

**MEDINA TOWNSHIP  
ZONING BOARD OF APPEALS  
PUBLIC HEARING  
APRIL 19, 2017**

Chairperson Ed Morel called the public hearing of the Medina Township Board of Zoning Appeals to order at 7:30 p.m. Permanent Board members Morel, Blakemore, West, and Gray were in attendance. Mr. Stopa was absent. Alternate member Matt Payne was absent. Alternate member Boris Williams sat in for a full Board.

Chair Morel explained the procedures of the hearing.

**Weymouth Crossing variance request-4262 Weymouth Rd.**

Secretary Ferencz read the application into the record. The applicant was Ryan Homes. The owner of the property is Weymouth Crossing LLC. The address of the property requesting a variance is 4262 Weymouth Rd. Present Zoning-UR. Previous variance requests-none.

Variance being requested-Section 303 A. Principal Buildings-No more than one principal building shall be permitted on any one lot, and every principal building shall be located on a lot having frontage on a public or private street. We are requesting shared access for 3 homes along Weymouth Rd. (Rt.3). Three homes will share one curb cut.

It is our understanding now that the shared access section of the Township Zoning Resolution was removed several years ago. As the resolution stands, one is to infer that all lots are to have individual driveways since the Township Resolution is silent on the matter. Townships have permissive zoning (if it's not in the code it's not allowed).

We are requesting the variance to allow for 3 driveways to share one curb cut along Weymouth Rd. (Exhibit A).

- The property is zoned Urban Residential (UR).
- The intent is to remove the existing buildings, divide the property into 3 lots; one lot to be added to Weymouth Crossings Subdivision; 2 new lots to be created out of the remaining land. An existing easement is already recorded on the property granting the access to the neighbor to the south; Brian Tkacz (Exhibit B).
- As Weymouth Rd. is a State Route we are not permitted to have more than one curb cut within the given frontage as topography limits our access. We applied for 3 curb cuts with ODOT and were denied. ODOT requires 360' between curb cuts. (Exhibit C)
- All 3 lots have frontage on Weymouth Rd. Required frontage is 100' with public sewer, 200' without public sewer. The 2 new lots will have public sewer access. The 2 new lot frontages are 135' and 115'. The Tkacz's property has 485' of frontage (no sewer access)
- The existing driveway is gravel/dirt.
- Our proposal would grant shared access to the first 125' of driveway. The shared driveway would be paved.

- Our request includes rewriting of the existing easement to provide better maintenance controls, better access to the rear lot and cost sharing of the shared driveway.
- Additional information on our request is contained in our explanation under item 5 below.

Duncan Factors:

**Will the property yield a reasonable return or whether there can be any beneficial use of the property without the variance;**

The property will not yield a reasonable return.

- The property was purchased with the understanding that the lot could be split. The property was purchased to allow the existing home and barn to be removed. Route 3 is being widened in order to add a turn lane to alleviate traffic congestion and increase safety for traffic looking to turn into Weymouth Crossing. The removal of the home and barn will provide safer access than the existing configuration.
- The existing easement wind its way around the house and barn taking up a large portion of the center of the site. Once the house and barn are removed the easement can be better located on the property.
- We have approached ODOT for several curb cuts and have been denied (See ODOT attachment Exhibit C). They will only allow 1 curb cut.

**Whether the variance will be substantial;**

No.

- The variance is for an easement that is already in place. We are merely rerouting the easement to straighten it out and allow 3 homes to share it. 2 homes currently use the existing recorded easement. We are modifying an existing condition.
- Existing site conditions prevent the southern property owner Mr. Tkacz to have direct access to Rt. 3.

**Whether the essential character of the neighborhood be substantially altered or whether adjoining property owners would suffer a substantial detriment as a result of the variance;**

- The character of the neighborhood will not be altered or adjoining properties will be detrimentally affected by the shared access.
- The neighbor to the south is already using a recorded easement across the property to access their home and is in favor of a new easement and shared maintenance agreement.
- Weymouth Crossing lies to the north.

- The adjoining properties will benefit by the removal of the existing home and the redesign of the easement.
  - Increase resident safety by removing existing home and building new homes farther back from Rt. 3
  - Better access to the existing home to the south
  - Existing easement does not spell out how the driveway is to be maintained. The new easement can provide better clarity on the shared maintenance.
  - Provide for a better driveway as the existing easement does not define the driveway material.

**Whether the variance would adversely affect the delivery of governmental services;**

- Delivery of governmental services will not be affected. On curb cut will continue to be used. The reworking of the access and driveway will increase the safety for residents.

**Whether the property owner purchased the property with the knowledge of the zoning restrictions;**

- It was assumed that since a shared driveway already existed that they were permitted in the township. See attached “4272 Weymouth Access” (Exhibit D).
- A similar arrangement is located immediately to the south of these properties where 3 lots share one access driveway (4306,4316& 4324 Weymouth Rd. See attached “Neighbors” (Exhibit E).
- The Township Zoning Resolution is silent on the matter of shared driveways.

**Whether the property owner’s predicament feasible can be obviated through some other method than the granting of a variance;**

- We have explored other means of accessing the 3 lots. ODOT denied our application for additional curb cuts. Their requirement of 360’ driveway spacing eliminates the possibility to add more curb cuts. Only a variance can provide access to the lots.

**Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance;**

- The spirit and intent of the zoning requirement is to avoid the issues the township has had in the past with shared driveways. While the parties associated with a shared access might be good friends when the access is created, time moves on, people change, expectations are assumed that might not be true and then issues occur. Our proposal provides for an easement with language (draft easement attached (Exhibit F) that spells out the use, maintenance and restrictions of the easement to avoid any issues in the future.
- All three property owners are in favor of the new easement
- All 3 lots have frontage on Rt. 3 and our valid lots. If not for the ODOT restriction we would run 3 separate driveways.

- If required we would be willing to add language that any changes to the easement that are required or proposed must be brought before the Township. Thereby protecting the Township and avoiding any future issues.

Mr. West asked why this request was before the Board in the first place. Chair Morel responded the applicant assumes he needs three separate driveways; which is a logical assumption. Everything that is logical is not written in the zoning code. The code spells out frontage on the road and lot lines. I think it would be assumed that a driveway would be part of that i.e., it would need to be located on the property. Chair Morel went on to state that he thought the applicant, Mr. Keith Mitchell from Ryan Homes was accurate that there was no specific language prohibiting a shared driveway but does it mean its allowed. It's a valid assumption Mr. Mitchell is making i.e. that every driveway needs to be on its own property with a separate curb cut.

Mr. West then asked about Rivendale Subdivision. Was there a variance granted for Rivendale? There are common driveways in Rivendale.

Ms. Strogin Chair of the Zoning Commission was sworn in. She stated that Rivendale was a PUD (Planned Unit Development) with private roads. In that scenario one wants a shared road. She continued the Commission took shared driveways out of the zoning resolution in 2001 or 2003 because "they were nothing but trouble." Therefore the Commission could not approve a shared driveway for Weymouth Crossings because it was not allowed per the zoning code. That is why it is before the BZA this evening.

Mr. Blakemore stated if that is the case, why doesn't Weymouth Crossing put a shared lane in and separate driveways off of that. Mr. West interjected then it would have to be a private road. He then asked Ms. Strogin, are you stating this evening that those are private roads in Rivendale? Ms. Strogin responded, yes in a PUD. Mr. West asked what the rationale was for not allowing shared driveways in a "regular" development? Ms. Strogin stated the lots in question are not in the development. Mr. West stated he did not believe the interpretation of the regulation was correct but stated the Board should move on.

The applicant Mr. Keith Mitchell from Ryan Homes was sworn in. Chair Morel stated the attached brief was pretty detailed but did he want to add any more information before the Board this evening or did the Board have any questions. ?

Ms. Gray stated she was concerned with the added population to the community especially off Rt. 3 which is extremely busy. To have three families off one shared driveway coming in and out off of Rt. 3; she had grave concerns.

Mr. West asked if the shared driveway exists already. Mr. Mitchell stated the curb cut is already there with two existing homes coming out onto it. He added he would rather have less curb cuts coming off Weymouth so has to minimize the congestion of pulling out at **Page 2 BZA April 19, 2017**

relatively the same time in the morning. More curb cuts more confusion. That is why ODOT denied additional curb cut requests.

Chair Morel stated these are legal lots. Mr. Mitchell could put in three curb cuts if it was a Township road but because Rt. 3 is a State road, ODOT has denied additional curb cuts. Mr. West interjected that Ryan Homes is adding a significant curb cut there with a turning lane just right next to where these homes are/will be. It will absolutely be congested area.

Ms. Grey asked about the maintenance agreement regarding the shared driveway. Mr. Mitchell answered just like a private drive, there are rules and regulations that will govern it. Ms. Grey stated she was still concerned how that would ultimately play out. Mr. Mitchell added that Mr. Tkacz owned the property in question where this shared driveway would take place and he is very much in favor of the idea. The other two lots have not been sold yet, but this agreement would be disclosed to the potential owner(s) and runs with the land.

Mr. Blakemore stated he did not like that Ryan Homes was so assuming that they would be allowed to put three homes off of a shared driveway. Mr. Mitchell state there were already two homes sharing a driveway.

Ms. Strogina stated the language that everyone has a separate driveway facing a public or private road is not in the PUD's; but in the PUD's one wants to have commonality. On regular single lots you do not. The Township does not like shared driveways and it was taken out of the zoning code in 2001-2003. Mr. West asked why? Ms. Strogina stated because of the problems it causes. Mr. West then commented that the Commission didn't put any language in the code prohibiting it; you took it out of being permissive. Ms. Strogina stated that a zoning code is permissive by definition. If it is not stated in the code it automatically defaults to be prohibited. However in this case, there is already is a recorded easement regarding this shared driveway.

Hearing no further comments by the Board members, the Board considered the Duncan Factors:

1. Will the property yield a reasonable return or whether there is a beneficial use without the variance? The Board stated yes
2. Is the variance substantial? The Board stated implicit not explicit.
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? The Board stated no.

4. Will the granting of the variance adversely affect the delivery of governmental services? The Board stated no.
5. Did the property owner purchase the property with the knowledge of the zoning restrictions? The Board stated yes.
6. Whether the problem can be solved by some other manner other than the granting of the variance? The Board stated there were already two homes coming off the shared driveway.
7. Does the granting of the variance uphold the spirit and intent of the Zoning Resolution? The Board stated yes.

Mr. West made a motion to approve a variance for a common driveway and curb cut as outlined in Exhibit A to run between lot A and lot B and to include 4272 Weymouth Rd. as detailed in the application. It was seconded by Mr. Blakemore.

ROLL CALL-West-yes, Blakemore-yes, Williams-yes, Gray-no, Morel-yes.  
The variance request was approved.


The minutes to the Board's February 21, 2017 meeting was approved as written.

Having no further business before the Board, the hearing was officially adjourned at 8:30 p.m.

Respectfully Submitted,

Kim Ferencz, Zoning Secretary

~~Ed Morel, Chairperson~~

  
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William West, Acting Chair