



DEPARTMENT OF DEVELOPMENT SERVICES – PLANNING DIVISION
REPORT: Variance request at 145 New Britain Ave
 for consideration May 3, 2022

STAFF REPORT

TO: Zoning Board of Appeals
PREPARED BY: Paul Ashworth, Senior Planner
paul.ashworth@hartford.gov

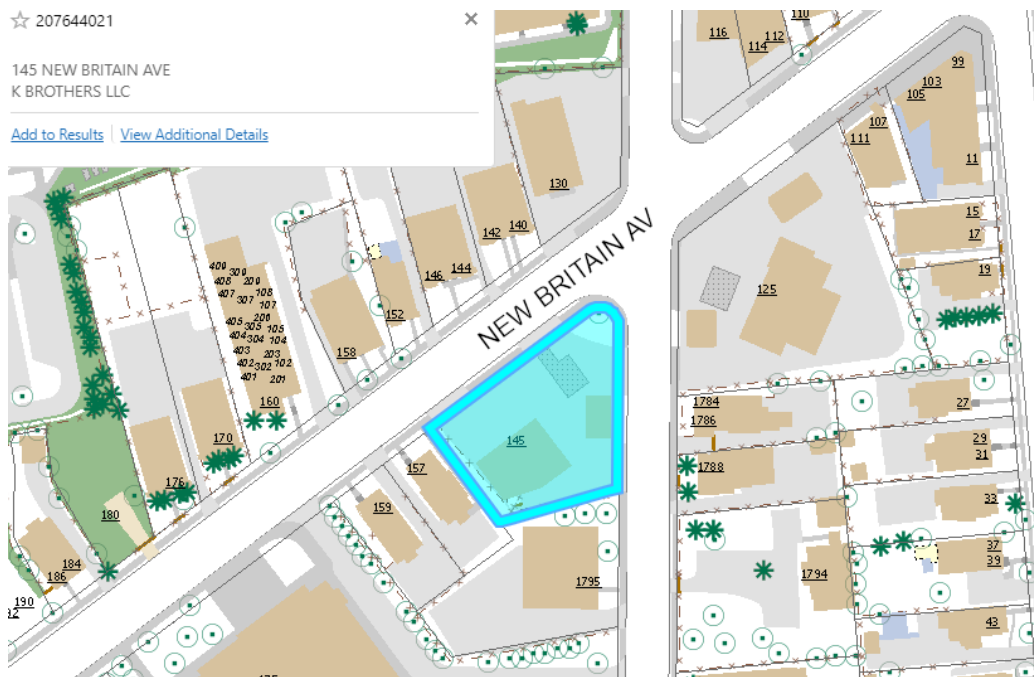
PROJECT: Sam’s Food Stores
 145 New Britain Ave
PARCEL ID: 207-644-021
P&Z-COMM-2022-0576

ZONE: MS-3, Main Street

TYPE: Request for two (2) variances from: Section 4.20.4.F – Fuel Pumps & Canopies, to allow three fuel pumps in the front yard; and, from Section 6.7.3 – Street Trees, to allow smaller shrubs where street trees are required.

APPLICANT: Alfred Benesch & Company, c/o John Oliveto

OWNER: K Brothers LLC



Overhead View – City of Hartford GIS 2022

STATEMENT OF HARDSHIP

The Applicant provided the following statement:

The application of this zone for the site achieves near compliance with the zoning regulations. However, hardships exist that make achieving all aspect of the regulations impossible. The applicant seeks relief from the following two (2) regulations:

- 4.17.2A: Fuel Pumps & Canopies
 - This regulation stipulates that any fuel pumps and/or canopies shall be located in the rear or interior side yard per 4.20.4.F.
 - General Hardship: the location of the existing store building does not provide a rear or interior side yard adequate in size for the new canopy and fuel dispenser. The new canopy and dispensers will be located in the same general location as the existing canopy.
- 6.7.3: Street Trees
 - This regulation stipulates that one street tree shall be planted for every 40' of street frontage with a minimum of one street tree per frontage. Street trees shall be located between 2-10' from the street, measured perpendicular to the curb.
 - General Hardship: the existing site contains very minimal green space or plantings and the site is very limited in space for tree plantings. The proposed site improves the site by decreasing impervious cover with the addition of small grassed islands along the property line. These islands will be planted with four (4) Turkish filbert deciduous trees and 41 inkberries (smaller shrubs) as they are still not large enough to support the required number of trees.

The applicant's full supporting narrative can be found attached to this report as Attachment 1.

KEY APPLICATION TIMELINES

- Application Submission Date: February 8, 2022
- Date Application Accepted as Complete: February 8, 2022
- Application Date of Receipt: March 1, 2022 (sooner of either: date of next regularly scheduled meeting, or 35 days after acceptance of complete application)
- Public Hearing is scheduled to open on Tuesday, May 3, 2022; Open Hearing Deadline: May 5, 2022.
- Close Hearing Deadline (if opens May 3, 2022): (35 days after opening) Tuesday, June 7, 2022
- CT General Statutes Sec.8-7D allow that the applicant may consent to one or more extensions of time, provided the total extension of all time periods shall not be for longer than 65 days.

LEGAL STANDARD

Standard for Application Type:

The ZBA shall have the power under Chapter 124 of the Connecticut General Statutes to vary the application of the zoning laws, ordinances, or regulations when the conditions affecting a particular parcel but not the general district cause exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured, provided that the zoning regulations may specify the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed. The board must take into consideration conserving the public health, safety, convenience, welfare, and

property value solely with respect to the affected parcel. (City of Hartford Zoning Board of Appeals Bylaws, Article II, Sec. 3)

STANDARD SPECIFIC TO THE USE

Section 4.17.2.A Fuel Pumps & Canopies – Any fuel pumps and/or canopies shall be located in the rear or interior side yard per Section 4.20.4.F Accessory Structure: Fueling Pumps and Canopies.

Section 4.20.4.F Fuel Pumps & Canopies – Facility associated with a commercial or industrial use that distributes fuel.

- (1) **Yard.** Permitted in side and rear yards.
- (2) Areas outside the drive, access, parking and pashing areas shall not be paved (refer to 7.3 Parking Design Standards).
- (3) A frontage Buffer is required (refer to 6.8 Frontage Buffer).
- (4) **Height.** The height of the structure shall not exceed 18 feet at its highest point from any single finished grade location.

Section 1.5.4 Nonconforming Structures: A building or structure that was lawfully established but that no longer complies with applicable regulations.

Section 1.5.4.E – No nonconforming structure shall be enlarged or structurally altered except to make it a conforming structure or to comply with requirements of health and safety laws or ordinances or regulations.

Section 4.7 Commercial center Building Type

Chapter 6 Sitework & Landscape

Chapter 7 Parking

FINDING OF FACTS

Building & Veranda Lines

New Britain Ave – Building Line at 15', Veranda Line at 5'

Broad St – Combined Building and Veranda line at 15'

Existing Conditions

Fueling Pumps & Canopy

- Two pumps aligned parallel to Broad St.
- Fuel pumps are located approximately 15' from the corner side property line (Broad St).
- The canopy is ~20' by ~35' or ~770 sf.
- The canopy extends to ~7' from the property line along Broad St and
- The fueling pumps and canopy have been in this location since prior to 1985.

Site Conditions

- Lot is ~0.4 acres or 17,627 sf.
- Current impervious surface ratio is 85.5%.
- There are no trees on the property.
- Nine (9) marked parking spots.
- Four (4) curb cuts, two on each frontage.



Figure 2. Existing Conditions Aerial Photo – Eagleview 2022

Proposed Conditions

Fuel Pumps & Canopy

- Three (3) fuel pumps and aligned perpendicular to Broad Street.
- Fuel pumps to be located ~22' from the corner side (Broad St) property line and ~30' from the front property line (New Britain Avenue).
- The proposed canopy is 68' by 22' or 1,496 sf.
- The proposed canopy will extend to ~11' from the property line along Broad St and ~20' at its closest point to the property line along New Britain Ave.

Site Conditions

- Impervious surface ratio would be reduced 2.8% to an overall 82.7%.
- The existing landscape island in the northeast corner of the site is proposed to be lengthened to the west to provide a frontage buffer. New landscape area is proposed along the corner side property line in between the existing curb cuts.
- Both landscape islands are partially in the right-of-way.
- Four (4) trees are proposed, partially on the property (street trees).
- At Staff's request the applicant has proposed a 4' wide concrete pedestrian way from New Britain Ave to the existing building.
- The applicant has proposed to close the eastern most curb cut along New Britain Avenue.
- Proposed conditions are detailed in the 8-page plan set titled Sam's Food Stores by Alfred Benesch & Company dated 04/22/2022. Sheet C-1.0 "Site Plan" is attached to this report as Attachment 2.

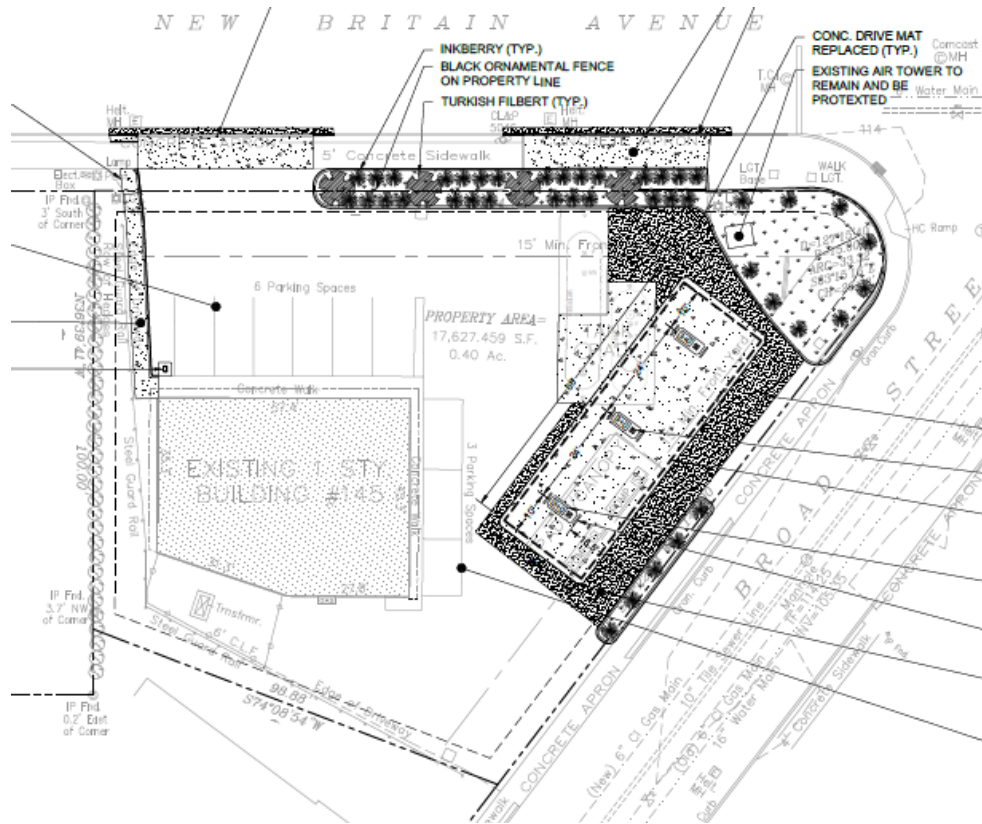


Figure 3. Proposed Conditions Site Plan – Benesch 2022

COMMENTS RECEIVED (DEPARTMENTS, AGENCIES, NRZs, PUBLIC)

The Maple Avenue Revitalization Group (MARG) NRZ was notified of the subject request on March 23, 2022. As of this writing no official response from the MARG NRZ has been received by staff.

The Hartford Department of Public works reviewed the proposed plan and expressed concern over proposed improvements within the public right-of-way. They noted all proposed curbing and landscaping in the right-of-way would require an encroachment permit (certificate of insurance and additional review by DPW).

ANALYSIS

The applicant has argued that a hardship is present because the location of the existing building does not allow adequate space for fuel pumps or fueling canopies in the rear or internal side yard. The condition asserted by the applicant is indeed the case and the fuel pumps and fueling canopy would not function in the existing rear or side yards as defined in the Regulations. The existing building is located too close to the rear and internal corner of the property to allow this modification to be made. However, this condition does not sufficiently justify a hardship. Further, while the lot does have an acute angle in its northeast corner, the lot is of sufficient size that a redeveloped lot with a conforming layout would be functional as a fueling station. The property owner is not denied use of

their property and the regulatory prohibition of expansion of a nonconforming structure is an established, well supported expression of the police powers.

The layout of the subject property, operating as a gas station, is not unique in the City of Hartford. The majority of gas stations in the City of Hartford are in a similar nonconforming layout with pumps in the front yard and a convenience store or principle structure in the rear. The intention of the Zoning Regulations to phase out this design is made clear in section 1.5 of the Regulations regarding nonconformities. Section 1.5 states that “no nonconforming structure shall be enlarged or structurally altered except to make it a conforming structure.” The design required by the Regulations with the building at the street and the auto-related accessory structures in the rear is also consistent with the overall pedestrian focus of the Regulations.

The intention of the Commercial Center building is to create a lively, pedestrian friendly environment at the street with a focus on the sidewalk, pedestrian safety and ease of pedestrian movement, while allowing convenient vehicular access. This is partly accomplished through the build-to zone requirement and the required occupation of the corner. Proximity of the store entrance to the sidewalk has been shown to positively impact the pedestrian environment. The current request to permit and expansion of the fuel pumps and canopy in the front yard are contrary to the intention of this building type and place increased vehicle activity between pedestrians and the commercial center. Further, because the variance would allow additional investment into this configuration, it would reduce the likelihood of the subject property coming into conformance in the future.

There are several site characteristics that are nonconforming other than the arrangement of structures, including: the total impervious surface area, the lack of landscaping buffers or trees, and the number of curb cuts. The proposed plan represents an improvement over existing conditions and the applicant has expressed willingness to work with Staff. However, the current plan is the second iteration after receiving Staff comments and the plan still does not meet all zoning requirements. The total ISR is not compliant, nor is the depth of the frontage buffer or the proposed tree canopy coverage. The applicant has also failed to add the plantings required within side/rear landscaped buffers. The tree canopy coverage marked on the plan states it is in conformance, however, the calculation includes the fueling canopy and an estimate of the shade provided by the inkberry bushes. The required canopy coverage should be calculated using tree canopy over pavement only. For clarity, the required on-site tree plantings and overall canopy coverage are dictated by Sec.6.4 and must be met with sufficient plantings regardless of the presence of street trees. In this case a variance is not required for street trees per Sec.6.7, however the overall tree-canopy provide onsite is still deficient.

Should the ZBA find that a hardship is present and move to approve the requested variance, Staff recommend that the ZBA include conditions to mitigate the negative impacts of the design. Staff recommend that the Board condition their approval with the requirement that above grade or otherwise protected pedestrian pathways be provided from the public sidewalk to the entrance of the existing commercial center building from each frontage. These pathways would emulate the pedestrian safety granted by a building at the build-to line. Further, should the existing ~57' by ~45' sf building ever be redeveloped or removed, the variance should be considered null and void. Staff find that at time of building redevelopment, the pumps and the fueling canopy should be moved to the rear yard and the building brought forward to a conforming location. Finally, Staff find that if the variance is approved that with the proposed construction, all site characteristics should be

brought into conformance with the current Zoning Regulations. If by adding the required landscape buffers, trees and reducing the total impervious area, the applicant is unable to accommodate the proposed third fueling pump, then the proposed alteration should be limited to the modification of the existing two pumps and the fueling canopy.

Variance VS Text Amendment

When evaluating whether a hardship is caused by Section 4.20.4.F it is important to recognize that every gas station in the City of Hartford with the exception of one, is in a similar configuration to the subject property. It is further worth noting that the site configuration is common locally and has been established for several decades. Two important points can be derived from this commonality. The first is that the Connecticut General Statutes require each variance to be supported by a hardship caused by "...conditions especially affecting such parcel but not affecting generally the district in which it is situated...". The prevalence of these conditions throughout all districts therefore makes the burden of proof of a hardship more difficult. The second important point is that these conditions were common across the city at the time the subject regulations were adopted. It can therefore be surmised that the drafters of the Regulations intended for these properties to become nonconforming. The current difficulty caused by "...literal enforcement of [the] ordinance..." was at least in part, premeditated and intended, in hopes to encourage better design. However, it could be the case that the total impact caused by this element of the regulations is more burdensome than anticipated. If the regulation is overly burdensome, staff find that the most appropriate path to alleviate this burden may be to confer with the Planning & Zoning Commission to evaluate potential solutions. The text amendment process could mitigate the burden for all properties, as opposed to a variance for each individual property.

STAFF RECOMMENDATION

Staff recommends the Zoning Board of Appeals deny the subject request for a variance. However, should the ZBA find that a hardship is present and moves to approve the variance, staff recommend the ZBA include the following conditions of approval:

1. Should the existing ~57' by ~45' nonconforming commercial center building ever be redeveloped, demolished, or significantly altered, or the property ever change to any use other than fueling station, that the variance be considered null & void.
2. The variance shall allow only those fuel pumps that can be accommodated when the buffers, required ISR, tree canopy coverage and all other regulatory requirements of the Zoning Regulations are met, not to exceed three (3) pumps.
3. Above grade or otherwise protected pedestrian pathways be provided from the public sidewalk to the entrance of the existing commercial center building from each frontage.

A draft resolution follows.

ATTACHMENTS

1. Applicant Narrative and Justification Statement
2. Sheet C-1.0 "Site Plan" dated 02/08/2022 by Alfred Benesch & Company

REVIEWED AND EDITED BY,

Aimee Chambers, Director



**CITY OF HARTFORD
ZONING BOARD OF APPEALS RESOLUTION
145 NEW BRITAIN AVENUE**

**VARIANCE REQUEST FOR FUEL PUMPS AND A FUELING CANOPY IN THE CORNER SIDE
YARD**

- Whereas,** The City of Hartford Zoning Board of Appeals reviewed the application and attached documents regarding the request for a variance from Section 4.20.4.F – Fuel Pumps & Canopies, to allow three fuel pumps in the front yard; and
- Whereas,** The subject property is located in the MS-3, Main Street district; and
- Whereas,** Section 4.20.4.F requires that all fuel pumps and fueling canopies be located in the rear or internal side yard; and
- Whereas,** There are two (2) pumps currently located in the corner side yard of the subject property and the current request would modify the existing pumps’ location within the corner side yard and add a third pump; and
- Whereas,** The current request is to expand the existing fuel canopy located in the front yard from ~770 square feet to 1,496 square feet; and
- Whereas,** The subject property is occupied by an operational gas station consisting of an ~57 by ~45’ or 2,565 square foot nonconforming commercial center building, two fuel pumps with associated fuel canopy, and parking; and
- Whereas,** The existing commercial center building is located in the internal, rear corner of the property approximately 14.7’ from the western property line and 22.9’ from the southern property line, such that in order for the property to come into complete compliance, the entire site would need to be redeveloped; and
- Whereas,** The existing layout of the subject property is common in the City of Hartford for such uses in the MS-3 district; and
- Whereas,** The proposed variance to allow the expansion and alteration of fuel pumps and the fueling canopy in the front yard represents an expansion of a nonconforming characteristic; and

Whereas, The location of the fuel pumps and fueling canopy between the principle structure and the public sidewalk creates conditions unfavorable to pedestrian circulation and safety; and

Now therefore Be It

Resolved, The City of Hartford Zoning Board of Appeals hereby **denies/approves** the request for a variance from Section 4.20.4.F – Fuel Pumps & Canopies, to allow three fuel pumps and an expanded fueling canopy in the front yard:

IF ZBA MOVES TO APPROVE -

1. Should the existing ~57' by ~45' nonconforming commercial center building ever be redeveloped, demolished, or significantly altered, or the property ever change to any use other than fueling station, that the variance be considered null & void.
2. The variance shall allow only those fuel pumps and a fueling canopy that can be accommodated when the buffers, required ISR, tree canopy coverage and all other regulatory requirements of the Zoning Regulations are met, not to exceed three (3) pumps.
3. Above grade or otherwise protected pedestrian pathways be provided from the public sidewalk to the entrance of the existing commercial center building from each frontage, to offset the negative impact of the proposed layout on pedestrian circulation and safety.

Be It Further,

Resolved, This 3rd day of May, 2022.

Attachment 1 – Applicant Narrative and Justification Statement



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February 8, 2022

Zoning Board of Appeals (ZBA)
City of Hartford (City)
250 Constitution Plaza, 4th Floor
Hartford, CT 061093

RE: Application for Variance at 145 New Britain Avenue

Dear Board Members:

Alfred Benesch and Company (Benesch) has prepared this letter and its supporting documentation on behalf of the owner K Brothers LLC (Sam's Food Stores). These documents are prepared in support of the Applicant's application for two (2) variances to their proposed site plan and re-development of 145 New Britain Avenue.

Background: The existing property contains an active Ravi gas station which consists of a small building (*Sam's Food Stores*), underground fuel tanks, and two (2) fuel dispensers under a small canopy. The property is zoned Main Street 3 (MS-3). This application is for the re-development of the subject site consisting of a new and larger canopy over three (3) new fuel dispensers in the same general location as the existing canopy. A portion of the site is to remain as is including the existing convenience store building and underground fuel tanks. The redevelopment also includes various site upgrades including new pavement (in disturbed areas only), concrete sidewalk, an electric vehicle charging station, and landscape enhancements.

Non-compliance: The regulations were carefully evaluated, in coordination with the City Planning Department, to design the site to be as compliant with the regulations as possible. As you know, the regulations are form-based so the zoning criteria are based on proposed building type, rather than strictly on the location of the lot. To that end, the following briefly summarizes the way the regulations are being applied for the site:

- 145 New Britain Avenue: Apply MS-3 zoning criteria for a Storefront Building Type (Section 4.5).

The application of this zone for the site achieves near compliance with the zoning regulations. However, hardships exist that make achieving all aspect of the regulations impossible. The applicant seeks relief from the following two (2) regulations:

- 4.17.2A: Fuel Pumps & Canopies
 - This regulation stipulates that any fuel pumps and/or canopies shall be located in the rear or interior side yard per 4.20.4.F.
 - General Hardship: the location of the existing store building does not provide a rear or interior side yard adequate in size for the new canopy and fuel dispenser. The new canopy and dispensers will be located in the same general location as the existing canopy.
- 6.7.3: Street Trees
 - This regulation stipulates that one street tree shall be planted for every 40' of street frontage with a minimum of one street tree per frontage. Street trees shall be located between 2-10' from the street, measured perpendicular to the curb.

- General Hardship: the existing site contains very minimal green space or plantings and the site is very limited in space for tree plantings. The proposed site improves the site by decreasing impervious cover with the addition of small grassed islands along the property line. These islands will be planted with four (4) Turkish filbert deciduous trees and 41 inkberries (smaller shrubs) as they are still not large enough to support the required number of trees.

Respectfully Submitted,
Alfred Benesch & Company

John Oliveto, P.E.
Project Engineer

