

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING AUGUST 25, 2010**

Initially, Messrs. Musmanno, Cole and Gluckler were present. The Chair called the meeting to order at 7.45 p.m. On a motion moved by Mr. Musmanno, seconded by Mr. Gluckler and passed unanimously, the minutes of the meeting of June 10, 2010 were approved with one minor correction.

By unanimous consent, the re-election of officers for the new financial year was postponed to a later meeting when more members were present.

Ms. Affleck-Childs, on behalf of the Planning Board, present the proposed revised Zoning Map. The Board did not suggest any changes.

Mr. Biocchi then joined the meeting and by unanimous consent the Board held a hearing on the application of WD Jaguar, LLC, on whose behalf Attorney David Krumsiek appeared. Mr. Krumsiek stated that the present owner bought the property out of foreclosure from the previous owner, who in turn bought it from the developer Mr. Garofalo, who still owns the remaining land on which the proposed sub-division is to be built. The sale by the developer was in violation of the covenants entered into when the sub-division plan was approved. The present owner cannot sue the developer because of lack of privity of contract and because the land has passed through foreclosure. This is a unique situation; if the owner cannot obtain relief, nothing can be done with the lot. A proposed owner has already moved in and is currently renting the property. The hardship was created by the developer who conveyed the lot in violation of his covenant; the present owner did obtain title insurance at the time of purchase. Ultimately, if relief is not granted, the town's interest will be degraded due to the likely deterioration of the existing building. The developer cannot sell either of the two back lots in the proposed sub-division without constructing the approved road.

In response to a question from the Board as to why the Board should absolve the present owner of his failure to perform due diligence, Mr. Krumsiek pointed out that the owner's attorney contact the Planning Board and informed the title insurance

company of the situation, and that when one is buying property out of foreclosure there is very limited time to do title research.

Questions were then invited from the general public. Mr. Mark Robinson of 26 Milford Street asked if the existence of the non-conforming lot affect the development of the lot on which the proposed sub-division was to stand. The Board explained that this was a matter for the Planning Board and not a matter for decision by this Board.

The floor was then opened for comments by the general public. Mr. Robinson stated that he would like to see the property occupied but was concerned about the effect of non-conforming lots on other developments. Relief should lie against the title insurance company.

Mr. Brian Donovan of 25 Milford Street (the tenant of the subject property) stated that he wanted to increase the value of the property but does not want to buy a property which is not “clean” with regard to zoning.

Mr. Vincent Pipia of 6 Fales Street stated that he did not want to see building near his property.

Ms. Affleck-Childs explained the approaches made to the Planning Board regarding the subject lot. She had had a telephone conference with the applicant’s attorney prior to the applicant’s closing on the property in which the question of the lot release was discussed. She indicated to the attorney that the question would have to go before the Planning Board. The Planning Board has subsequently provided to the Zoning Board of Appeals the memorandum of record. Under State Law, there would be an automatic two year extension of the period within which the developer must begin construction. The Planning Board was seriously troubled by the illegal release of the subject lot and might consider rescission of the sub-division approval. The Planning Board has twice declined to give a release for the subject lot.

In further comments, Mr. Donovan stated that relief would make this a more valuable property than the present owner had bargained for, and the inability to convey the lot would not relieve the owner from his obligation to maintain the property. He was therefore opposed to the petition.

On a motion moved by Mr. Cole, seconded by Mr. Biocchi and passed unanimously, the hearing was closed.

The Board then proceeded by unanimous consent to deliberate on the application of WD Jaguar, LLC. Mr. Gluckler expressed the opinion that if the lot cannot be conveyed, the owner will obtain a monetary settlement from the title company and ultimately the property will degrade. Mr. Biocchi questioned whether there was in fact hardship, noting that hardship within the meaning of the ByLaw was difficult to find. Mr. Gluckler raised the question of what would happen to the lot when the covenant expired. Mr. Musmanno pointed out that the period within which the developer could construct the proposed road (which would render the subject lot conforming) had not yet expired, and that the developer would receive an automatic extension under State Law; accordingly, there was a question whether relief at this point might be premature.

The hour being somewhat late, and it appearing that lengthy further deliberations would be required, on a motion made by Mr. Musmanno, seconded by Mr. Biocchi, and passed unanimously deliberations were continued to August 31, 2010 at 7:30 pm in the Town Hall

A motion to adjourn being made by Mr. Musmanno, seconded by Mr. Cole and passed unanimously, the meeting closed at about 10:30 pm.