

**CITY OF TORRINGTON  
ZONING BOARD OF APPEALS  
MINUTES  
March 9, 2009**

Present: David Moraghan, Chairman  
Kathleen Perrotti, Vice Chairwoman  
Genevieve Gangi, Member  
James Marinelli, Member  
Karen Falk, Alternate  
Ken Edwards, Alternate  
Marc Trivella, Alternate

Not Present: Cynthia Vasko, Member

Also Present: Mike O'Neil, Assistant Zoning Enforcement Officer

1. **Call to Order:** Chairman David Moraghan called the meeting to order at 7:00 p.m. in the Sullivan Senior Center, Shuffleboard Room, 88 East Albert Street, Torrington, CT (southeast corner of East Albert Street and Park Avenue)

2. **Attendance:**

Chairman David Moraghan announced seated this evening will be Board Members Kathleen Perrotti, James Marinelli, Cynthia Gangi ( announced on tape as Cynthia Gangi and should be corrected to show Genevieve Gangi as Cynthia Vasko was not present), Karen Falk, Ken Edwards and Marc Trivella. Also present is Assistant Enforcement Officer Mike O'Neil.

3. **Minutes:**

- a. 11/10/08

Mr. Marinelli noted a correction to Page 4, fourth paragraph, the last sentence should be changed to read: "It says you cannot do it, then you can do it *with a variance.*"

MOTION by Ms. Gangi to accept the minutes as corrected, motion seconded by Ms. Perrotti, unanimously carried.

- b. 1/12/09

MOTION by Ms. Gangi to accept the 1/12/09 minutes, seconded by Ms. Perrotti, unanimously carried.

4. **Hearings:**

Chairman Moraghan read the legal notice which was published in the Republican American.

- a. Variance  
Applicant: James McGarry, d/b/a McDonalds  
Location: 1858 East Main Street  
Proposal: Request to keep roof light beams lit, original building constructed in 1996 had light beams, building reconstructed in 2006 with light beams (Section 5.15.8 E)

Chairman Moraghan opened the public hearing, seconded by Ms. Perrotti, unanimously carried.

Mr. James McGarry, owner/operator of the McDonalds on 1858 East Main Street appeared, and provided an exhibit to be submitted. Mr. McGarry gave a presentation and background on the history of the site.

Chairman Moraghan read portions of Section 8.1.3 of the Zoning Regulations which is the portion of the Regulations that gives this Board the authority to grant a Variance. One of the arguments presented is that it is financial due to the economy, and Mr. Moraghan does not see how if this Variance is not granted, use of the property will be denied. Mr. Moraghan has been up there recently and seen the lights are off and he applauds Mr. McGarry for that. Mr. Moraghan does not believe the lights or lack of will cause the business to end.

Mr. McGarry provided more comments on the reasons for his request for this variance, including for what is fair for him as a businessman in town based on the points made in his outline on page 2.

Ms. Gangi referred to a letter from the McDonalds Corp. to Kim Barbieri saying the issue had been resolved, the letter is dated January 16, 2009. Mr. O'Neil responded he believes that letter refers to the recent court case regarding the cease and desist order which still stands. The court case was withdrawn by the McDonald's attorney.

Discussion amongst Board members and Mr. McGarry followed. Mr. McGarry noted these lights had been fine for 20 months and then the City had an issue.

Mr. Trivella responded it was not fine with the City, as he was on the Architectural Review Committee when the plans were submitted for review, and the Committee did not recognize these bands to be lit during the review. The lights were not identified properly on the plans and there was a discrepancy in the presentation of the plans. The Committee was excited about the expansion of the building and the color design, etc. Today whether the band lights are on or off, Mr. McGarry still has lit McDonalds signage that is appropriate and visible. Mr. Trivella believes the lights should be off for the City to remain consistent in their plans for the future and future buildings and designs. Mr. Trivella is sensitive to Mr. McGarry as a business owner in current economic times.

**Zoning Board of Appeals - 3/9/09**

**Page 3**

Mr. Moraghan stated the problem with Mr. McGarry's argument is that he keeps coming back to financial and that is expressly forbidden to give a variance based on financial. That area is overdeveloped and it doesn't matter to Mr. Moraghan that there are bands on the building and when it was brought to their attention, they had to act upon it, and this Board's hands are tied by law, and one specific condition is that it cannot be financial.

No comments from the public.

MOTION by Mr. Moraghan to close the public hearing, seconded by Ms. Perrotti. Mr. O'Neil requested he present some information and photos. Mr. Moraghan reopened the public hearing.

Mr. O'Neil presented photos taken last Thursday and explained the angles from which the photos were taken.

Mr. McGarry briefly discussed the signage he is allowed at the plaza.

Mr. O'Neil presented site plans for the new building topography maps of the site and noted various elevation points on the map, and he believes the McDonalds is not 15 feet below, but there is more likely a depression of five feet.

MOTION by Mr. Moraghan to close the public hearing, seconded by Ms. Perrotti, unanimously carried.

Ms. Perrotti stated she cannot find the criteria to grant a variance.

MOTION by Mr. Marinelli to DENY the Variance proposal, based on the hardship stated, and no hardship was shown directly related to the land to set it apart from surrounding property in the area. All property on that site is below street level, there is no justifiable hardship to the applicant. Mr. Marinelli voted in favor of the motion.

Mr. Moraghan amended the motion to say that the primary hardship is alleged to be a financial one.

Mr. Moraghan said the motion is to DENY the variance because it is not a financial hardship and it is not a special condition or circumstance affecting that lot alone, Mr. Marinelli agreed.

MOTION seconded by Ms. Perrotti.

Ms. Perrotti agreed with Mr. Marinelli and regretfully she does not see a way to approve this application.

Mr. Marinelli voted in favor of his motion.

Ms. Gangi voted in favor of the motion because she has no choice because of their rules, but she feels he was not treated fairly and it is hard enough for small businesses in Connecticut now, and she feels badly about having to vote this way.

**Zoning Board of Appeals - 3/9/09**

**Page 4**

Ms. Falk voted for the motion and she also feels it is unfortunate..

Mr. Moraghan voted in favor of the Motion and he echoes Ms. Gangi's comments and he is sorry.

Mr. Moraghan stated the application for a variance is denied.

**5. Adjournment:**

MOTION by Mr. Trivella to adjourn, seconded by Mr. Moraghan, unanimously carried.

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Lona Kirk, Land Use Office