



TOWN OF BOW

Zoning Board of Adjustment

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Approved as amended on August 18, 2020

MINUTES

July 21, 2020

The Town of Bow Zoning Board of Adjustment met on Tuesday, July 21, 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. Also present were Matt Taylor, Community Development Director, and Alvina Snegach, recording secretary.

Mr. Hadaway read the virtual meeting checklist into the record. He noted that Mr. Buckley is now a regular member of the Board.

Then Mr. Hadaway directed the attention of the Board to Agenda item I.1, 2 and 3 which were all related to one applicant.

PUBLIC HEARINGS

APPEAL OF ADMINISTRATOR'S DECISION

Case #103-20 (ref. ZBA case #101-20) Applicant/Owner: Stanley Emanuel (c/o Orr & Reno, P.A.)/Stan & Pete, Inc. Appeal of the Administrator's decision by Bow Community Development Director Matt Taylor dated June 11, 2020 that (1) site plan is required for expansion or change of use; (2) that the current use meets the definition of a junkyard; and (3) that junkyards in the I-2 Zone are allowed by special exception and are prohibited in the AP District. Located at 330 River Road, Bl 2, Lot 160-A, 352 River Road, Bl 2, Lot 159-C, 25 Ryan Road, Bl 2, Lot 159-F4, 3, 5, 7 Thibeault Drive, Bl 2 Lots 159-M, 159-L, 159-K in the General Industrial Zone (I-2) and AP overlay district. Zoning Ordinance Articles: 3.02 – Words and Phrases not Defined; 10.03 – Aquifer Protection (AP) District; 13.02.A – Interpretation of the Ordinance.

APPEAL OF ADMINISTRATOR'S DECISION

Case #104-20 (ref. ZBA case #101-20) Applicant/Owner: Stanley Emanuel (c/o Orr & Reno, P.A.)/Stan & Pete, Inc. Appeal of the Administrator's decision by Bow Community Development Director Matt Taylor dated June 11, 2020 that (1) site plan is required for a conversion to a nonresidential use; (2) that the current use meets the definition of a junkyard; and (3) that junkyards in the I-2 Zone are allowed by special exception and are prohibited in the AP District. Located at 343 River Road, Bl 2, Lot 203 in the General Industrial Zone (I-2) and AP overlay district. Zoning Ordinance Articles: 3.02 – Words and Phrases not Defined; 5.07 - Site Plan Review Regulations; 10.03 – Aquifer Protection (AP) District; 13.02.A – Interpretation of the Ordinance.

APPEAL OF ADMINISTRATOR'S DECISION

Case #105-20 (ref. ZBA case #101-20) Applicant/Owner: Stanley Emanuel (c/o Orr & Reno, P.A.)/Mike & Rita, LLC. Appeal of the Administrator's decision by Bow Community Development Director Matt Taylor dated June 11, 2020 that (1) site plan is required for expansion or change of use; (2) that the current use meets the definition of a junkyard; and (3) that junkyards in the I-2 Zone are allowed by special exception and are prohibited in the AP District. Located at 11 Dunklee Road, Bl 2, Lot 159-F1 in the General Industrial Zone (I-2) and AP overlay district. Zoning

Ordinance Articles: 3.02 – Words and Phrases not Defined; 5.07 - Site Plan Review Regulations; 10.03 – Aquifer Protection (AP) District; 13.02.A – Interpretation of the Ordinance.

Mr. Hadaway read the items into the record and noted that the site walks have been cancelled.

Mr. Taylor said that the violation notices that have been the grounds for all three appeals have been withdrawn as the applicant has been working with the Bow Planning Board on the modification to the site plan and rectifying compliance issues. He mentioned a sitewalk that the Planning Board held recently at 330 River Road to see the progress. Then Mr. Taylor spoke about the other two properties and the recent communications with the tenants of Stan & Pete, Inc. and Mike & Rita, LLC advising them what would need to be done to bring their business operations on these properties into compliance.

Laura Hartz and Jonathan Eck from Orr & Reno introduced themselves as the attorneys for Stan and Pete, Inc. Ms. Hartz agreed with Mr. Taylor and said that given that the underlying notices of violations have been withdrawn for all three properties, the appeals became moot and her client is requesting they be withdrawn as well.

Discussion ensued about procedure and whether withdrawal or dismissal would make more sense. Mr. Eck concurred with Ms. Hartz that they would withdraw the appeals.

Mr. Buckley made a motion that the Zoning Board accepts the withdrawal of appeals in cases #103-20, #104-20, and #105-20. Mr. Burns duly seconded and motion passed with a 4:0 roll call vote: Mr. Ives – yes; Mr. Burns – yes; Mr. Reynolds – yes; Mr. Buckley – yes.

OTHER BUSINESS

MOTION FOR REHEARING ON THE APPEAL OF ADMINISTRATIVE DECISION Case #101-20 Stanley Emanuel (c/o Orr & Reno, P.A.)/Beau River Associates, LLC. 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).

Mr. Hadaway noted that the Motion for Rehearing is filed on behalf of the same applicant as the previous appeals, therefore he will put its review out of order of the Agenda. He read the item into the record and asked if there was anyone present to speak on the matter.

Jonathan Eck and Laura Hartz from Orr and Reno were there to address it. Mr. Eck noted that an email was submitted shortly before the meeting with a short summary of what is being requested and went over both parts of the motion: one being the request to stay matters under paragraphs A, B, C, and D of the Motion for Rehearing (MOH) dealing with the applicant having to undergo site plan review; and the other being a motion for clarification of the notice of decision which, in their view, is inconsistent with what has been motioned and voted on at the meeting, as reflected correctly in the meeting minutes.

Ms. Harts went over the first part of the motion in detail and clarified the intent of the stay request being that her client would need some time to go through the site plan review, and should that not work out, they would like to preserve their right to move forward with the part of the appeal contained in paragraphs A, B, C and D (dealing with the requirement of site plan).

Before Mr. Eck continued with the part E of the MOH, Mr. Burns noted that the Board would like to deal with each part of the motion to stay separately.

Mr. Burns made a motion that in case #101-20 that the all aspects of the motion for rehearing that are set forth in parts A, B, C and D are stayed until whenever. Mr. Buckley noted that he will second the motion solely for the purpose of discussion.

Discussion ensued about statutory basis for granting a stay in this case given that the ZBA has to either grant or deny a MOH within 30 days, and there is no statutory basis to deal with a stay. Ms. Hartz suggested that it be reviewed as a motion to continue or they could temporarily withdraw the MOH

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contained in paragraphs A, B, C and D until the site plan review has been resolved with the Planning Board. Mr. Eck also noted that the statute allows for the order to be stayed by the ZBA as well within that 30-day period. Discussion ensued about staying the decision itself and that it would be too cumbersome as it would mean suspending any code enforcement with it. Members then discussed possible motion language and whether Mr. Burns needs to withdraw his original motion. Mr. Burns withdrew his original motion and *made a motion that in response to the motion of the applicant for a stay of a portion of the motion for rehearing set forth in paragraphs A, B, C and D, hearing on that is hereby continued to the ZBA meeting on October 20, 2020 in order that the applicant may pursue site plan review or other proceedings with the Planning Board. Mr. Ives duly seconded and motion passed with a 4:0 roll call vote: Mr. Mr. Ives – yes; Mr. Burns – yes; Mr. Reynolds – yes; Mr. Buckley – yes.*

Mr. Eck then addressed the second part of MOH which is a request to clarify the language of the Notice of Decision (NOD) as it seemed inconsistent with the minutes and the meeting recording in that it implied that the site is being used as a junkyard as a retroactive finding, whereas the actual motion made by Mr. Buckley and amended by Mr. Burns was referring to a prospective use of the site as a junkyard if there were to appear any waste storage/transfer on site. Mr. Eck also said that based on the statement noted in the minutes there was no determination made as to any number of times the property actually had dumpsters that contained any waste scraps or other materials that would have made it non-compliant and reiterated that the decision was a prospective finding only of what would constitute a future unlicensed and non-compliant use of the property, as opposed to it being a finding that had retroactive effect.

After clarifying which verbiage was contested by the applicant, Mr. Burns noted that regardless of the language being slightly different in the NOD he does not agree with the statement that the NOD is in fact prospective, as the reason for that language in the motion and in the decision was based on the evidence of past actions, and also serves to state the Board's position that the use of the property in that manner does constitute it being operated as a junkyard; therefore, they should stop doing it. Mr. Burns reiterated that it was not his intention to say that this is just prospective, and everything has been just fine, but in the future please do not do it. That was not what he had in mind.

Mr. Eck responded that the minutes reflect that there was not a particular finding of any period of time or frequency of the violation occurring (waste being stored/transferred on site), therefore, he concluded that the motion was made to the prospective use of the property, as opposed to being a retroactive finding.

Mr. Burns noted that the Board in fact was not able to find when or how many times, however, there was evidence of misuse of the property, which was sufficient to constitute a violation of the ordinance, and the Board said that you shouldn't have done it in the past and shouldn't do it in the future. Mr. Burns concluded that he does not personally agree with either Mr. Eck's interpretation of the minutes or his interpretation of what Mr. Burns meant when he offered that language. He also did not agree with Mr. Eck's interpretation of what the board meant when it approved it.

Discussion ensued about procedure and whether the MOH has to be granted and a MOH hearing held for any decisions to be made regarding any matters addressed in the MOH. Ms. Hartz said that the motion to clarify should not require a hearing, in her opinion, and if the Community Development staff could administratively change the language of the NOD to be consistent with the meeting minutes, should the Board agree to it.

Members discussed the change requested (word "being" in the NOD prior to the words "intermittently operated") and whether the Community Development Assistant Alvina Snegach, who signed the NOD on behalf of the Board, could change it after double checking the recording of the meeting. It was noted that even if the word is found to be missing from what was said in the recording, it would not change the meaning of what the Board decided as was discussed earlier.

Mr. Burns made a motion that the Board would ask the Community Development Assistant Alvina Snegach to review the tape of the meeting to confirm the language of the Board's motion of denying the appeal of the administrator's decision and if there was any error in the language of the notice of decision

to make whatever corrections are necessary. Mr. Reynolds duly seconded and motion passed by a 4:00 roll call vote: Mr. Ives – yes; Mr. Burns – yes; Mr. Reynolds – yes; Mr. Buckley – yes.

Another discussion ensued about part E of the MOH and whether it should be withdrawn or continued. Mr. Burns made a motion that with respect to the motion for rehearing that the hearing on the relief requested in paragraph E of that motion be continued to October 20, 2020. Mr. Ives duly seconded and motion passed 4:0 by a roll call vote: Mr. Ives – yes; Mr. Burns – yes; Mr. Reynolds – yes; Mr. Buckley – yes.

PUBLIC HEARING

Case #106-20. Applicant/Owner: Andrew Mattiace, Variance to encroach into the front setback (where 35 ft is required) to accommodate the construction of a sugar house and encroach into the side setback (where 20 ft is required) to accommodate the construction of a footbridge as indicated on the provided plan. Located at 1 Beaver Brook Drive, Bl 4 Lot 127-1 in the Residential (R) District. Zoning Ordinance Articles: 6.03.A - Minimum Yard Requirements; 13.02.B – Authorization of Variances.

Mr. Hadaway read the item into the record and noted that a site walk took place at the property before the meeting. The owner of the property Andrew Mattiace from 1 Beaver Brook Road presented the details of the proposal which is construction of a 12’ X 20’ sugar house on his property and a small bridge over a small stream to access the back of his property to be able to collect sap from tapped trees on the other side. Both structures will have to encroach into the setbacks to allow for the scale of Mr. Mattiace’s operation. Mr. Mattiace briefly described the nature of his hobby and answered questions from the Board about wetland/wetland buffer impacts, dimensions of the sugar house, Planning Board decision, and amounts of sap processed and equipment used. Mr. Mattiace then addressed the variance criteria individually. Mr. Buckley noted that the Board is only reviewing the dimensional variance to put structures into the building setback; therefore, any use related matters would not be part of this hearing. Mr. Taylor spoke about the Planning Board decision regarding Mr. Mattiace’s request to impact the wetlands and buffers for the construction of both structures and also explained that the Bow Conservation Commission (BCC) had requested that conditions be put on the Planning Board approval, however, there was no comment from the BCC for the ZBA.

Mr. Hadaway opened the public hearing at 9:01 PM and having nobody there to address the Board, closed it at 9:01 PM. He then opened the floor for Board discussion.

Mr. Hadaway noted that there have been many letters received from abutters who did not have a problem with Mr. Mattiace’s operation and only one of these letters had listed multiple issues with it. Mr. Hadaway also noted that the Bow Building Inspector commented on the application requesting that a plot plan with the exact layout of what is going where be provided by the applicant.

Discussion ensued about Mr. Mattiace’s ability to build the structure outside of the setback and whether there is a hardship. Mr. Mattiace presented several layouts on the screen to show the building relative to the wetland buffers and setbacks.

Then the Board reviewed the criteria in the Zoning Ordinance Article 13.02.B.2 for the authorization of a variance and by a roll call vote determined the following (for the building and the bridge respectively):

- a. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship. Unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (1) No fair and substantial relationship exists between the general public purposes of the Ordinance provision and the specific application of that provision to the property

(building)	not met:	1:3
	TR (met)	
	RI, RI, SB (not met)	

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(bridge) met: 4:0
BI, DB, TR, SB (met)

(2) the proposed use is a reasonable one
(building) met: 3:1
DB, TR, SB (met)
RI, (not met)

(bridge) met: 4:0
SB, RI, DB TR (met)

(3) If the criteria in subparagraphs (1) and (2) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

(building) not met: 0:4
BI, DB, TR, SB (not met)

(bridge) 2:2
RI, TR (met)
DB, SB (not met)

b. Authorization of a variance will not be contrary to the public interest

(building) not met: 1:3
TR (met)
BI, DB, SB (not met)

(bridge) met 4:0
RI, DB, TR, SB (met)

c. The spirit of this Ordinance shall be observed, and substantial justice done in the authorization of a variance:

(building) not met: 1:3
TR (met)
BI, DB, SB (not met)

(bridge) met 4:0
RI, DB, TR, SB (met)

d. No diminution of in the value of surrounding properties would be suffered as a result of the authorization of the ordinance.

(building) met: 3:1
BI, TR, SB (met)
DB (not met)

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(bridge)

met 4:0
RI, DB, TR, SB (met)

Mr. Buckley made a motion that the Board is (1) denying the request for the front yard setback variance for the structure proposed by the applicant in case #106-20 because the property can be reasonably used for a structure that can be placed in a conforming location; and (2) is granting the variance for the side yard setback for the proposed bridge structure to the rear of the property. Mr. Ives duly seconded.

Discussion ensued about the two locations for the bridge that are shown on the plan. Mr. Mattiace clarified that the latest plan revision would be #5.

Mr. Buckley clarified his motion to state that the variance for the bridge would be granted for the existing location as shown on the submitted Revision 5 of the plan. Mr. Ives seconded the amended motion. A roll call was taken, and motion passed 4:0: Mr. Ives – yes; Mr. Burns – yes; Mr. Reynolds – yes; Mr. Buckley – yes.

REVIEW OF MINUTES: 6/16/2020

June 16, 2020 draft minutes were reviewed, and changes were made. *Mr. Buckley made a motion to approve the 06/16/2020 minutes as amended. Mr. Ives duly seconded and motion passed 4:0 by a roll call vote: Mr. Ives – yes; Mr. Burns – yes; Mr. Reynolds – yes; Mr. Buckley – yes.*

Mr. Ives made the motion, duly seconded by Mr. Burns, to adjourn. Motion passed unanimously. Meeting adjourned at 9:35 PM