

1. Bow Zoning Board Meeting Agenda

Documents:

[ZBA2020 0818 - ONLINE .PDF](#)

2. Bow Zoning Board Of Adjustment 08/18/2020 Meeting Packet Materials

Documents:

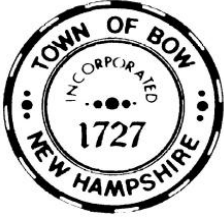
[08182020.PDF](#)

[PAGES FROM MOTION FOR REHEARING PACKAGE\\_FILED 7-16-2020.PDF](#)

2.I. Bow ZBA 08/18/2020 Meeting Additional Packet Material

Documents:

[MAIL - ALVINA SNEGACH - OUTLOOK.PDF](#)



# TOWN OF BOW

## Zoning Board of Adjustment

10 Grandview Road, Bow, New Hampshire 03304

Phone (603) 223-3970 | Fax (603) 225-2982 | Website [www.bownh.gov](http://www.bownh.gov)

## AGENDA

**August 18, 2020**

The Town of Bow Zoning Board of Adjustment is scheduled to meet on Tuesday, August 18, 2020 at 7:30 PM via ZOOM.

Dial in: +1 301 715 8592, +1 929 205 6099 (US). Meeting ID: 849 9899 0104

To request the meeting password or report issues with login/dial in during the meeting please call 603-223-3976. Additional Instructions on how to join the meeting will be posted here:

<https://www.bownh.gov/200/Community-Development>. Public comment can be submitted to [asnegach@bownh.gov](mailto:asnegach@bownh.gov) prior to the meeting. The meeting will be streamed live via Youtube:

<https://youtu.be/Q1axxt6vzrs>

### **I. OTHER BUSINESS**

**Notice of Decision for MOTION FOR REHEARING ON THE APPEAL OF ADMINISTRATIVE DECISION Case #101-20 clarification review.**

### **II. REVIEW OF MINUTES: 7/21/2020**

Respectfully submitted,

Harry Hadaway, Chairman

YouTube transcript:

**Transcript begins at 1:37:38 and ends at 1:41:48** (<https://www.youtube.com/watch?v=UGDVyPmJ9nw&t=1475s>) “I would move that the Zoning Board of Adjustment find that it agrees in part with the code enforcement letter of the unique Development Director dated January 14 2020 that the subject site 3:45 river road **is being operated as a junkyard** contrary to the terms of the both zoning ordinance and RSA chapter 236 : 112 and further the property is being operated in violation of section 5.07 of the bo zoning ordinance due to the fact that the profit does not have site plan approval from the Planning Board as a non residential use under RFC 674 : 43 that's all I the my only thought would be somewhere in there language that to the extent that you know the junk yard to the extent that trash paper trash and others that's materials are being are are still stored there because we're not I don't think we're taking a position that's always every minute of the day of every day it's a it's being operated as a junkyard something like that what that makes sense I think I said Almina didn't I say to the extent that **the property is being used for the temporary storage of scrap and wastes at such times it is in fact an unlicensed and in non-conforming or non-compliant use of the property for junkyard purposes or something like that** didn't I say that I think you did yes you said it earlier discussion yes no I agreed on that that's the idea we're not saying that this is 24 hours a day seven days a week an illegal junkyard under the zoning ordinance in 236 : 112 it's just it becomes junkyard intermittent yeah could you read that back Alvina is this appropriate time to do that I wouldn't know because it's always very um ya know **move other GBA finds that it agrees in part with the court enforcement letter of the Community Development Director from January 14 2020 that subject site at 3:45 River Road is being operated as a junkyard contrary to the Bo zone ordinance in the RSA and the property is being operated in violation of article 607 of the zoning ordinance due to the fact that it doesn't have a site plan approval** and yeah so there is a part there that's missing about the extent that paper trash and other if such materials are stored there about the very last thing before I forget it's it's 507 not six site plan review and if you **could just reflect that the junkyard just say something you how the junkyard is intermittent...**”

NOD language: The Board voted 3:2 (by roll call vote: Mr. Buckley (yes); Mr. Burns (yes); Mr. Hadaway (yes); Mr. Ives (no); Mr. Reynolds (no). to affirm the Administrator’s decision, dated January 14, 2020, in part that the subject site located at 345 River Road is being intermittently operated as a junkyard (to the extent that the property is being used for the temporary storage of scrap and wastes, thus at such times it is in fact an unlicensed and non-compliant use of the property for junkyard purposes), contrary to the terms of the Bow Zoning Ordinance and RSA 236:112; and the property is being operated in violation of Section 5.07 of the Bow Zoning Ordinance due to the fact that it does not have site plan approval from the Planning Board as a non residential use under RSA 674:43.

Minutes language:

Mr. Buckley made a motion that the Zoning Board affirms the Administrator’s decision, dated January 14, 2020, in part that the subject site located at 345 River Road is being operated contrary to the terms of the Bow Zoning Ordinance and RSA 236:112; and the property is being operated in violation of Section 5.07 of the Bow Zoning Ordinance due to the fact that it does not have site plan approval

from the Planning Board as a non residential use under RSA 674:43. Mr. Burns made a friendly amendment that the site is intermittently operated as a junkyard (to the extent that the property is being used for the temporary storage of scrap and waste, thus at such times it is in fact an unlicensed and non-compliant use of the property for junkyard purposes). Mr. Buckley agreed to the amendment.

16. Whether or not the provision requiring site plan approval is ambiguous as applied to the Property is shown by the sudden divergence of opinions of town officials in their interpretation of the provision of Section 5.07 of the Ordinance as applied to the Property. Their opinions would not diverge if the provision was not ambiguous. In 1999, the Building Inspector told Mr. Belanger, in essence, that the use did not need site plan approval. Since that time, the Town has **never** taken the position that site plan review is required relative to the ongoing operations at the Property, even though those operations have been constantly occurring, in the same degree of intensity, since 2000. Now, the Administrator says that the Property is classified as a different use, and therefore requires site plan approval even though the function of the Property has not changed in over 20 years.

17. The two town officials are differently applying the provision, which means that it is *ipso facto* ambiguous, and in such a scenario, the Town cannot diverge and change course from its previous interpretations of the provision, as applied to the Property, *see supra* ¶ 15, without a change in the provision through the legislative process. No such change has occurred.

18. In short, an administrative gloss has been placed on the provision such that site plan approval is not required for the storage of containers and dumpsters on the Property that was established in 2000 and continues today.

**D. The ZBA Erred When It Neglected to Recognize and Consider the Zoning Administrator's Discriminatory Enforcement in Imposing Site Plan Review Upon the Owner, but Not Other, Similar Properties in the Town.**

19. Discriminatory enforcement is when one individual is singled out for enforcement where no one else is. *Alexander v. Hampstead*, 129 N.H. 278, 283-84 (1987). Owner and its other, related entities in Bow or the principals thereof have three other legal matters pending against the Town of Bow. In all three matters, Town officials, including the Administrator, ruled against Owner's-related entities' or Owner's principal's interests. *See* Applicant's Administrative Appeal at 6. The Town failed to treat Stanley Emanuel fairly in a bidding process. The Town conditionally approved a site plan for Stan & Pete, Inc.'s neighbor to excavate, which is likely to result in harm to Stan & Pete, Inc.'s property, such as erosion or subsidence. The Administrator also deemed that a neighbor's major excavation was only a minor topographical adjustment. At the same time, Owner is now being required to obtain site plan approval for a property when other property owners with similar uses are not. This requirement reflects a pattern of unlawful and improper discriminatory enforcement against Owner and its related entities, and site plan review should not be required for the Property.

**E. Owner Requests that the ZBA Clarify Its June 16, 2020 Decision Relative to The Use of the Property for "Intermittent Storage of Scraps and Waste."**

20. Finally, Owner seeks a rehearing so that the ZBA can clarify the extent to which its June 16, 2020 Notice of Decision affirmed the Community Development Director's January 14, 2020 Notice relative to the supposed "junkyard" matter. The Notice of Decision incorrectly describes the motion that was actually voted on and passed at the Hearing. The actual motion, as amended by a friendly amendment, and as was correctly set forth in the meeting minutes, was that "the site is intermittently operated as a junkyard . . . to the extent that the property is being used for the

temporary storage of scrap and waste, thus at such times it is in fact an unlicensed and non-compliant use of the property for junkyard purposes.” ZBA Minutes, June 16, 2020, at 6. Such a motion and the decision the ZBA ultimately made is prospective only, and not a statement of retroactive findings. In contrast, the Notice of Decision implies that the ZBA concluded that property is being used as a junkyard presently. It reads:

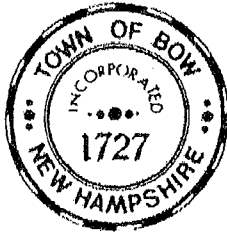
The Board voted 3:2 (by roll call vote: Mr. Buckley (yes); Mr. Burns (yes); Mr. Hadaway (yes); Mr. Ives (no); Mr. Reynolds (no). to affirm the Administrator's decision, dated January 14, 2020, in part that the subject site located at 345 River Road is being intermittently operated as a junkyard (to the extent that the property is being used for the temporary storage of scrap and wastes, thus at such times it is in fact an unlicensed and non-compliant use of the property for junkyard purposes), contrary to the terms of the Bow Zoning Ordinance and RSA 236:112; and the property is being operated in violation of Section 5.07 of the Bow Zoning Ordinance due to the fact that it does not have site plan approval from the Planning Board as a non residential use under RSA 674:43. (Emphasis added.)

21. Furthermore, the minutes from the Hearing reflect that the ZBA made no determination—and moreover felt that there was insufficient evidence—as to the number of times that the property actually had dumpsters full of waste and was non-compliant in that regard. *See* ZBA Minutes, June 16, 2020, at 5 (“A point was made that there was video evidence presented of solid waste being transferred; however, it was unclear if it was a regular occurrence or if the dumpsters were in fact empty 90 percent of the time.”). Again, this emphasizes the fact that the decision was prospective only and a determination of what would in the future constitute unlicensed and non-compliant use of the Property as a “junkyard” as defined by RSA 236:112.

22. Therefore, the Notice of Decision erred in its description of the motion, vote, and ultimate decision.

WHEREFORE, Beau River Associates, L.L.C. respectfully requests the Bow Zoning Board of Adjustment:

- A. Grant this motion for rehearing;
- B. Clarify the Notice of Decision; and
- C. Provide such other and further relief as justice requires.



## TOWN OF BOW

### Zoning Board of Adjustment

10 Grandview Road, Bow, New Hampshire 03304

Phone (603) 223-3970 | Fax (603) 225-2982 | Website [www.bownh.gov](http://www.bownh.gov)

Stanley Emanuel  
330 River Road  
Bow, NH 03304

June 18, 2020

**RE: Case #101-20, Appeal of Administrator's Decision.**

Zoning Ordinance Articles: 5.11 - Table of Use (Junkyards), 13.02.A – Interpretation of the Ordinance. Subject property is located at 345 River Road, Block 2, Lot 204-A1 in the Industrial Zone (I-2).

Dear Mr. Emanuel,

Please be informed that the Bow Zoning Board of Adjustment at its June 16, 2020 meeting held a public hearing regarding your **Appeal of Administrator's Decision** of Matt Taylor, Community Development Director, from 01/14/2020, that (1) storage of empty dumpsters constitutes use of property as junkyard and (2) that site plan review is required for a property located at 345 River Road.

The Board voted 3:2 (by roll call vote: Mr. Buckley (yes); Mr. Burns (yes); Mr. Hadaway (yes); Mr. Ives (no); Mr. Reynolds (no). to affirm the Administrator's decision, dated January 14, 2020, in part that the subject site located at 345 River Road is being intermittently operated as a junkyard (to the extent that the property is being used for the temporary storage of scrap and wastes, thus at such times it is in fact an unlicensed and non-compliant use of the property for junkyard purposes), contrary to the terms of the Bow Zoning Ordinance and RSA 236:112; and the property is being operated in violation of Section 5.07 of the Bow Zoning Ordinance due to the fact that it does not have site plan approval from the Planning Board as a non residential use under RSA 674:43.

Please be aware that NH Statutes stipulate that all ZBA decisions are subject to appeal. Appeals must be submitted to the ZBA agent no later than 30 days after the ZBA decision.

If you have any questions, please contact the office.

Sincerely,

  
Alvina Snegach  
Town of Bow Community Development Assistant

~~cc: Laura J. Hartz, Esq.~~

**Re: ZBA packet for 08/18/2020 meeting**

Robert W. Ives <bowplumbing@comcast.net>

Fri 8/14/2020 6:46 AM

To: Alvina Snegach <asnegach@bownh.gov>

Ms Snegach,

In case I can not make the meeting I wanted to express my thoughts. I checked on the use of the word "being". It really does not work in the context which it is used in the sentence in question. Perhaps the word occasionally or intermittently would be more appropriate.

Robert W. Ives

On 08/13/2020 2:32 PM Alvina Snegach <asnegach@bownh.gov> wrote:

Good afternoon Board members,

The packet for the meeting is posted here.

<https://www.bownh.gov/AgendaCenter/Zoning-Board-of-Adjustment-16/?#08182020-1634> I will send a reminder on Monday.

Thanks,

**Alvina Snegach, MPA**

Assistant | Community Development Department

Town of Bow, NH

603-223-3976 office

[www.bownh.gov](http://www.bownh.gov)

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