



**ZONING BOARD of APPEALS**  
City Hall, Room 303  
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New Bedford, MA 02740  
(508) 979-1488  
[www.newbedford-ma.gov](http://www.newbedford-ma.gov)

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**CITY OF NEW BEDFORD**

**JONATHAN F. MITCHELL, MAYOR**

**NOTICE OF DECISION**

Case Number:	#4426			
Request Type:	Variance			
Address:	4227 Acushnet Avenue			
Zoning:	Residential A (RA) Zoned District			
Recorded Owner:	4227 Acushnet Ave LLC, CO Jack Sassin			
Owner Address:	4227 Acushnet Avenue, New Bedford, MA 02745			
Applicant:	4227 Acushnet Ave LLC, CO Jack Sassin			
Applicant Address:	4227 Acushnet Avenue, New Bedford, MA 02745			
Application Submittal Date	Public Hearing Date	Decision Date		
September 23, 2020	October 15, 2020	October 15, 2020		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
136A	20	8597	192	

A Variance under Chapter 9 Comprehensive Zoning Sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430 (nonconforming structures, other than single- and two-family structure) 2431 (reconstructed, extended or structurally changed), 2432 (altered to provide for a substantially purpose or for the same purpose in a substantially different manner or to a substantially greater extent) and 2430 (Continued: the reconstruction, extension or structural change of such nonconforming structures so as to increase an existing nonconformity, or create a new conformity, including extension of an exterior wall at or along the same non-conforming distance within a required yard, shall require the issuance of a variance from the Zoning Board of Appeals); relative to property located at **4227 Acushnet Avenue**, Assessors' map 136A lot 20 in a Residential A [RA] zoned district. The petitioner proposes to construct a 20'x46' addition along the northly side of the existing station per plans filed.

**Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached decision with the Conditions as described therein.**

A copy of this Decision was filed with the City Clerk of the City of New Bedford on October 20, 2020. Any person aggrieved by this decision has twenty (20) days to appeal the decision in accordance with the procedures set forth in Section 17 of Chapter 40A of the General Laws of Massachusetts.

October 19, 2020



Date

Stephen Brown, Clerk of the Zoning Board of Appeals

## **APPLICATION SUMMARY**

The petitioner is proposing to construct a 20'x46' addition along the northly side of the existing station per plans filed, which requires a Variance under Chapter 9 Comprehensive Zoning Sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430 (nonconforming structures, other than single- and two-family structure), 2431 (reconstructed, extended or structurally changed), 2432 (altered to provide for a substantially purpose or for the same purpose in a substantially different manner or to a substantially greater extent) and 2430 (Continued: the reconstruction, extension or structural change of such nonconforming structures so as to increase an existing nonconformity, or create a new conformity, including extension of an exterior wall at or along the same non-conforming distance within a required yard, shall require the issuance of a variance from the Zoning Board of Appeals); relative to property located at **4227 Acushnet Avenue**, Assessors' map 136A lot 20 in a Residential A [RA] zoned district.

## **1.) MATERIALS REVIEWED BY THE BOARD**

### **Plans Considered to be Part of the Application**

- Plan Set, drawn by SITEC, Inc., plans dated September 6, 2020, date stamped September 23, 2020 by City Clerk's Office.
  - Existing Conditions
  - Proposed Addition

### **Other Documents & Supporting Material**

- Completed Petition for a Variance Form, stamped received by City Clerk's Office September 23, 2020.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated September 30, 2020.
- Staff Comments to the ZBA from the Office of the City Planner, dated October 5, 2020.

## **2.) DISCUSSION**

On the evening of the October 15, 2020 meeting, board members Laura Parrish, Stephen Brown, Allen Decker, Robert Schilling and Celeste Paleologos were present for the virtual public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Angela Goncalves (Assistant Project Manager) were present during proceedings for the subject case review.

In regard to Case #4425 and Case #4426 Clerk Brown made a motion, seconded by Mr. Schilling to hold the public hearings concurrently as they both were in regard to the same project at 4227 Acushnet Avenue. With all in favor, the motion carried.

In regards to Case #4426, Clerk Brown made a motion, seconded by Mr. Schilling to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D.

Romanowicz, dated September 30, 2020; staff comments from the Department of City Planning, dated October 5, 2020; Letter in support of the project from Randy Santos, dated October 6, 2020; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. With all in favor, the motion carried.

Acting Chairperson Parrish then declared the hearing open.

The petitioner: Jon Connell, SITEC, Inc. (449 Faunce Corner Road, Dartmouth) presented the case at the hearing representing the proprietor of 4227 Acushnet Ave, LLC, Jack Sassin (4227 Acushnet Avenue, New Bedford). Mr. Connell began the presentation by describing the area associated with the subject property and the proposal.

The property is a 25,138 SF, L-shaped parcel of land located on the westerly side of Acushnet Avenue between Cherokee Street and Sassaquin Avenue. There is a 2,387 SF, one story, commercial building that currently hosts a gas station and auto repair service station known as "Route 18 Gas & Service".

The service station has three existing auto repair bays: performing auto repairs and state vehicle inspections, while the gas station serves gasoline and diesel fuel.

**The proposal is to construct a 20'x46' addition along the northly side of the existing station per plans filed, which requires a special permit and a variance from the Zoning Board of Appeals.**

**Under the zoning ordinance a change to an existing nonconforming structure for a substantial extension of the use requires a Special Permit, and the extension of a nonconforming structure so as to increase an existing nonconformity, or create a new conformity, including extension of an exterior wall at or along the same non-conforming distance within a required yard, requires a Variance from the Zoning Board of Appeals.**

Mr. Connell continued the presentation explaining the elevations and retaining walls depicted on the plans submitted. The topography of the site falls from a high elevation of 147 at Acushnet Avenue to a low elevation of 137 in the northwest parcel corner opposite Sassaquin Avenue and utilizes two retaining walls to keep the site high enough to be accessible from Acushnet Avenue.

Mr. Connell proceeded with the presentation explaining the necessity of the proposed addition. Mr. Connell stated the additional service bay would provide quicker repair services for existing clients' as well as fulfill the need/demand for State Inspections for Class C, D & E vehicles, which requires the 12'x12' doors in the proposed bay. Additionally, Mr. Connell indicates the proposed bay would provide covered off-street parking for 1-2 vehicles overnight rather than parking outside, thereby improving onsite parking availability, traffic flow, safety, loading and deliveries.

Mr. Connell concluded the presentation by briefly summarizing the proposal. The proposed addition would allow the neighborhood service station to provide additional services to existing clients, while maintaining the neighborhood character and social structures surrounding the site. Additionally, the

proposed addition has been carefully designed to complement the existing structure and neighborhood. Mr. Connell then welcomed questions from the board.

In response to an inquiry from Acting Chair Parrish relative to the design of the additional bay, Mr. Connell replied it will fit in nicely and referred to the proposed site plan submitted, depicting the proposed bay.

Following the petitioner's testimony, Acting Chairperson Parrish invited anyone wishing to speak in favor or be recorded in favor of the petition of the application. Ward 1, Councilor Brad Markey (1520 Morton Avenue) spoke in favor of the proposal. Councilor Markey stated he drove by the subject site to get a visual of the proposal. Councilor Markey stated it's a top notch property and the addition would complement the neighborhood with no detriment.

Councilor Gomes (66 Clara Street) also spoke in favor of the proposal. Councilor Gomes concurs with Councilor Markey's comments and notes it's a prestigious establishment that provides needed services.

Councilor Linda Morad (4162 Acushnet Avenue) also spoke in favor of the proposal. Councilor Morad stated she lives outside the notification area, nonetheless the subject property is kept clean and well operated since the petitioner purchased it. Additionally, Mr. Morad noted the economic hardship for the expansion. Mr. Morad indicated she would like to be recorded in favor of the petition.

Acting Chairperson Parrish invited anyone else wishing to speak in favor or be recorded in favor of the petition of the application. There was no response to Acting Chairperson Parrish's invitation to speak or be recorded in favor.

Acting Chairperson Parrish invited anyone wishing to speak in opposition of the petition. There was no response to Acting Chairperson Parrish's invitation to speak or be recorded in opposition.

Acting Chairperson Parrish asked the Board if there were any further questions.

In response to an inquiry from board member Decker relative to class state inspections, Mr. Sassini replied Class C, D & E must fit in a 12'x12' bay door opening.

With no further questions, Acting Chairperson Parrish closed the hearing.

The Board had a brief discussion. Acting Chair Parrish stated she is in favor of the petition. Board member Schilling stated it's a fine project and board member Paleologos noted the proposal would be a plus for the north end neighborhood. Board member Decker engaged with the Commissioner of Building and Inspectional Services, Danny D. Romanowicz regarding the variance; Mr. Romanowicz stated the variance is for the existing nonconforming use.

With no further questions. The board indicated their readiness to vote.

### **3.) FINDINGS**

### **Criteria for Approval of Dimensional Variation (Ch. 9, Sect. 2730)**

The Board of Appeals may vary otherwise applicable dimensional requirements pertaining to frontage, lot area, building height, and sidelines upon finding the following:

- a.) *That owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant;*

The Board found that due the configuration of the existing structure on the parcel the additional bay would need to be constructed at the same elevation as the existing bays, and essentially within the existing paved surface, to ensure that the addition would be accessible and functional.

The Board found that if the city were to literally enforce the Zoning Ordinance due to circumstances unique to this land or structure, it would mean a substantial hardship to the petitioner. In this case, without the relief; the service station would suffer the loss of customers; resulting in a financial hardship for the petitioner.

- b.) *And, that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*

The Board found that relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

- c.) *That desirable relief may be granted without substantial detriment to the public good;*

The board found that relief may be granted without substantial detriment to the public good.

### **4.) RELIEF**

With respect to the relief requested by the Applicant, the Board has been presented with sufficient information at the hearing to justify the relief described below, subject to the conditions set forth in Section 6.

The Board grants the applicant's request for relief from Chapter 9 Comprehensive Zoning Sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430 (nonconforming structures, other than single- and two-family structure), 2431 (reconstructed, extended or structurally changed), 2432 (altered to provide for a substantially purpose or for the same purpose in a substantially different manner or to a substantially greater extent) and 2430 (Continued: the reconstruction, extension or structural change of such nonconforming structures so as to increase an existing nonconformity, or create a new conformity, including extension of an exterior wall at or along the same non-conforming distance within a required

yard, shall require the issuance of a variance from the Zoning Board of Appeals); relative to property located at **4227 Acushnet Avenue**, Assessors' map 136A lot 20 in a Residential A [RA] zoned district.

## 5.) DECISION

Based on a review of the application documents, testimony given at the public hearing and the findings described above, the Zoning Board of Appeals hereby **GRANTS, WITH CONDITIONS**, the requested variance.

A motion to approve was made by Clerk Brown and seconded by Mr. Schilling as follows:

In regard to Case #4426 **4227 Acushnet Ave LLC, CO Jack Sassin, (4227 Acushnet Avenue, New Bedford, MA 02745)**; relative to property located at **4227 Acushnet Avenue**, Assessors' map 136A lot 20 in a Residential A [RA] zoned district. The petitioner proposes to construct a 20'x46' addition along the northly side of the existing station per plans filed, which requires a **Variance** under Chapter 9 Comprehensive Zoning Sections 2400 (nonconforming uses and structures), 2410 (applicability), 2430 (nonconforming structures, other than single- and two-family structure), 2431 (reconstructed, extended or structurally changed), 2432 (altered to provide for a substantially purpose or for the same purpose in a substantially different manner or to a substantially greater extent) and 2430 (Continued: the reconstruction, extension or structural change of such nonconforming structures so as to increase an existing nonconformity, or create a new conformity, including extension of an exterior wall at or along the same non-conforming distance within a required yard, shall require the issuance of a variance from the Zoning Board of Appeals). Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 Comprehensive Zoning sections as cited; the board finds that in respect to these sections the application has made sufficient arguments.

In addition to the foregoing section this petition has been found to be in accordance with Massachusetts General Law Chapter 40A section 10 relative to the granting of variances because the board found:

- That there are circumstances relating to the soil conditions, shape or topography especially affecting the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located;
- And due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the Zoning Ordinance or By Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant;
- And that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance or Bylaw;
- And that desirable relief may be granted without substantial detriment to the public good.


In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made based on these items along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

General Conditions on this decision shall include:

- That the project be set forth according to the plans submitted with the application.
- That the applicant shall ensure a copy of the Notice of Decision bearing the certification of the city of New Bedford City Clerk's Office be recorded at the Registry of Deeds.
- The rights authorized by the granted variance must be exercised by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted, or the approval will lapse.

On a motion by S. Brown seconded by R. Schilling to grant the requested Variance, the vote carried 5-0-0 with members A. Decker, S. Brown, C. Paleologos, Robert Schilling and L. Parrish voting in the affirmative; no members voting in the negative or abstaining. (Tally 5-0-0).

Filed with the City Clerk:

  
\_\_\_\_\_  
Stephen Brown  
Clerk of the Zoning Board of Appeals

October 19, 2020

\_\_\_\_\_  
Date