



## **Town of Cromwell Zoning Board of Appeals**

***PUBLIC HEARING AND MEETING  
6:30 P.M. TUESDAY MAY 9, 2023  
TOWN HALL COUNCIL CHAMBERS  
41 WEST STREET CROMWELL***

### **AGENDA**

1. **Call to Order**
2. **Roll Call**
3. **Seating of Alternates**
4. **Approval of Agenda**
5. **Public Comments**
6. **Public Hearing:**
  - a. Application #23-03: Request for Variance from Section 3.3.B Bulk Requirements of the Zoning Regulations (Front Yard Setback) to allow for the construction of the building in the front yard setback at 48 Berlin Road in the Highway Business Zone District. Gary Hatch on behalf of AutoZone, Inc. is the Applicant and ORION PRO FRIEND SL LLC is the Owner.
7. **Board Members Comments:**
8. **Approval of Minutes:**
  - a. April 11, 2023
9. **Adjourn**

RECEIVED FOR RECORD  
May 02, 2023 11:50A  
JoAnn Doyle  
TOWN CLERK  
CROMWELL, CT

LEGAL NOTICE  
PUBLIC HEARING  
TOWN OF CROMWELL ZONING BOARD OF APPEALS

The Cromwell Zoning Board of Appeals will hold a Public Hearing and Meeting at 6:30 pm on Tuesday, May 9, 2023 in the Council Chambers at the Cromwell Town Hall at 41 West Street on the following item:

1. Application #23-03: Request for Variance from Section 3.3.B Bulk Requirements of the Zoning Regulations (Front Yard Setback) to allow for the construction of the building in the front yard setback at 48 Berlin Road in the Highway Business Zone District. Gary Hatch on behalf of AutoZone, Inc. is the Applicant and ORION PRO FRIEND SL LLC is the Owner.

At this hearing interested parties may appear and be heard and written testimony received. The application is on file in the Planning and Development Department office at 41 West Street, Cromwell, Connecticut.

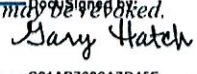

Joseph Morin  
Chairman

Dated in Cromwell, Connecticut this 25th day of April 2023.

# 23-03

**TOWN OF CROMWELL  
ZONING BOARD OF APPEALS**

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

<b>Address:</b> 48 Berlin Road, Cromwell, CT 06416	<b>PIN #:</b> 00094400
<b>Zoning District:</b> Highway Business (HB)	<b>Volume/Page:</b> 1745/90
<b>Applicant:</b> Gary Hatch, on behalf of AutoZone, Inc.	<b>Property Owner:</b> Christopher Sanz
<b>Home or Business Address:</b> 123 S. Front St., 3rd Floor Memphis, TN 38103	<b>Home or Business Address:</b> 200 South Biscayne Blvd 7th Floor Miami, FL 33131
<b>Phone #:</b> 901-495-8567  <b>Email:</b> Gary.Hatch@autozone.com	<b>Phone:</b> 305-960-8979
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. <b>Signature:</b> 	I hereby consent to the Applicant acting as my agent for the purpose of this application.  <b>Signature:</b>
<b>Type of Application (check one):</b> <input checked="" type="checkbox"/> Variance from Section 3.3.B 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)	
<b>Description of Request:</b> Variance relief is requested from Section 3.3.B with respect to the Highway Business (HB) Minimum Front Yard requirement of 25 feet. Additional description of request is included in an attached document. <hr/> <hr/> <hr/> <hr/>	

**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).

**Justification for Request included in attached document.**

1. I will send written notice of this application to the owners of property within 100' of the site not less than 14 days before the public hearing. I will submit the "certificate of mailing" not less than 10 days before the hearing.
2. I will post a sign on the property not less than 14 days before the public hearing per Section 8.10.H. of the Cromwell Zoning Regulations. I will submit an affidavit of posting at the hearing.
3. If my request is dimensional in nature, I have submitted a site plan prepared by a surveyor in accordance with Sec. 10.4.B.2 of the Cromwell Zoning Regulations.

DocuSigned by:

*Gary Hatch*

CS1AB7608A7D45F...

applicant

04/21/2023

date



445 Hamilton Avenue, 14th Floor  
White Plains, New York 10601  
T 914 761 1300  
F 914 761 5372  
cuddyfeder.com

Christopher B. Fisher  
[cfisher@cuddyfeder.com](mailto:cfisher@cuddyfeder.com)

April 25, 2023

**By Overnight Mail**

Chairman Joseph Morin  
and Members of the Zoning Board of Appeals  
Town of Cromwell  
Town Hall, 2<sup>nd</sup> Floor  
41 West Street  
Cromwell, CT 06416

Re: Proposed Retail Redevelopment  
Closed Friendly's Restaurant and Proposed AutoZone  
Setback Variance Application  
48 Berlin Road, Cromwell, CT

Dear Chairman Morin and Members of the Zoning Board of Appeals:

We are writing to you on behalf of AutoZone and the owners of property at 48 Berlin Road in support of a setback variance application associated with redevelopment of the site into a permitted retail use at the location of a now closed Friendly's restaurant ("Friendly's Lot").

**Prior Development and Easements for the Lots at 48 and 50 Berlin Road**

In the 1980s, Mr. Joseph Compagnone owned properties which now consist of two lots in separate ownership at 48 and 50 Berlin Road in the Town of Cromwell. At that time, Mr. Compagnone entered into agreements and easements with Friendly's for a restaurant at 48 Berlin Road and an adjacent multi-tenanted retail building at 50 Berlin Road ("Retail Lot").

To facilitate the overall development of both the Friendly's Lot and Retail Lot, a perpetual easement running with the land was established for the benefit of both parcels and recorded in the Town's land records at 295 page 52, a copy of which is attached as Exhibit A ("Perpetual Easement"). The Perpetual Easement is located in the eastern most portion of the Retail Lot in a notched area between the Friendly's Lot and Berlin Road. The easement area is depicted on the Town's GIS maps as a green dashed line and also identified as a hatched area on the survey included with Tab 1 of the Application. Attached as Exhibit B are copies of the Town GIS maps and a photograph of the area from Berlin Road.

Among other things the Perpetual Easement includes the permanent right for a parking lot that benefits the Friendly's Lot and its successors and assigns. That parking lot is incorporated into the approved site plan for the existing restaurant building and part of the restaurant site's functional frontage on Berlin Road ("Parking Easement"). It is our understanding that the Friendly's Lot has all required Town approvals for the restaurant and the integrated parking lot on the Perpetual Easement over the adjacent Retail Lot (collectively the "Site").



### **The Closed Friendly's Restaurant & AutoZone Proposed Site Redevelopment**

The Friendly's restaurant has been closed for a few years and the property was conveyed in 2021. AutoZone has entered into a ground lease with the owner of the Site that is contingent on AutoZone's ability to redevelop the Site into a new company owned retail store. AutoZone is the U.S.' leading retailer and distributor of automotive replacement parts and accessories.

The proposed retail store at the Site is just over 6,000 square feet in size and below the prototypical size of a new AutoZone site which is in the 6,500 to 8,000 square foot range as noted in Exhibit C. Proposed construction will consist of a new building on the west side of the lot in an area that is currently part of the parking lot for the Friendly's restaurant. Additional parking and access drives will be constructed around the proposed building on the Site and the existing restaurant building demolished.

### **Consistency with the Town of Cromwell POCD & HB Zoning District Regulations**

The Town of Cromwell Plan of Conservation and Development ("POCD") supports and encourages retail uses along Berlin Road for economic development. Supporting the Town's commercial tax base is also one of the highest POCD priorities. Redevelopment of the Site into a retail store is consistent with the POCD's goals and policies.

The Friendly's Lot and Retail Lot are both in the Town's HB Zoning District. Pursuant to Section 3.3.C.3 of the Town's Zoning Regulations, redevelopment of the Site into a retail store is a permitted use subject to site plan review and approval by the Planning & Zoning Commission. Additionally, there are no Town special standards or requirements associated with establishing retail uses on the Site.

### **The Friendly's Lot is Unique in its Shape and Physical Features**

The Friendly's Lot is oddly configured, bounded by Berlin Road and Country Squire Drive and has one means of vehicular ingress and egress near a signalized intersection. The Lot includes FEMA flood zones and steep slopes that impact site planning as well. Due to the Lot's configuration and the location of the Site's access, integrating on-site vehicular, loading and pedestrian management are also considerations for appropriate site planning.

A zoning compliant retail site plan for a 6,000 square foot building is included in Exhibit D and highlights why a such a site design is not practical or feasible for retail redevelopment of the Site. Due to the unique configuration and characteristics of the Lot, a conforming retail plan would require the building entrance and facade to face Country Squire Road with the rear of the building facing Berlin Road with a tractor trailer loading area more highly visible. That kind of site plan design would be inconsistent with the Town's POCD which seeks to maintain a high quality commercial appearance along Berlin Road along with other zoning standards in Sections 4 and 5 of the Zoning Regulations (e.g. flood zone avoidance, parking and loading requirements, etc.).

### **Request for a Setback Variance for Retail Redevelopment of the Site**

The site civil engineers at Kimley-Horn have evaluated the Site and concluded that constructing a new retail building which faces Berlin Road and incorporates the Parking Easement as part of the main entrance to the building is the most appropriate way to address the Lot's unique circumstances and meet the Town's other zoning requirements. Included in Exhibit E is a copy of the proposed site plan for redevelopment of the Site into a 6,000 square foot retail building. For the reasons more fully outlined below, AutoZone on behalf of the owner is seeking a setback variance from the adjoining Retail Lot/Parking Easement line and the 25' technically required by Section 3.3.B of the Zoning Regulations.

### **This Application Meets the Standards for Granting the Requested Setback Variance**

Pursuant to Section 10.4.A of the Zoning Regulations and Connecticut General Statutes Section 8-6, the Zoning Board of Appeals has the authority to vary or adjust the strict application of the Zoning Regulations with due consideration for conditions especially affecting a parcel of land but not affecting generally the district in which it is situated. Where a literal enforcement of the Zoning Regulations would result in exceptional difficulty or unusual hardship, a variance is warranted. What follows is an analysis of the Town's variance standards as applied to the Friendly's Lot and redevelopment of the Site for retail.

#### **I. Town Zoning Regulation Section 10.4.D.3**

- (1) Is the exceptional difficulty or unusual hardship solely with respect to the parcel or land subject of the application?

**Yes.** In this case, the configuration of the Friendly's Lot and dedicated Parking Easement that is part of the development Site, along with their physical conditions, all serve to create an exceptional difficulty or unusual hardship with respect to this land. The terms of the Perpetual Easement make clear that all beneficial ownership of the easement area is enjoyed by the owner of the Friendly's Lot as if it were owned in fee simple. Additionally, the easement itself was conveyed in the 1980s as part of prior development and was a condition known and approved by the Town as part of the site-specific site plans for both the Friendly's and Retail Lots.<sup>1</sup> These facts coupled with the steep slopes, flood zones, required entrance off of Country Squire Drive and other zoning standards for retail development on the Site all serve to create unique hardships and exceptional difficulties associated with any permitted retail site plan for a 6,000 square foot building on this HB zoned Lot.

- (2) Is the difficulty or hardship owing to conditions especially affecting such parcel but not others?

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<sup>1</sup> See current Zoning Regulation Section 5.2.B which permits parking areas to be on adjacent lots subject to a recorded easement with the approval of the Commission.



**Yes.** This is a unique situation. There is a property line internal to the development Site that the owner of the Friendly's Lot and AutoZone fully control (i.e. the Lot Area + Perpetual Easement Area = the Site). But for the Lot line's existence internal to the development Site, no variance would be required at all for development of the proposed 6,000 square foot retail building on the Site as proposed and shown in Exhibit E. Additionally, the granting of a setback variance in this unique case would be of no precedential value to other property owners in the HB Zoning District given the unique circumstances, difficulties and hardships involved.

II. Town Zoning Regulation Section 10.4.D.4

- (1) Is the proposed variance grant the minimum variance necessary to alleviate the exceptional difficulty or unusual hardship and in harmony with the general purpose and intent of the Zoning Regulations?

**Yes.** A variance to permit a 3.8' front yard building setback from the Retail Lot/Parking Easement line is requested to develop a permitted retail use with a building entrance that would physically connect with an adjacent on-site travel way, sidewalks and adjacent parking in the Parking Easement area. In reality, the retail building is setback is over twice the required 25' from the "front yard" area on the Site that the owner and AutoZone already control. Specifically, the setback to the building front as measured from the Perpetual Easement line along Berlin Road and benefiting the Friendly's Lot is over 57' away and more than meets the Town's setback objectives associated with retail redevelopment of the Site. With a variance, the proposed retail site development can be achieved on this Site in conformity with other Town Zoning Regulations and the POCD which should be considered of higher significance in this unique case than the building location internal to the overall Site and near the Parking Easement and lot line.

- (2) Would granting the variance give due consideration for conserving the public health, safety, convenience, welfare and property values?

**Yes.** The Site is in a commercially zoned area of Cromwell and not adjacent to residential uses. Conversion of the use from restaurant to a new retail building would actually achieve two notable land use benefits. First traffic to the Site would be reduced substantially and we have included the ITE trip count standards for comparative purposes:

High turnover restaurant: AM Peak = 9.57/1,000sf; PM Peak = 9.05/1,000sf

Retail: AM Peak = 2.36/1,000sf; PM Peak = 6.59/1,000sf

Automobile parts sale: AM Peak = 2.51/1,000sf; PM Peak = 4.09/1,000sf

Additionally, the Site's stormwater systems will be substantially upgraded to meet today's standards as compared to those standards in place decades ago when the restaurant use was developed on the Site.

- (3) Would granting the variance permit substantial justice to be done and the public safety and welfare secured?





**Yes.** The owners of the Friendly's Lot control not just the lot at 48 Berlin Road, but the adjacent Perpetual Easement area over the Retail Lot at 50 Berlin Road. Notably, the site layout for the new retail building incorporates the existing pedestrian access and stairway to the adjacent Retail Lot along with a consistent setback for the two buildings along Berlin Road creating a more cohesive visual corridor along the frontage. As such, redevelopment of the Site with a setback variance will actually enhance property values of the adjacent Retail Lot and further promote the interrelationship of the two lots as a connected retail sites as shown on the proposed site plan in Exhibit E.

### **Conclusion**

We respectfully submit that, without the granting of the requested variance, a literal enforcement of the Zoning Regulations would result in exceptional difficulty and/or unusual hardship to the owners and any practical redevelopment of the Site for retail uses as permitted in the HB Zoning District. Moreover, the granting of the requested variance will actually enhance the public health, safety and welfare and environment as compared to existing conditions with the restaurant or even a conforming retail site plan. As such, we respectfully submit that there is a unique hardship and practical difficulties which warrant the issuance of the requested front yard setback variance in this unique circumstance.

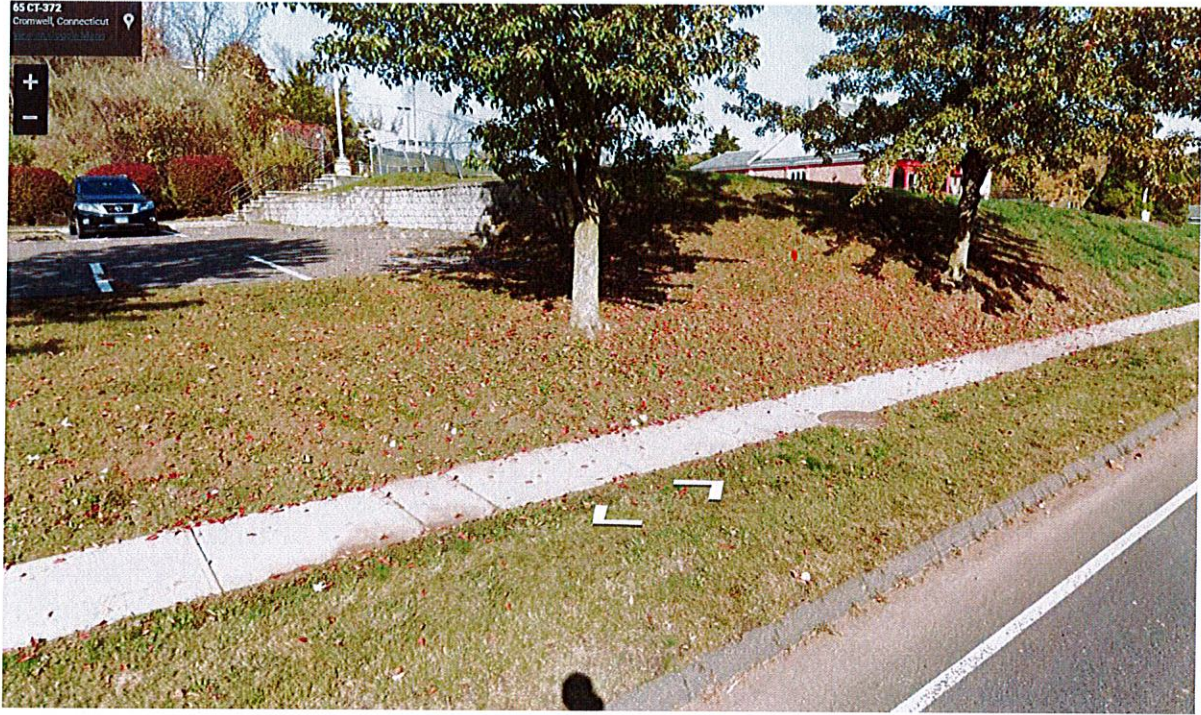
Very truly yours,

A handwritten signature in black ink, appearing to read 'Chris B. Fisher', with a long horizontal flourish extending to the right.

Christopher B. Fisher











## Town of Cromwell Zoning Board of Appeals

***PUBLIC HEARING AND MEETING  
6:30 P.M. TUESDAY APRIL 11, 2023  
TOWN HALL COUNCIL CHAMBERS  
41 WEST STREET CROMWELL***

RECEIVED FOR RECORD  
May 01, 2023 01:40P  
JoAnn Doyle  
TOWN CLERK  
CROMWELL, CT

### **Minutes and Record of Votes**

**Present:** Vice Chairman Dan Delisle, Mark Zampino, John Whitney and Steve Wygonowski (alternate)

**Absent:** Chairman Joseph Morin, John Keithan

**Also Present:** Director of Planning and Development, Stuart Popper, Zoning Enforcement Officer Bruce Driska

1. **Call to Order** - the meeting was called to order by Vice Chair Delisle at 6:30pm
2. **Roll Call** - The presence of the above members was noted.
3. **Seating of Alternates**

A motion was made by John Whitney and seconded by Mark Zampino to seat Steve Wygonowski as an alternate. All were in favor; the motion passed.

4. **Approval of Agenda**

A motion was made by Mark Zampino and seconded by John Whitney to approve the agenda. All were in favor; the motion passed.

5. **Public Comments** – none

6. **Public Hearing:**

- a. Application #23-02: Request for Variance from Section 2.2.B Bulk Requirements of the Zoning Regulations (Side Yard Setback on a corner lot and Aggregate Side Yard Setback) to allow for the construction of an addition on the east side of the house at 8 Black Haw Drive. Maureen Y. Krauss and Jeffrey are the Applicants and the Owners.

Vice Chair Delisle read the legal notice dated March 27, 2023.

A motion was made by Mark Zampino and seconded by John Whitney to open the public hearing for application #23-02. All were in favor; the motion passed.

Maureen Krauss, 8 Blackhaw Drive, Cromwell, CT said they are seeking a variance for 6.5 feet over the side yard setback. She said they are planning on adding a family room and a master bedroom with a bath. Mrs. Krauss said this is a corner lot. She said we have an ongoing water issue in the backyard although it is much better now with the addition of a swale, fill, drywell and landscaping.

Jeffrey Krauss, 8 Blackhaw Drive, Cromwell handed out photos taken March 14, 2023. He said this taken after a rainstorm. He said this actually better than it had before since they raised the hatchway, bricked in the basement windows and eliminated window wells. He said we also created a swale and installed a pumped sump. Mr. Krauss there would be a hardship if they had to use this area of the yard for the addition. He said we have notified the 8 surrounding neighbors, installed a 4 x 4 sign and submitted an affidavit attesting to this.

Mrs. Krauss said our home is a cape and the addition will look similar to the garage so the whole house will have a uniform appearance. She said it is a 900 square foot one story addition and the siding and roof will match the existing house. Mr. Zampino asked if they get water in the basement and Mr. Krauss said no and they have installed a sump pump.

Mr. Popper said the 6.5 feet into the setback minimized the impact and it faces the street. He said they have a clear hardship and Mr. Zampino said they clearly showed the evidence of the wet conditions. Mr. Wygonowski asked if there will be a basement under the addition and Mrs. Krauss said yes, but it will be high enough. She said all of the landscaping will stay as much as we can. She said all of the neighbors are happy with the addition. Mr. Driska said there has not been one call to his office with any questions or concerns about this. Mr. Zampino said as long as people in the neighborhood are fine with this than he has no issues. Mrs. Krauss said there have been a lot of additions in the neighborhood.

A motion was made by Mark Zampino and seconded by John Whitney to close the public hearing for application #23-02. All were in favor; the motion passed.

A motion was made by Mark Zampino and seconded by John Whitney to approve application #23-02. All were in favor; the motion passed.

Mr. Popper said a legal notice will put in the paper on Tuesday and if you want to start building before 2 weeks after the notice is published than you will need to submit a hold harmless letter to the town. He said you will receive the variance in the mail.

## **7. Board Members Comments:**

Vice Chair Delisle said he wishes Chairman Morin well since he had surgery today.

Mr. Zampino said we received the bylaws of the ZBA and on page 3, article 4 section 1 it says the Board meets on the fourth Tuesday of every month but it is really the 2nd Tuesday of the month. Mr. Popper said we can correct that. He said Chairman Morin asked me to distribute those so we can discuss them when he returns.

## **8. Approval of Minutes:**

### **a. March 14, 2023**

A motion was made by Mark Zampino and seconded by John Whitney to approved the minutes of March 14, 2023. All were in favor; the motion passed.

Mr. Zampino said he thought the minutes were too detailed and long. Mr. Popper said the it was long and onerous meeting and it seems better to have the details in writing. Mr. Delisle asked if the letter went out and Mr. Popper said it did last week.

## **9. Adjourn**

A motion was made by Mark Zampino and seconded by John Whitney to adjourn at 6:54pm. All were in favor; the motion passed.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda Imme".

Linda Imme  
Recording Clerk