

**Town of Cromwell
Zoning Board of Appeals**


Jean Ahlqvist, Esq.
TOWN CLERK

**PUBLIC HEARING AND REGULAR MEETING
7:00 P.M. TUESDAY, SEPTEMBER 28, 2010
ROOM 224 CROMWELL TOWN HALL, 41 WEST STREET**

AGENDA

1. **Call to Order**
2. **Roll Call**
3. **Seating of Alternates**
4. **Approval of Agenda**
5. **Public Comments**
6. **Public Hearing:**
 - a. Application #10-13: Variance from Article 12 Paragraph 5.1.13 and 14 (Compensatory Storage and Equal Conveyance of Flood Waters) at 245 Main Street. The Mattabassett District, owner/applicant.
 - b. Application #10-15: Variance from Article 8.1 (Maximum Building Height) at 245 Main Street. The Mattabassett District, owner/applicant.
 - c. Application #10-14: Special Permit (Change of Non-Conforming Use) at 31 West Street. Gary Sullivan, owner/applicant.
7. **Old Business:** None
8. **New Business:** None.
9. **Approval of Minutes:**
 - a. August 24, 2010
10. **Commissioner's Comments**
11. **Adjourn**

Memo

To: Zoning Board of Appeals
From: Craig Minor, AICP
Town Planner 
Date: September 21, 2010
Re: ZBA meeting on September 28, 2010

6. Public Hearing:

a. Application #10-13: Variance from Article 12 Paragraph 5.1.13 and 14 (Compensatory Storage and Equal Conveyance of Flood Waters) at 245 Main Street. The Mattabassett District, owner/applicant.

According to their application, the Mattabassett District cannot construct the needed improvements to their facility without: (1) decreasing the amount of "flood storage capacity" on the site, and (2) increasing the height of the flood level during a 100-year storm.

This is something new: an application for a variance from the Special Flood Hazard Area regulations. There is a slightly different process that we need to go through. Please read the attached excerpt from the Zoning Regulations, especially Paragraph 8.4: "Conditions for Variances".

b. Application #10-15: Variance from Article 8.1 (Maximum Building Height) at 245 Main Street. The Mattabassett District, owner/applicant.

According to their application, the Mattabassett District need to construct a building that is higher than the maximum allowable 40'.

In principle I cannot recommend approval. The proper solution to this problem is to amend the zoning regulations to permit flexibility in the maximum height of a public utility or other structure whose height is dictated by some unique manufacturing or other constraint. For example, the zoning regulations currently allow a smokestack to exceed 40' upon approval of a special permit by P&Z.

However, it takes several months to amend the zoning regulations, so I understand their desire for a variance instead.

c. Application #10-14: Special Permit (Change of Non-Conforming Use) at 31 West Street. Gary Sullivan, owner/applicant.

You may recognize this as the application which was denied back in April 2010. This is the same project, but the applicant is now asking you to treat it as a "change of non-conforming use".

There are two basic types of "non-conformities". There are non-conformities in terms of use, and there are non-conformities in terms of bulk. An example of a use non-conformity would be the package store at the north end of Main Street which has been there since before zoning and is now in a residential zone. An example of a bulk non-conformity would be a house situated only 15' from the street, which was built before Cromwell had setback regulations.

As in most towns, Cromwell regulates the establishment of bulk non-conformities through the variance process. A property owner requests a variance; he explains what he would like to construct; he demonstrates his "hardship"; and the ZBA grants or denies the variance.

Cromwell regulates the natural evolution of non-conforming uses through an entirely different process. The property owner requests a special permit; he explains the type of business that he would like to open in his building; he demonstrates how the new business would be no more out of character with the neighborhood than the old business was; and the ZBA grants or denies the special permit.

The applicant's attorney has stated that the applicant is seeking a special permit to expand a non-conforming use. I have several problems with this.

1. The applicant says that he is requesting an expansion of a non-conforming use. There is nothing in the zoning regulations that gives the ZBA the authority to allow the expansion of a non-conforming use. All you have the authority to do is approve a change in an existing non-conforming use and only if the new use will be no more non-conforming than the old use.
2. This existing porch is not a non-conforming use. Porches are perfectly allowable in the residential zone, as the applicant's attorney mentions in the application. It is the bulk of the porch (too close to the street) that is non-conforming, not its use.
3. The applicant's attorney references Paragraph 13.2 of the zoning regulations. While that section might provide the ZBA with useful guidance in deciding whether or not to approve a change from a package store to a convenience store, the more important regulation is Paragraph 21.1.a.5 in the ZBA section of the zoning regulations:
 5. To hear and decide requests for any application for a change of non-conforming use. The current use must be legal non-conforming in that it must have been lawfully existing prior to the zoning change that made it non-conforming and at the time of application (this requirement does not apply to subsequent ZBA-approved changes for the same property). The new non-conforming use must be no more non-conforming than the current non-conforming use.

10. Commissioners Comments:

I will not be able to attend the meeting on October 26, 2010. There really is no other night that I can suggest you reschedule it to, so you might want to consider canceling it altogether.

cc:
Gary Sullivan
Wright-Pierce Inc.
file

LEGAL NOTICE
PUBLIC HEARING
TOWN OF CROMWELL ZONING BOARD OF APPEALS

The Cromwell Zoning Board of Appeals will hold a Public Hearing and Regular Meeting at 7:00 pm on Tuesday, September 28, 2010 in Room 224 of the Cromwell Town Hall at 41 West Street on the following items:

1. Application #10-13: Variance from Article 12 Paragraph 5.1.13 and 14 (Compensatory Storage and Equal Conveyance of Flood Waters) at 245 Main Street. The Mattabassett District, owner/applicant.
2. Application #10-15: Variance from Article 8.1 (Maximum Building Height) at 245 Main Street. The Mattabassett District, owner/applicant.
3. Application #10-14: Special Permit (Change of Non-Conforming Use) at 31 West Street. Gary Sullivan, owner/applicant.

At this hearing interested parties may appear and be heard, and written testimony received. These applications are on file in the office of the Town Planner at 41 West Street, Cromwell, CT.

Thomas Tokarz
Chairman

Dated in Cromwell, Connecticut this 16th day of September 2010

**TOWN OF CROMWELL
ZONING BOARD OF APPEALS**

**APPLICATION FOR VARIANCE, ZONING APPEAL, DMV LOCATION APPROVAL,
OR CHANGE OF NON-CONFORMING USE SPECIAL PERMIT**

Address: 245 Main St., Cromwell, CT 06416		Map/Block/Lot: NA
Zoning District: Industrial	PIN #: Parcel ID 00308900	Volume/Page: Book 75; Page 275
Applicant: The Mattabasset District		Property Owner: Same
Home or Business Address: 245 Main St., Cromwell, CT 06416		Home or Business Address: Same
Phone: 860-635-5550		Phone: Same
<p><i>I hereby certify that the information presented is to the best of my knowledge true and accurate, and that should such information be proved to be inaccurate or misleading, any permit issued on the basis of this information may be revoked.</i></p> <p>Signature: _____</p>		<p><i>I hereby consent to the Applicant acting as my agent for the purpose of this application.</i></p> <p align="center">Brian W. Armet, P.E., Executive Director</p> <p>Signature: <i>Brian W. Armet</i></p>
<p>Type of Application (check one): 5.1.13 and 5.1.14</p> <p><input checked="" type="checkbox"/> Variance from Article (Section XII) of the Zoning Regulations.</p> <p><input type="checkbox"/> Appeal from ZEO Decision dated _____.</p> <p><input type="checkbox"/> Change of Non-Conforming Use Special Permit.</p> <p><input type="checkbox"/> Application for Motor Vehicle Location Approval (attach copy of your completed DMV Form K-7)</p>		
<p>Description of Request:</p> <p>See attached.</p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>		

SECTION XII
SPECIAL FLOOD HAZARD AREA REGULATIONS

8.0 VARIANCE PROCEDURES

8.1 ESTABLISHMENT OF VARIANCE PROCESS

8.1.1. The Zoning Board of Appeals, as established by the Town of Cromwell, shall hear and decide appeals and requests for variances from the requirements of this regulation.

8.1.2. The Zoning Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Director of Development Services (or his designee) in the enforcement or administration of this regulation.

8.1.3. Any person aggrieved by the decision of the Zoning Board of Appeals or any person owning land which abuts or is within a radius of one hundred (100) feet of the land in question may appeal within fifteen (15) days after such decision to the State Superior Court of Middlesex County, as provided in Section 8-8 of the General Statutes of Connecticut.

8.1.4. The Director of Development Services shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) upon request.

8.2 SPECIFIC SITUATION VARIANCES

Buildings on a Historic Register - Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or any locally-adopted historic district without regard to the procedures set forth in the remainder of this section and provided the proposed reconstruction, rehabilitation or restoration will not result in the structure losing its historical designation.

Functionally Dependent Use or Facility - Variances may be issued for new construction and substantial improvements and other development necessary for the conduct of a functionally dependent use or facility provided the structure or other development is protected by methods that minimize flood damage, creates no additional threat to public safety and meet all the requirements of Section 8.4.

Floodway Prohibition - Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

8.3 CONSIDERATIONS FOR GRANTING OF VARIANCES

In passing upon such applications, the Zoning Board of Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this regulation and the items listed below as 7.3.1 – 7.3.11. Upon consideration of these factors and the purposes of this regulation, the Zoning Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this regulation.

The danger that materials may be swept onto other lands to the injury of others;

The danger to life and property due to flooding or erosion damage;

The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

The importance of the services provided by the proposed facility to the community;

The necessity of the facility to waterfront location, in the case of a functionally dependent facility;

The availability of alternative locations not subject to flooding or erosion damage for the proposed use;

The compatibility of the proposed use with existing and anticipated development;

The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

The safety access to the property in times of flood for ordinary and emergency vehicles;

The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

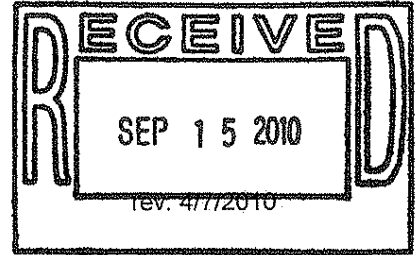
8.4 CONDITIONS FOR VARIANCES

8.4.1 Variances shall only be used upon a determination that the variance is the minimum necessary to afford relief considering the flood hazard; and in the instance of a historical building, a determination that the variance is the minimum necessary as not to destroy the historic character and design of the building and result in the loss of historic designation of the building. Variances pertain to a piece of property and are not personal in nature. A properly issued variance is granted for a parcel of property with physical characteristics so unusual that complying with the regulation would create an exceptional hardship to the applicant or the surrounding property owners. Those characteristics must be unique to that property and not be shared by adjacent parcels. For example, economic or financial hardship is not sufficient cause for a variance, nor are inconvenience, aesthetic considerations, physical handicaps, personal preferences or disapproval of one's neighbors.

8.4.2 Variances shall only be used upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship, and; (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, damage the rights or property values of other persons in the area, cause fraud on or victimization of the public, or conflict with existing local laws, ordinances or regulations. Only hardships that are based on unusual or unique physical characteristics of the property in question, characteristics that are not shared by adjacent parcels, shall qualify to meet subsection (ii) above. Claims of hardship based on the structure, on economic gain or loss, or on personal or self-created circumstances are not sufficient cause for the granting of a variance.

8.4.3 No variance may be issued within a regulatory floodway that will result in any increase in the 100-year flood levels. A variance may be issued for new construction, substantial improvements and other development necessary for the conduct of a "functionally dependent use" provided that there is good and sufficient cause for providing relief; and the variance does not cause a rise in the 100-year flood level within a regulatory floodway. The structure and other development must be protected by methods that minimize flood damages.

8.4.4 Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation (BFE) and the elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor elevation.



TOWN OF CROMWELL
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE, ZONING APPEAL, DMV LOCATION APPROVAL,
OR CHANGE OF NON-CONFORMING USE SPECIAL PERMIT

Address: 245 Main St., Cromwell, CT 06416		Map/Block/Lot: NA
Zoning District: Industrial	PIN #: Parcel ID 00308900	Volume/Page: Book 75; Page 275
Applicant: The Mattabasset District		Property Owner: Same
Home or Business Address: 245 Main St., Cromwell, CT 06416 Brian W. Armet, P.E., Executive Director		Home or Business Address: Same
Phone: 860-635-5550		Phone: Same
<i>I hereby certify that the information presented is to the best of my knowledge true and accurate, and that should such information be proved to be inaccurate or misleading, any permit issued on the basis of this information may be revoked.</i>		<i>I hereby consent to the Applicant acting as my agent for the purpose of this application.</i>
Signature:		Signature:
Type of Application (check one): <input checked="" type="checkbox"/> Variance from Article 8.1 (Max. Bldg. Height) of the Zoning Regulations. <input type="checkbox"/> Appeal from ZEO Decision dated _____. <input type="checkbox"/> Change of Non-Conforming Use Special Permit. <input type="checkbox"/> Application for Motor Vehicle Location Approval (attach copy of your completed DMV Form K-7)		
Description of Request: See attached.		

Justification for Request:

If Applying for a variance, state the hardship and explain why the variance is required.

If appealing a Decision of the ZEO, explain why you feel the ZEO is wrong.

If Applying for a Change in Non-Conforming Use Special Permit, explain how the new use will be less non-conforming than the current use.

If Requesting DMV Location Approval, state the date of the original Public Hearing (if any).

See attached.

1. If you are applying for a variance to reduce a minimum setback by one-half or more, you must submit either a "zoning location survey" or a recent "as-built survey". This survey should show the location of the desired building, the setbacks, and as much of the site as is necessary to illustrate what your are requesting. Photocopies of the Tax Assessor's Map are not acceptable.

2. Written notice must be sent to the owners of property across the street and property that abuts this property not less than 14 days before the public hearing. A "certificate of mailing" must be submitted to the ZBA not less than 10 days before the hearing.

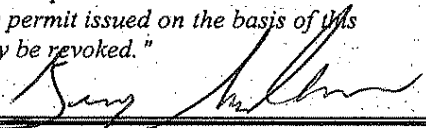
3. A sign must be posted on the property not less than 14 days before the public hearing per Article 21.1 of the zoning regulations.

_____ applicant

_____ date

TOWN OF CROMWELL ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE, ZONING APPEAL, DMV LOCATION APPROVAL, OR CHANGE OF NON-CONFORMING USE SPECIAL PERMIT

Address: 31 West Street		Map/Block/Lot: 54 / 39 / 6	
Zoning District: A-15	PIN #: 00444900		Volume/Page: 400/346
Applicant: Gary M. Sullivan		Property Owner: same	
Home or Business Address: 31 West Street Cromwell, CT 06416		Home or Business Address: same	
Phone: (860) 301-2088		Phone: same	
<p><i>I hereby certify that the information presented is to the best of my knowledge true and accurate, and that should such information be proved to be inaccurate or misleading, any permit issued on the basis of this information may be revoked.</i></p> <p>Signature: </p>		<p><i>I hereby consent to the Applicant acting as my agent for the purpose of this application.</i></p> <p>Signature: _____</p>	
<p>Type of Application (check one):</p> <p><input type="checkbox"/> Variance from Article _____ of the Zoning Regulations.</p> <p><input type="checkbox"/> Appeal from ZEO Decision dated _____</p> <p><input checked="" type="checkbox"/> Change of Non-Conforming Use Special Permit.</p> <p><input type="checkbox"/> Application for Motor Vehicle Location Approval (attach copy of your completed DMV Form K-7)</p>			
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Please see attached

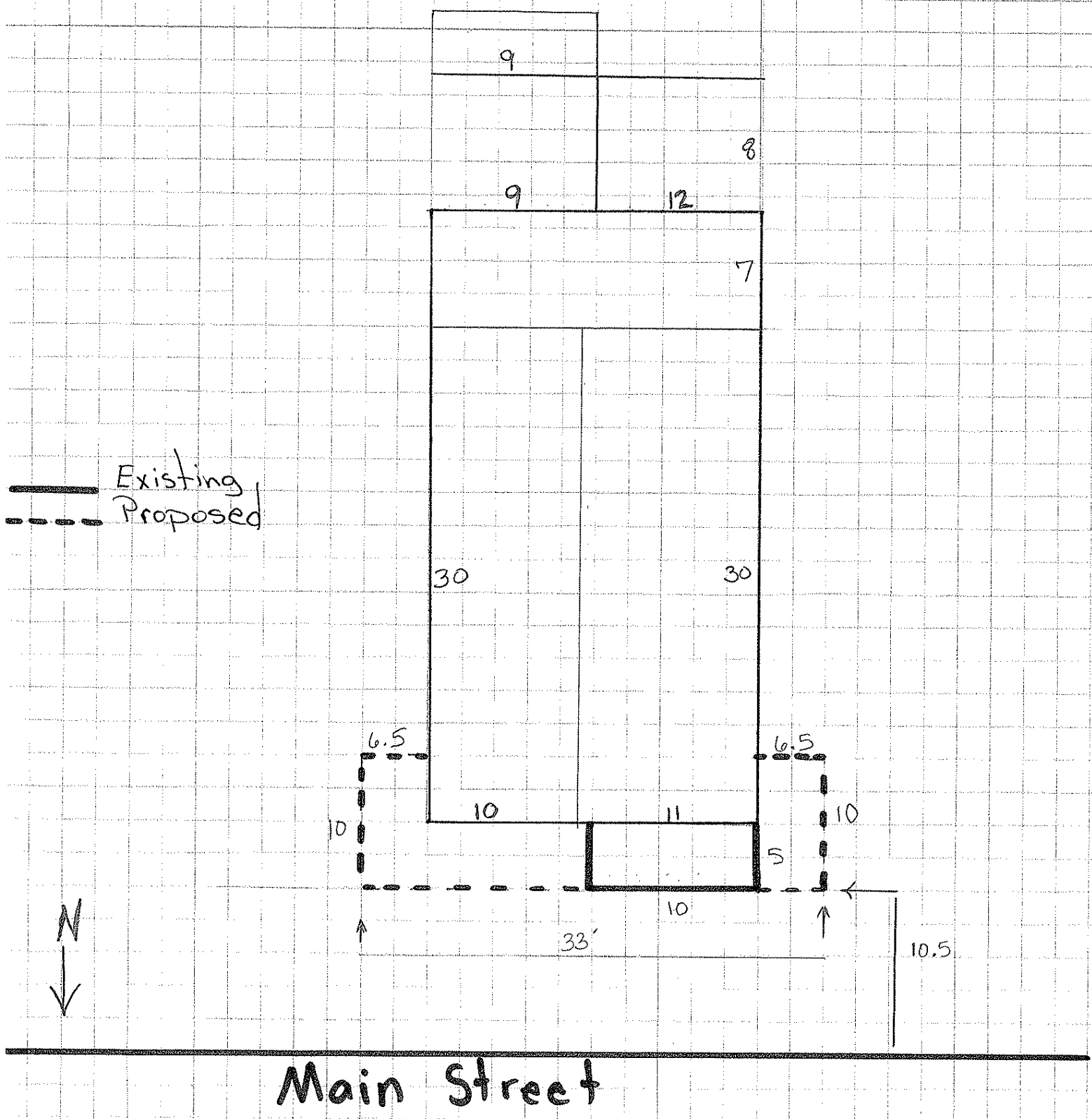
1. If applying for a variance to reduce a minimum yard by 50% or more, a "zoning location" or recent "as-built" survey must be attached. This survey should show the location of the desired building, the required setback, and the width of the resulting yards, plus as much of the site as is necessary to illustrate the requested variance. Photocopies of the Cromwell Tax Assessor's Map are not acceptable.

2. Certified Mail notices must be sent to the owners of property across the street and property that abuts this property not less than 14 days before the public hearing. U. S. Postal Service receipts for these certified mail letters must be submitted to the ZBA not less than 10 days before the hearing. *"I understand that I must send notice of this application to property owners by certified mail and submit proof of that notice to the ZBA."*

3. A sign must be posted on the property not less than 14 days before the public hearing per Article 21.1 of the zoning regulations. *"I understand that I must post the required sign."*

 Gary Sullivan
applicant

Sept 7, 2010
date



Law Office of Salvatore J. Petrella, LLC
Attorneys At Law

Salvatore J. Petrella

Julie C. Petrella

630 Main Street
Cromwell, Connecticut 06416

Tel. (860) 632-8300
Fax (860) 632-7945

September 10, 2010

Zoning Board of Appeals
Cromwell Town Hall
41 West Street
Cromwell, CT 06416

Dear Board Members:

RE: Application for Special Permit – Application # 10-14, 31 West Street, Cromwell, CT 06416, Gary M. Sullivan, Applicant / Owner

I represent Gary M. Sullivan, the owner of property at 31 West Street in Cromwell. My client is seeking a Special Permit (which also could be considered a Special Exception) under Section 13.2 of the Cromwell Zoning Regulations to change the dimensions of a validly existing non-conforming porch on the front of his property. Mr. Sullivan is seeking this Special Permit in order to construct a full front porch on his property.

Mr. Sullivan previously appeared before the Zoning Board of Appeals and sought a variance of the zoning regulations in order to accomplish this goal. His application was denied as it was determined that he did not present a hardship at the public hearing on the matter.

An application for a Special Permit (for the expansion of a non-conforming use) does not necessarily entail the demonstration of a hardship, as does the granting of a variance. Whereas a variance permits an owner to develop and use his property in a manner prohibited by the Zoning Regulations, a special exception only permits uses explicitly provided for in the Zoning Regulations. It is the position of the applicant that he will demonstrate the propriety of expanding this validly existing non-conforming use.

In considering and granting a special exception, the Zoning Board of Appeals acts in an administrative capacity and must follow the conditions in the Zoning Regulations which are set forth below.

Section 13.2 of the Zoning Regulations lists the factors to be considered in evaluating an application for a Special Permit. The Board of Appeals is to consider whether the proposed use is appropriate in terms of its location, size and character and whether it will be in harmony with its surroundings. A number of the neighboring homes have similar style full front porches and many of the residents on or about West Street spoke in favor of Mr. Sullivan's previous

application. Constructing this porch will increase the beauty and value of the home and benefit, not detract from, the surrounding properties.

The other factors to be considered, such as the public's welfare, safety, impact on traffic, production of noise, smoke, odors, etc have no bearing on this application and need not be addressed.

The current porch is approximately 10 feet 3 inches in width and about 18' feet to the curb on West Street. The house is approximately 20' wide and is located in an A-15 zone which requires a 35' setback from the street. This house was erected between the 1700s and 1800s and the porch was built prior to the existence of zoning regulations. It is therefore grandfathered in as a non-conforming use.

The existing porch covers approximately one-half of the front wall of the structure. The previous location of the front entranceway and the base or foundation indicates that this porch previously covered the entire front of the home and may even have extended beyond the corners of the house. That extent of the base is in existence today and can be seen in the photographs to be presented at the public hearing on the matter.

Mr. Sullivan's plan is to enlarge the porch so that it wraps around the front of the house, as depicted on the enclosed sketch. This enlargement is in width only; it will not be any closer to West Street than the current structure. This is an important factor to note. Zoning regulations do not generally allow a non-conforming use to be extended or enlarged. While the applicant is asking for a larger porch than what currently exists, he is not asking for an increase in the non-conformity. The extent of the non-conformity is the set-back distance from the street. That figure will remain the same. The use is in conformity with the Zoning Regulations, i.e, porches are allowed on residential structures. The final as built porch will be a porch no closer to West Street than the existing porch and there is ample side yard set-back distances on the lot.

It is important to note that the residence is a two-family structure. The front door serves as an entrance to both dwellings. There are two driveways servicing the property. Each dwelling unit would enter the proposed porch from a different side of the property.

On behalf of Mr. Sullivan, I ask you to approve this application for a Special Permit to allow a change in the size of the current non-conforming use at 31 West Street. Thank you.

Sincerely,



Salvatore J. Petrella
cc: Gary M. Sullivan