

**CITY OF TORRINGTON
ZONING BOARD OF APPEALS
MINUTES
August 10, 2009**

Present: David Moraghan, Chairman
Kathleen Perrotti, Vice Chairwoman
Cynthia Vasko, Member
Genevieve Gangi, Member
Karen Falk, Alternate
Marc Trivella, Alternate

Also Present: Mike O'Neil, Zoning Enforcement Officer

Not Present: James Marinelli, Member
Ken Edwards, Alternate

1. **Call to Order:** Chairman David Moraghan called the meeting to order at 7:00 p.m. in the Sullivan Senior Center, Main Room, 88 East Albert Street, Torrington, CT

2. **Attendance:**

Chairman David Moraghan announced present are David Moraghan, Kathleen Perrotti, Cynthia Vasko, Genevieve Gangi, Karen Falk and Marc Trivella.

3. **Minutes:**

a. 7/13/09

Correction to Attendance, Cynthia Vasko was present (Genevieve Gangi was not present).

Mr. Moraghan noted a correction on Page 4, sixth paragraph, Mr. Malley argued (not testified) on behalf of Mr. Monahan.

MOTION by Ms. Gangi to accept the minutes as corrected, seconded by Mr. Trivella, unanimously carried.

4. Hearings:

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

- a. Appeal
Appellant: Travis Battistoni
Location: 147 Circle Drive
Proposal: Appeal from Zoning Enforcement Officer Mike O'Neil's
decision in Cease and Desist Order dated June 7, 2009.

Mr. Moraghan outlined the procedures for public hearing.

Travis Battistoni appeared and explained how the structure was installed near the house, he had photos and pointed out areas on the photos for the Board. A Cease and Desist Order was issued to him, saying the structure was too close to the house. Mr. Battistoni met with Mike O'Neil and obtained a permit relocating the tent garage back, he thought everything was fine. Mr. Battistoni then received another Cease and Desist Order saying that it was too close to the property line. His neighbor does not have a problem with this and submitted a letter to that effect. Photos of the site were reviewed and location of the tent discussed.

Mr. O'Neil stated he does not believe the tent is ten feet from the property line, and that is why the Cease and Desist Order was issued. Ms. Gangi questioned the necessity of permits, Ms. Vasko asked if it was OK to put up such a structure in November and take it down in March.

Mr. O'Neil explained the definition of accessory structure, anything that sets upon the ground requires a zoning permit. Ms. Gangi believed somewhere along the line this has changed, as these tents are not anchored to the ground and she considers them to be temporary.

Mr. Moraghan read the definition of accessory structure from the Zoning Regulations.

Mr. O'Neil explained the setback requirements in response to questions from Mr. Battistoni and Board members.

Mr. O'Neil presented exhibits, including the setback requirements for accessory structures. Mr. Battistoni had read the requirements for the principal structure, not an accessory structure. Exhibit 2 is the zoning permit that was filled out in February. A request for voluntary compliance was sent on February 7, 2009. The applicant did not place the accessory structure as shown on his submitted zoning permit. As it was winter and the structure was frozen into the ground, Mr.

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O'Neil rechecked the site in June, the shed was not moved and he issued the Cease and Desist Order. It is the applicant's responsibility, not the town's, to show that the structure meets the setback. Mr. O'Neil read portions of the Zoning Permit that reference this issue.

Mr. Moraghan read the definition of structure from the Zoning Regulations, and the word "tent" is in that definition. Therefore, a tent is defined as a structure. Mr. O'Neil read the definition of Zoning Permit as well.

Mr. Moraghan outlined the benefits of Mr. Battistoni obtaining a survey (#1372). The timing of obtaining a survey was discussed. Mr. O'Neil stated Mr. Battistoni is unable to locate the pins, in reference to discussion regarding maps on file at the City Hall.

Discussion amongst Board members, Mr. Battistoni, and Mr. O'Neil followed regarding details of this application.

MOTION by Ms. Gangi to close the hearing, seconded by Ms. Perrotti, unanimously carried.

In response to a question from Ms. Gangi, Mr. Moraghan stated the Board can vote to over rule the Cease and Desist Order, to sustain the Cease and Desist Order, or impose new conditions on the property to satisfy questions the Board has. He does not know if this means the Board can order an A-2 survey.

MOTION by Ms. Gangi to not allow the Cease and Desist Order simply because we don't have accurate numbers and it would be terribly unfair to do this without the numbers and I don't believe we can force anyone to get them at this point, motion seconded by Mr. Trivella.

Mr. Moraghan reiterated this motion is to over rule the Cease and Desist Order issued by Mr. O'Neil because we don't have accurate numbers to determine the property line location and how that interacts with the structure.

Ms. Gangi voted in favor of the motion.

Ms. Vasko voted in favor of the motion.

Ms. Perrotti voted in favor of the motion.

Mr. Trivella voted in favor of the motion.

Mr. Moraghan voted to sustain the Cease and Desist Order as the burden is on the applicant to provide the proper mapping.

Mr. Moraghan stated the Cease and Desist Order has been over ruled.

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5. Adjournment:

MOTION to adjourn by Mr. Trivella, seconded by Ms. Gangi, unanimously carried.

Lona Kirk, Secretary
Land Use Office