



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

DRAFT MINUTES

June 16, 2020

The Town of Bow Zoning Board of Adjustment met on Tuesday, June 16, 2020 at 7:30 PM via Zoom. Chair Harry Hadaway called the meeting to order with a roll call introduction of the Board.

Members present were Harry Hadaway, Chair, Robert Ives, Vice Chair, Donald Burns, Secretary, Tony Reynolds, and Stephen Buckley. Maya Dominguez was excused. Also present were Matt Taylor, Community Development Director, Bryan Westover, Assistant Planner, and Alvina Snegach, recording secretary.

Mr. Hadaway stated everyone present will be voting, and read the virtual meeting checklist into the record.

Then Mr. Hadaway directed the attention of the Board to Agenda item I.1.

PUBLIC HEARINGS

APPEAL OF ADMINISTRATOR’S DECISION

Case #101-20 Applicant/Owner: Stanley Emanuel (c/o Orr & Reno, P.A.). Appeal of the Administrator’s decision that (1) storage of empty dumpsters constitutes use of property as junkyard and (2) that site plan review is required. 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) (continued from May 19, 2020).

Mr. Hadaway read the item into the record and noted that there was a site walk held previously. Mr. Hadaway then asked if there was anyone there to present the case. Laura Hartz from Orr & Reno introduced herself as the Attorney for Stan and Pete, Inc. Ms. Hartz noted that the email, which had been sent earlier about continuance of the public hearing, should be disregarded as she was ready to present the case today. Ms. Hartz noted that Tony Belanger, the Director of Operations for Pinard Waste Systems and Bruce Crawford, the President of NH Automobile, Motor Vehicle and Junkyard Association were both present to testify about the case if needed. She also added that Stan and Pete Emanuel, Jim Phillips, and Michael Sullivan from Stan & Pete, Inc were present to answer questions.

Ms. Hartz went over the location and ownership of the lot in question and noted that the primary use was storage of dumpsters that belong to Pinard Waste which is leasing the space from Beau River Associates, LLC, a real estate affiliate of Stan & Pete, Inc. She briefly described the nature of the waste management business in NH and how the companies involved (Pinard Waste, Zero Waste, and Bow Recycling Center) fit into the flow. Ms. Hartz showed the original site plan for the lot and went over the details of dumpster storage presenting some pictures from the winter months and from a few days ago. She gave a brief historical description of the site, accompanied by aerial images dating back to 1998, and said that the property has been used to store dumpsters approximately from that time. Tony Belanger, who was the Manager of Operations for Pinard Waste at the time, lived in the residential property located on the lot and approached Bud Currier, who was the Bow Building Inspector then, asking permission to store dumpsters on the lot. According to Mr. Belanger the use

1 was granted by Mr. Currier during that conversation. Ms. Harz noted some seasonal variations in the
2 images, which could be explained by the nature of the business and some economic fluctuations;
3 however, she noted that the footprint and the use of the property remained the same for all these
4 years. Ms. Hartz then spoke about legal aspects of this property being classified as a junkyard (NH
5 RSA 236-112) and applied the facts pertaining to this property to see if they pass the legal test. As a
6 result Ms. Hartz stated that the elements of the junkyard definition do not apply to the use of 345
7 River Road as there is a more suitable definition of a contractor's yard, which is applicable and is also
8 permitted by right in this district. She did note that Bow Zoning Ordinance does not specifically
9 define a contractor's yard, therefore she used a Merriam Webster definition. Then Ms. Hartz spoke to
10 the ability of the Zoning Board to decide whether site plan would be required for a property; and
11 answered questions about the containers being empty 90-95 percent of the time in accordance with
12 the agreement between Pinard Waste and the lot owners. She said if any dumpsters are found to be
13 full, the owners would demand that the agreement is adhered to. When asked if Mr. Belanger has
14 anything written from Bud Currier, Tony Belanger from Pinard Waste Systems said that he did not.
15 He then spoke about his original conversation with Bud Currier, which lasted about five minutes and
16 resulted in Mr. Currier giving Mr. Belanger permission to operate without going through any formal
17 channels of approval as no approvals were required.

18
19 Mr. Belanger then answered Board questions about his position with Pinard at the time, which was
20 Director of Operations, and that he has been with the company since 1986. He also answered
21 questions about his arrangement with his employer to use his property for storage of dumpsters and
22 that it was not in writing either. He said it was free until many years later, when Pinard began paying
23 him a small amount for repairs/grading every month. The next question was about Mr. Belanger's
24 awareness, as the Operations Manager of Pinard Waste, of the state permitting requirements for
25 similar type operations, and whether he took any steps, besides talking to Mr. Currier, to make sure
26 that all the requirements have been met prior to storing dumpsters on the lot. Mr. Belanger confirmed
27 that he was aware of such requirements for operating a transfer station, which he thought did not
28 apply to this operation as it was only storage of empty dumpsters. He also brought up Pinard's
29 Hooksett operation which was challenged and confirmed his assumption that the one in Bow is not
30 comparable. Mr. Belanger spoke about the Hooksett site having a site plan approval before the
31 company even began operating on it; however, he reiterated that the lot in Bow is not used in a
32 similar way, as there is no trucks stored on it (except for a rare occasion when a truck is waiting for
33 repairs) and the dumpsters are always empty.

34
35 Mr. Buckley asked how Mr. Belanger could have reasonably believed that no site plan review was
36 required for Bow, having known that Pinard's operation in Hooksett did have one. Ms. Hartz
37 reiterated that the two operations are very distinct, with Hooksett housing the entire operation of
38 Pinard Waste with its variety of activities, whereas Bow property was only used to store dumpsters,
39 akin to Eversource leasing space to Liberty Utilities to store the coils.

40
41 Mr. Burns added that in Mr. Belanger's affidavit he uses the words 'site plan' when asking Mr.
42 Currier if it is required for this site. Mr. Belanger responded that he was not quite sure that this was
43 what he said as the conversation with Mr. Currier was very informal and he was only asking him
44 whether any permits were required to clear brush and store dumpsters, to which he got a response to
45 only keep as far away as possible from the pond, but nothing about any paperwork or permitting. Mr.
46 Belanger said that in his affidavit he may have assumed that this was the technical term, however,
47 that is not what he asked Mr. Currier. Mr. Belanger also answered a question about his conversation
48 being the only time he asked the Town for any approvals and recalled that when he was preparing the

1 site for the intended use, which took him quite some time, nobody had any objections to it either;
2 which, for him, was reaffirming the conversation he had with Mr. Currier.

3
4 Mr. Belanger also spoke about how the use of the site in Bow coincided with Bow Recycling Center
5 beginning their operation. He explained the synergy of the two businesses at the time and how it
6 started and what a great business relationship it has turned into.

7
8 Ms. Hartz also answered some questions about the subdivision plan she showed earlier that she
9 explained was the only plan that was recorded for that property, which was signed by Norman
10 Williams and Mr. Currier.

11
12 Mr. Belanger also spoke about the multitude of transfer stations that Pinard uses to haul trash to.
13 Mr. Buckley asked Mr. Crawford, who was the Chair of the Zoning Board in the past, to weigh in on
14 the supposition that the storage of dumpsters in this case could be classified as a contractor's yard.
15 Mr. Crawford spoke about various types of contractors out there and them storing both the materials
16 and equipment used in their operations on their sites, and that the dumpsters in this case were the
17 tools used in the contractor's business. Mr. Crawford concluded that as this equipment comes and
18 goes, depending on demand and the seasons, he would consider it auxiliary to the contractor, who is
19 in the business of providing a container service to its customers.

20
21 Mr. Hadaway also asked Mr. Taylor to explain the logic behind the classification of this lot as a
22 junkyard. Mr. Taylor spoke about expansion of the business by Bow Recycling Center from its
23 mother lot on 330 River Road to nearby properties owned by them or their subsidiaries. Mr. Taylor
24 said that the operation by Bow Recycling Center required a special exception, and there have been no
25 approvals for the expansion of their business operations beyond their original lot. He mentioned
26 another complaint received just recently about dumpster storage at 15 Dunklee Road. Ms. Hartz
27 clarified that 343 River Road is not a subsidiary of the Bow Recycling Center, even though some
28 dumpsters may get dumped at the Center, the operation is not an integral part of their business. Mr.
29 Taylor continued to say that lacking any site plan for the lot, the labeling was done based on
30 observation, and it included various complaints, pictures of full dumpsters, and videos of trash
31 transfers taking place there from a truck to a dumpster, which is does not fall under storage only.

32
33 Discussion ensued about the dumpsters being full sometimes and whether it is a regular practice or
34 not, which would make the difference in the use classification and that more evidence is needed. It
35 was also noted that if there is a consistent pattern of refuse storage on site along with similar
36 activities, a solid waste permit should be acquired from the State and a site plan approval received
37 from the Town.

38
39 Mr. Hadaway opened the public hearing at 8:28 PM. The following individuals addressed the Board:

- 40
41 - Rick Geddes, 27 Dunbarton Center Road, an abutter, who owns a business on 359 River Road
42 spoke about his encounter with Stan Emanuel at the site about a year ago, where there was a lot of
43 truck activity at the time, and their conversation about Stan's desire to pave the driveway on the
44 property, during which Mr. Geddes told him that a site plan approval would be needed for this
45 operation to be brought into compliance. Mr. Geddes then spoke about the issues that arose out of
46 Mr. Emanuel paving the driveway and that Tim Sweeney (Director of Public Works) had issues
47 with it, as it was right against the lot line, for which it was cited by Mr. Sweeney. Mr. Geddes said
48 he had submitted a complaint about the driveway being too close to his property line and is

1 pitched towards it. He also said that there is a telephone pole right in the middle of this driveway
2 and had there been a site plan review, it would have never allowed such driveway placement. Mr.
3 Geddes continued to say that since then there has been almost daily occurrences of trash begin
4 transferred from one dumpster to another (from five yard into 30 yard ones). He said there is a
5 video from one of his tenants of a dumpster being dumped with rats coming out. Mr. Geddes said
6 that he also observed Pinard truck driver place bags of trash into dumpsters on this lot. There
7 were dumpsters with maggots at the bottom, with multiple mattresses, which are a breeding
8 ground for rats, there were about eight dumpsters with steel scraps, as well as many batteries
9 laying on the ground, and etc. Mr. Geddes said that this type of operation can only be regulated by
10 NHDES and it should not be allowed to continue. He asked to play the video that he took on site
11 in February. Mr. Geddes also said that there is a picture of Mr. Emanuel standing on his property
12 while the driveway is being paved. Mr. Geddes requested Mr. Taylor to play the three videos,
13 which Mr. Geddes verbally described as three separate occasions of smaller dumpsters full of
14 household trash being emptied into larger ones. Mr. Geddes reiterated that this is a regular
15 occurrence on this site. Mr. Geddes continued to list occasions when his tenants complained to
16 him about trucks emptying dumpsters on the property, trash flying around and settling on
17 neighboring lots and vehicles, rats, odors, and etc. He admitted that when Mr. Belanger lived on
18 site it was not like this and that it only got this bad over the last couple of years. Mr. Geddes also
19 spoke about the wetlands in the far corner of the lot and asked whether anything was monitored
20 regarding the impacts to those. Mr. Geddes concluded that in his opinion this operation needs a
21 full site plan review and NHDES review, during which he, as an abutter, would have a right to
22 request that a fence be erected between the two properties. He added that the situation had spread
23 to the abutting residential property and that he had submitted pictures to the Town for that site as
24 well. He continued to say that this is now a small trash transfer station and there are no controls,
25 including for rodents, of which he gets frequent phone calls from his tenants.

26
27 - Jim Paveglio, 53 South Bow Road, said that he has been working out of 359 River Road for 13
28 years and that he witnessed dumpsters being emptied on the subject property on a regular basis,
29 and has picked up trash on multiple occasions throughout these years.

30
31 - Laura Hartz, the attorney for the applicant, spoke about the role of the ZBA and whether it should
32 be settling arguments between neighbors and that the main goal here was to clear the record as to
33 the use of the subject property by Beau River Associates, LLC for storing dumpsters. She also
34 noted that there obviously was history between the neighbors and it should speak for itself. Then
35 Ms. Hartz spoke about the testimony that trash was present on the property and noted that the
36 ZBA members have been out to the site themselves and neither the site visit nor the satellite
37 imagery reflected any presence of trash on the site, aside from one dumpster that had content in it,
38 which was probably the same dumpster that was dumped into in the video.

39
40 Ms. Hartz also answered a question about the presented evidence that contradicts her statement of
41 the property used for dumpster storage only. She said that there have been similar accusations on
42 behalf of Stan and Pete, Inc. to Mr. Geddes about erosion happening by his actions on their
43 property and it is possible that the bile between neighbors is embellishing the facts in Mr. Geddes'
44 testimony, and that Mr. Paveglio, being Mr. Geddes' tenant, is possibly aligning his interests with
45 Mr. Geddes in this case. Ms. Hartz reiterated that the unbiased evidence was presented by the
46 satellite imagery and the site visit by the ZBA and was contrary to Mr. Geddes and Mr. Paveglio.
47 Ms. Hartz agreed that there should not be any trash in those dumpsters, and that it seemed more of
48 an issue between the lessor and the lessee in what is allowed and how to maintain the use

1 compliant, which Beau River Associates LLC is willing to do. As for the video, Ms. Hartz stated
2 that it was clear that it was the same dumpster as seen in the satellite image with content inside.
3 She said that in the winter some trash freezes to the bottom of the dumpsters and those have to be
4 dumped out, and it looked like that the only container that is seen to have trash in it, is the one at
5 the end which is the only one being dumped into.
6

7 Having nobody else there to address the Board, Mr. Hadaway closed the public hearing at 8:20 PM.
8

9 The Board discussion ensued about the actual use of the property, as it was quite clear that mere
10 storage of dumpsters would not constitute a junkyard; however, there was actual eyewitness
11 testimony that about various materials stored in these dumpsters. Also discussed was the site plan
12 review requirement and whether a casual conversation with the Building Inspector, some 20 years
13 ago, could overrule the regulations that govern the change of use, especially given the testimony of
14 the changes that occurred since the use was initially instituted. The statute that deals with solid waste
15 (RSA 149:M) was discussed and how it applies to this business, which has been shown to be engaged
16 in transferring solid waste; and therefore, should, under the RSA, have received a NHDES permit. It
17 was also noted that it would be difficult to imagine that a sophisticated operations manager like Mr.
18 Belanger who has been with the company for over ten years, would be unaware of all the permitting
19 and site plan requirements at the time of his conversation with the Bow Building Inspector, especially
20 given his own testimony that he had prior knowledge of the need for a site plan review for the Town
21 of Hooksett. Municipal estoppel elements were discussed and that the burden of proof would be on
22 the party asserting it (*Barba v. Town of Rye*). Another point was made that the use of this lot is quite
23 difficult to qualify as a contractor's yard, as Mr. Crawford asserted earlier, as the contractor's yard is
24 usually a site where a construction company would store the equipment and materials used in its
25 business. It was also stated that the site review is definitely a must for this use and at this stage the
26 Planning Board would do a proper investigation about the need to obtain other state permits for
27 operating a solid waste facility. On another hand it was noted that the ZBA does not have the
28 authority to adjudicate municipal estoppel (*Dembiec v. Holderness*), and that the applicant failed to
29 establish all the elements of municipal estoppel. It was also said that all the images/pictures that are
30 part of the record are of a certain point in time, whereas the videos show what actually happened,
31 which is transfer of solid waste, which would make this a transfer station.
32

33 Then the members discussed possible language for a motion and whether the Administrative decision
34 should be upheld in full or in part, depending on the Administrator making a determination about a
35 contractor's yard. Mr. Taylor clarified that he had not made any determinations on either it being a
36 contractor's yard or the storage of empty dumpsters. Discussion ensued about junkyard definition
37 under the statute and how the testimony presented the elements that meet that definition, with the
38 other matter being whether the applicant would need site plan approval regardless of what is being
39 done on that lot. A point was made that there was video evidence presented of solid waste being
40 transferred; however, it was unclear if it was a regular occurrence or if the dumpsters were in fact
41 empty 90 percent of the time. Opinions diverged as to whether this operation was indeed a
42 contractor's yard; however, there was consensus that mere storage of dumpsters did not make it a
43 junkyard, while the regular transfer of trash from one dumpster to another did, and that site plan was
44 required regardless of which use would be determined. It was noted that even if the applicant would
45 be able to classify the use as a contractor's yard under a Zoning Ordinance clause that allows for a
46 proposed unspecified use to be classified as the closest specified one, the Board should only consider
47 what is written in the Administrative Decision. Mr. Buckley made a motion that Code Enforcement
48 Officer's administrative decision dated January 14, 2020 by the Community Development Director is

1 upheld in part due to the fact that the ZBA finds that the site does require a site plan review and that
2 makes it a code violation under Section 5.07 of the Bow Zoning Ordinance. Discussion ensued on
3 whether the junkyard violation should be addressed and Mr. Buckley added to his motion that to the
4 extent that the activity is temporarily storing scrap, waste, and other materials, than it is during those
5 times and storage, it is an unlicensed and therefore illegal junkyard.

6
7 *Mr. Buckley made a motion that the Zoning Board affirms the Administrator's decision, dated*
8 *January 14, 2020, in part that the subject site located at 345 River Road is being operated contrary*
9 *to the terms of the Bow Zoning Ordinance and RSA 236:112; and the property is being operated in*
10 *violation of Section 5.07 of the Bow Zoning Ordinance due to the fact that it does not have site plan*
11 *approval from the Planning Board as a non residential use under RSA 674:43. Mr. Burns made a*
12 *friendly amendment that the site is intermittently operated as a junkyard (to the extent that the*
13 *property is being used for the temporary storage of scrap and waste, thus at such times it is in fact an*
14 *unlicensed and non-compliant use of the property for junkyard purposes). Mr. Buckley agreed to the*
15 *amendment.*

16 *Don Burns duly seconded and a roll call was taken: Mr. Buckley (yes); Mr. Burns (yes); Mr.*
17 *Hadaway (yes); Mr. Ives (no); Mr. Reynolds (no). Motion passed with a 3:2 vote.*

18
19 **Request for Modification for Application #102-20 by Keller Products Inc., at 9 Gordon Road**
20 **with access through 10 Noyes Lane. Block 2, Lots 184-A and 187-A in the I-2 (General**
21 **Industrial) zone to allow 90 days to clear the equipment from the site.**

22 Mr. Hadaway read the item into the record. Mr. Taylor explained that the modification was for the
23 recently approved excavation for the Keller Products company for which one of the conditions was to
24 remove the so called junk from the property prior to beginning excavating. There was an email from
25 Keller with a request. Tony Reynolds said that the equipment that is on the site belongs to him and
26 explained the history of it being stored there. He continued to say that Keller had finally asked him to
27 clear most of it out and that he had already removed quite a lot. There are concrete cinder blocks that
28 are remaining, a large pile of loam, and plows and sanders that he is using in the winter. Mr.
29 Reynolds said he is looking for an extension in time of 90 days so that he can find another location to
30 move this equipment from the Keller lot without precluding Keller from beginning their gravel
31 operation. Mr. Reynolds then answered questions about the nature of his agreement with Keller, the
32 aerial image showing all the stuff stored, and what has been removed already. He also said that access
33 road for the excavation is not being affected and that he was not sure what the reference to 'non-
34 conforming junk' used in the decision was for, as he there is some equipment that is registered and
35 cannot be classified as junk. He noted that he was not present at the last Zoning Board meeting due to
36 unexpected circumstances; therefore, he was not able to clarify the issue for the Board then.

37 Discussion ensued about the 'buckslips' for the Keller application that referred to storage of 'junk'
38 and equipment on the lot itself and in the right of way on Gordon Road. Mr. Reynolds clarified that
39 the right of way equipment and stuff belongs to Bow self storage. Mr. Burns then clarified that the
40 condition of approval only referred to the stuff on the lot and not in the right of way. Members
41 discussed the reference from the Building Inspector to 'the junkyard currently on the property' and
42 whether it would make sense to revert the enforcement action to him, allowing him to work out a plan
43 with Mr. Reynolds including the timeframe and what needs to be cleaned up. General consensus was
44 that if there is a written game plan that the Building Inspector finds acceptable, the Zoning Board
45 would not need to act and Keller Products should be able to begin their operation. Mr. Taylor
46 clarified that the plan has to be written and approved by the Building Inspector, thus satisfying the
47 condition of approval.

1 **Election of Officers**

2 Mr. Hadaway read the item into the record. *Mr. Buckley made a motion for the officers to remain as*
3 *is, Mr. Hadaway as Chair, Mr. Ives as Vice Chair, and Mr. Burns as Secretary. Mr. Burns duly*
4 *seconded and motion passed by a roll call vote 5:0 - Mr. Buckley – yes; Mr. Ives – yes; Mr. Burns –*
5 *yes; Mr. Reynolds – yes; Mr. Hadaway – yes.*

6
7 **REVIEW OF MINUTES: 05/19/2020**

8 Mr. Hadaway read the item into the record. Minutes were reviewed and no changes were made.
9 *Motion was made by Mr. Buckley to approve the minutes as presented, duly seconded by Mr. Ives,*
10 *and Mr. Buckley – yes; Mr. Ives – yes; Mr. Burns – yes; Mr. Reynolds – yes; Mr. Hadaway – yes.*
11 *Motion made by Mr. Ives, duly seconded by Mr. Burns, and unanimously voted to adjourn the*
12 *meeting at 9:32 PM.*

13
14 Respectfully submitted,

15
16 Donald Burns, Secretary.