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**COMMUNITY DEVELOPMENT**

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**Zoning Board of Adjustment**  
**Draft Minutes**  
**April 12, 2011**

**Board Members**

Tom Murray – Chairman  
Heath Partington – Vice-Chairman  
Elizabeth Dunn – Secretary (Excused)  
Mark Samsel – Member  
Dianna Fallon – Member (Excused)  
Jim Tierney – Alternate  
Mike Scholz – Alternate

**Staff**

Tim Corwin - ZBA/Code Enforcement Administrator

**Seat Alternates**

For this meeting, the Chairman appointed Mr. Tierney to replace Mrs. Dunn and to serve as Board Secretary, and appointed Mr. Scholz to replace Mrs. Fallon.

**Lot 21-Z-264, 6 Horne Road, Case #67-2010 – Request for Re-Hearing**

Mr. Tierney summarized a letter from Mr. Bill Mason, attorney for property owner/applicant, Leslie Crook. The letter presented 6 arguments for the Board's consideration.

Chairman Murray stated that it is the job of the Board in considering the re-hearing request to determine whether new evidence has been presented or whether a technical error was made.

Mr. Samsel recommended that the Board consider each of the applicant's six points separately.

Mr. Tierney read the first point set forth in the letter and stated that he did not believe any new evidence was presented nor was there any technical error made. Mr. Partington and Mr. Samsel voiced their agreement.

Mr. Tierney read the second point set forth in the letter. Chairman Murray asked whether this presented new information that was not readily available to the Board that would have changed the Board's opinion. Mr. Tierney stated it should have been available the night of the meeting, and not after the fact. Mr. Partington noted that this could also have been provided at one of the continued hearings.

Mr. Tierney read the third point set forth in the letter stating that former occupants could testify that they had sole use of the garage portion of the property. Chairman Murray asked whether this is new information or a technical error. Mr. Samsel stated that there was testimony that the use of the building was year round, so this is not new information. Mr. Scholz concurred. Mr. Tierney stated that the problem is that the Building Inspector previously made a determination that it could be occupied, but that at some point there was a kitchen installed that converted the space into a dwelling unit. So the fact that people could testify as to how it was used does not help the case with respect to legal occupancy. Mr. Partington stated that what the applicant was trying to address was the concern that the variance would create a greater intensity of use on this lot. But it is not new information and should have been presented.

Mr. Tierney read the fourth point set forth in the letter, and the Board agreed that this did not constitute new information or a technical error.

Mr. Tierney read the fifth point set forth in the letter. Chairman Murray stated that this was just a repeat of the third point.

Mr. Tierney read the sixth point set forth in the letter. Chairman Murray stated that this is information that was available and should have been presented.

Mr. Samsel asked that the Board also address the Board's possible technical error discussed in the applicant's letter regarding the town appraisal of the property and the issue of municipal estoppel. Chairman Murray read the full paragraph. Mr. Murray asked Mr. Corwin whether the Town has copies of any Certificates of Occupancy issued for the garage. Mr. Corwin reviewed his memo to the Board from January 11, 2011 which listed all relevant contents of the Community Development Department's property files. Mr. Partington stated that he could not make a final determination as to who was in the wrong and who issued the permits incorrectly, so he did not base his decision on that basis. Mr. Scholz said the appraisals would have been available at the time of the hearing.

Mr. Murray stated that the Board made a motion at the March 22, 2011 to cancel the April 12, 2011 meeting and asked the Board for a motion to reconsider the motion to cancel. Mr. Samsel stated the meeting was cancelled due to a lack of applications for the Board to consider. However, the re-hearing request for 6 Horne Road was subsequently submitted. Mr. Partington stated that the motion should never had been taken to begin with because the Chairman has the authority to call and cancel meetings. Mr. Corwin confirmed that the agenda for the 4/12/11 meeting was posted at the Department offices, in Town Hall and on the website and was published in the newspaper.

Mr. Partington made a motion, seconded by Mr. Tierney, to deny the re-hearing request for 67-2010 on the basis that no new information was presented and no technical error was found. The Board approved the motion 5-0.

### **Review and Approval of March 22, 2011 Draft Meeting Minutes**

Mr. Samsel motioned to approve the March 22, 2011 minutes. Mr. Partington asked that a portion of the footnote inserted by Mr. Corwin be moved to the main text. Mr. Partington seconded the motion, as amended. **Motion passed 3-0**, with Mr. Tierney and Mr. Scholz abstaining.

### **Miscellaneous Board Business**

Chairman Murray read letters from John Alosso and Jonathan Sycamore resigning as alternates to the Zoning Board of Adjustment.

The Board discussed further revisions to the February 22, 2011 meeting minutes.

Chairman Murray asked for a motion to authorize Staff to advertise for and to seek alternates for the two open alternate seats on the Board. Mr. Scholz made a motion, seconded by Mr. Samsel. The motion passed 5-0.

Mr. Partington asked whether the Board had approved the new ZBA junk yard application. Mr. Corwin briefly described the Board's role in the junk yard approval process as set forth in the newly adopted junk yard ordinance.

### **Adjournment**

**Mr. Samsel motioned to adjourn. Motion passed 5-0.**

The next meeting of the Zoning Board of Adjustment is scheduled for April 26, 2011 at 7:30 PM in the Community Development Office.

These minutes are in draft form and are respectfully submitted for approval by Tim Corwin.