgely commented that this was first addressed 3-4 months ago.

Mr. West commented that he was displeased that the applicant, zoning inspector and board had to prepare and review all of this material for an off-hand oral opinion made by

the Pros. Office. He added he did not think anymore time should be wasted and was willing to make a motion when the board would entertain it.

Chair Morel stated he was dismayed that Mr. Thorne did not give a written opinion but added he believed those individuals that were sworn in were telling the truth and that is what the board has to consider. He added usually this would be turned down by the Zoning Commission...Ms. Strogin Chair of the Zoning Commission was sworn in. She stated a turn down would have come from the Commission if it was commercial or a PUD but not for residential. That was under Zoning Inspector Ridgely's authority.

Mr. West stated per ORC 519.14 A, the Board of Appeals has the authority to "Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official..." Therefore this is an administrative appeal. ZI Ridgely made a decision based on the Pros. Office opinion not to allow the split.

Ms. Strogin asked why it stated in the application that, "for lack of approximately 3 or 4 feet, the property could not be divided..." Mr. Shurell responded that when you remove the frontage in front of the cemetery, in order to have the required 200 ft. it pushes the dividing line well into the back yard of the century home and makes it non-functional. Therefore we can't have the use of the cemetery frontage we would like a variance so we can put the division line to follow the natural tree line which runs.

Chair Morel stated he agreed though a 70 ft. variance may appear substantial in number. Mr. West stated he agreed the variance should be granted especially due to the uniqueness of the layout of this property and given the opinion of the Pros. Office.

Mr. Becker stated he wanted to see the Pros. opinion in writing. Chair Morel stated there was testimony from township officials which all confirmed the verbal opinion given by Mr. Thorne from the Pros. Office. Mr. West stated he had no issue but the substantiveness of the request, he questioned whether a variance was even required. He added nonetheless the board has a verbal opinion from the Pros. Office though the board does prefer a written opinion.

Mr. West made a motion to adopt the answers to the Duncan Factors per the Owner's perspective in its entirety and to grant a 70 ft. variance from the 200 ft. frontage resolution requirement of Section 401.3c along Remsen Rd., for the purpose of subdividing the 7.08 acre parcel #026-06B-19-002. It was seconded by Mr. DeMichael. ROLL CALL- West-yes, DeMichael-yes, Becker-yes, Karson-yes, Morel-yes.

The variance request was approved.

**MISC.**

The minutes from the Board's August 18, 2010 meeting were approved as written.

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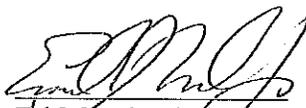
Zoning Secretary Ferencz reminded the board members of the Fair Housing and Zoning Law workshop that would be held on October 28, 2010 6-9 p.m. at the Akron University campus in Lafayette Township.

Inspector Ridgely gave the board the paperwork regarding the pool that was before the courts and reported that APPC Plumbing would be removing the garage and it should be completed in 60 days. Lastly Zoning Inspector explained the situation in Windfall Heights and about structures and sheds that were built that had no permits and did not fall within the required setbacks. She gave the board a copy of the letter that would be sent out to the homeowners. The Home Owner's Association has recommended modifying Section 303.D of the Medina Township Zoning Resolution so that the 30 ft. rear yard setback would not apply to sheds/accessory structures within the development but that would only help out structures built from this point forward and would not be retroactive to what was built previously so the issue of non-compliance would still remain. Zoning Inspector Ridgely stated of the approximately 200 homes in that development one part is covered under a Home Owners Association and the other does not. Zoning Inspector Ridgely continued that some of the structures were built before 1984 when the Township's zoning resolution went into effect and another issue some of the homeowners are second or third owners of the residence and were not the individual who erected such structures on their property. The result is that there would be numerous variance requests that would probably be coming before the board.

Having no further business before the Board, the hearing of Board of Zoning Appeals was officially adjourned at 8:04 p.m.

Respectfully Submitted,

Kim Ferencz  
Zoning Secretary

  
Ed Morel, Chairman