

**TOWN OF MEDWAY**  
**ZONING BOARD OF APPEALS**  
**MINUTES OF MEETING AUGUST 31, 2010**

Messrs. Musmanno, Cole, Biocchi and Gluckler were present. The Chair called the meeting to order at 7.35 p.m. By unanimous consent, the Board agreed to deliberate on the application of WD Jaguar, LLC relating to 25 Milford Street.

Mr. Musmanno presented draft findings to the meeting. Mr. Cole and Mr. Gluckler agreed with Mr. Musmanno that it would be unwise for the Board to take action to change the existing situation while the period for the developer to construct the proposed road had not expired.

The Board then unanimously agreed to several minor amendments in the text of the proposed findings, so that the final version of the findings was as set out in the Appendix to these minutes. On a motion moved by Mr. Musmanno, seconded by Mr. Gluckler and passed unanimously, the findings were adopted, and the Board refused the requested variance.

On a motion moved by Mr. Musmanno, seconded by Mr. Gluckler and passed unanimously, the minutes of the August 25, 2010 Board meeting as presented by the Clerk were approved.

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

On a motion made by Mr. Biocchi, seconded by Mr. Gluckler and passed unanimously, the Board adjourned at approximately 8:25 pm.

APPENDIX

Findings of Board regarding application of WD Jaguar, LLC.

We have the case of a parcel conveyed from a subdivision without an appropriate release, and subsequently foreclosed upon and conveyed again. The present owner lacks privity of contract with the subdivision developer, and the chain-of-title has been severed by the foreclosure.

The petitioner demonstrated unusual circumstances relating to the parcel. Standing on its own, as a result of its unusual provenance, the parcel only has approximately 65 feet of

frontage on an existing way. The balance of its intended frontage is along Harmony Lane, which exists only in plan form as of this date.

The hardship as a consequence of this circumstance was described as an inability to convey the parcel. However, the clear intent of the subdivision covenant was to prevent conveyance until the roadway is constructed. The period in which the developer is expected to complete construction of the roadway has not yet expired. While the present owner did not intend to enter into this covenant, the provisions remain sufficiently intact that grant of effective exclusion from them would be contrary to the requirements of MGL Chapter 41, Section 81u, and would derogate from the intent of the Zoning ByLaw. The petitioner correctly argues that it has no control over the completion of the roadway. Nevertheless, it is premature to grant relief, because to do so presumes the Developer will not complete the roadway. There is a plan that is current, on-file with the Town and the Registry of Deeds, and well within its time allowance for completion of the work. Until it is executed, or expires, or is revised, or is rescinded, the plan should control.

**RELIEF DENIED**