



# 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)

### DRAFT MINUTES

November 15, 2022

The Town of Bow Zoning Board of Adjustment met on Tuesday, November 15, 2022, at 7:30 p.m. in Room C of the Municipal office building.

Chair Hadaway called the meeting to order with a roll call introduction of the board members.

Present were Harry Hadaway, Chairman; Stephen Buckley, Vice-chair; Donald Burns, Secretary (via Zoom); Robert Ives, member; Michael O’Neil, member; Joseph Conti, alternate member; June Branscom, member and Ginger Iverson, recording secretary.

Mr. Burns stated it was not practical for him to attend meetings in person due his wife’s medical condition and would like to have permission to attend meetings remotely. Mr. Hadaway requested that someone entertain a motion to allow Mr. Burns to participate for this meeting remotely as it is not practical for Mr. Burns to attend due to his wife’s medical condition according to RSA 91-A:2, III.

*Mr. Buckley made a motion and Mr. Ives duly seconded to allow Mr. Burns to participate remotely due to his wife’s medical condition for future Zoning Board of Adjustment meetings in accordance with RSA 91-A:2, III.*

*Mr. Hadaway proceeded with a roll call vote: Mr. O’Neil -yes; Mr. Buckley – yes; Mr. Conti – yes; Mr. Hadaway – yes, Mrs. Branscom, -yes. The motion passed with a 5 yes-1 recused vote.*

Mr. Hadaway confirmed that Mr. Burns had no one in the room with him. Because there is a member attending remotely, the Board must do roll call vote for all matters tonight.

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

#### I. PUBLIC HEARINGS

1. Application no. 108-22 Town of Bow – Rising Tide Towers, LLC  
Proposed Telecommunications Facility on a 100’ X 100’ lease area. Facility to include a 190’ self-supporting lattice tower, a 75’ X 75’ fenced-in developed area, and 12’ X 550’ gravel access road.

Located at Branch Londonderry Turnpike E Bow, NH 03304.  
RU Property Zone, Map 23, Block 3, Lot 62

- ❖ Site Walk for 108-22, Variance, Town of Bow- Rising Tide Towers, LLC on Saturday, November 12, 2022 at 10:00 a.m.

43 Mr. Hadaway read the item into the record and noted that a site walk took place on Saturday, November  
44 12,2022 at 10:00 a.m. at the property located at Branch Londonderry Turnpike Bow, NH 03304. In  
45 attendance were Stephen Buckley, Robert Ives, Kevin and Deborah McCann, Kyle Gould, Paula Rys,  
46 Susan Marcotte-Jenkins, William t. Dyroff, Dee Treybig, Sue Nichols, Steve Nichols, Will Rocker and  
47 Chris Vitale.

48  
49 Mr. Buckley reviewed section 7.10 ordinance which states cell towers of this type are limited to 90 ft. in  
50 height. The applicant is seeking 190 ft. The applicant thought applying through the Zoning Board was the  
51 appropriate approach to take. In looking at section G., it delegates to the Planning Board the power to  
52 waive any provision of the regulation, not to the Zoning Board of Adjustment. Mr. Buckley concluded  
53 that the Zoning Board should make the motion to find that we do not, as the Zoning Board of Adjustment,  
54 have authority to grant the relief that the applicant is seeking.

55  
56 *Upon motion made by Mr. Buckley and seconded by Mr. Ives, the Zoning Board of Adjustment doesn't*  
57 *have the authority to grant the relief that the applicant is seeking, the applicant should seek the request to*  
58 *build the 190 ft. tower through a waiver from the Planning Board under section 7.10 G. The Zoning*  
59 *Board declines and dismisses this application and refers the applicant to seek the relief as part of the*  
60 *Conditional Use Permit planning process at the November 17, 2022 Planning Board meeting.*

61  
62 *Prior to taking a roll call vote, Mr. Buckley gave Chad Hebert, the Black Diamond Representative an*  
63 *opportunity to address the Board. He stated that they filled out all applications for the cell tower and they*  
64 *are good with however the Zoning Board decides.*

65  
66 Mr. Hadaway closed the applicant's presentation and returned to the board.

67  
68 Mr. Hadaway opened the public hearing at 7:42 p.m.

69  
70 Dee Trybek of 15 Londonderry Turnpike asked if our town attorney had been consulted as to whether this  
71 was a Zoning Board or Planning Board issue. Mr. Buckley replied that the town's counsel was consulted.  
72 Mrs. Trybek asked if the Town's Counsel agreed and Mr. Buckley stated that what was discussed is a  
73 confidential communication between Town Counsel and the Zoning Board. Susan Moore of 11 Crockett  
74 Drive felt the Zoning Board should provide some answers to their questions stating that now it's being  
75 put out to another board. She felt the Zoning Board should do its job and listen to them about this 19-story  
76 building being put in their front and back yards. She stated it was "kind of like a copout". Mr. Burns  
77 replied that the Zoning Board does not have the authority to make this decision. She said somebody knew  
78 prior to tonight that this meeting was going to be useless. Mr. Buckley said to Mrs. Moore that she still  
79 has a voice and can go to the Planning Board and make her points to the Planning Board. Steve Nicholls  
80 of 17 Branch Londonderry Turnpike East asked that once the Planning Board makes their decision will  
81 the Zoning Board have no more say in this. Mr. Buckley said the ordinance that the town adopted is a  
82 Conditional Use Permit ordinance under particular statute called, "*Innovative Land Use Controls*".  
83 There is another statute that governs what can be appealed to the Zoning Board of Adjustment. If the  
84 town creates an *Innovate Land Use Control* ordinance and delegates the Planning Board the power to  
85 issue a Conditional Use Permit, and then someone disagrees with what the Planning Board, there is no  
86 appeal to the Zoning Board of Adjustment. It goes directly to the Superior Court. It's designed to make  
87 one board responsible to make all relevant decisions on cell towers regarding size, appearance, and  
88 location.

89  
90  
91 Deborah McCann of 32 Branch Londonderry Turnpike East asked if anyone from the Planning Board had  
92 attended the site walk and Mr. Buckley replied that he did not believe so but does not know the whole

93 Planning Board membership. Mrs. McCann said it would not be unusual for them to ask the Planning  
94 Board to do a site walk. Robert Lux of 7 Allen Road is confused why they weren't informed of this by  
95 written communication and Mr. Buckley said the ZBA has to make decisions of this type at public  
96 meetings with the public attending to hear what they do. The Zoning Board of Adjustment can't issue  
97 edicts without the public having the opportunity to be heard. What we are doing is being in front of the  
98 people and answering their questions to make a decision on whether this is going to be dismissed and  
99 referred to the Planning Board for action on the waiver.

100  
101 Mr. Hadaway closed the Public Hearing at 8:21 p.m.

102  
103 Chairman Hadaway then suggested that the Zoning Board should vote on the motion.

104  
105 *Upon motion made by Mr. Buckley and seconded by Mr. Ives, the Zoning Board of Adjustment doesn't*  
106 *have the authority to grant the relief that the applicant is seeking. The applicant should seek the request*  
107 *to build the 190 ft. tower through a waiver from the Planning Board under section 7.10 G. The Zoning*  
108 *Board declines and dismisses this application and refers the applicant to seek the relief as part of the*  
109 *Conditional Use Permit planning process at the November 17, 2022 Planning Board meeting.*

110  
111 *Mr. Hadaway proceeded with a roll call vote: Mr. Buckley, yes; Mr. Ives, yes; Mrs. Branscom, Mr.*  
112 *O'Neil, yes; Mr. Burns, yes; Mr. Hadaway, yes. The motion passed with a 5-0 roll call vote.*

113  
114 *At 7:50 p.m. the Zoning Board of Adjustment entered Non-Public Session.*

115  
116 *At 8:07 p.m. the Zoning Board of Adjustment left Non-Public Session.*

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118  
119 **II. REVIEW OF MINUTES 10/18/2022**

120  
121 Mr. Hadaway asked if there were any corrections to the October 18, 2022 meeting minutes. The board  
122 discussed edits to the minutes.

123  
124 *Mr. Buckley made a motion and Mr. O'Neil duly seconded to approve the edited October 18, 2022 meeting*  
125 *minutes.*

126  
127 *Mr. Hadaway proceeded with a roll call vote: Mr. Buckley, yes; Mr. Burns, yes; Mr. Conti, yes;*  
128 *Mr. Ives, yes; Mrs. Branscom, yes; Mr. Hadaway, yes. The motion passed with a 6-0 roll call vote.*

129  
130 *At 8:17 p.m. Mr. Buckley made a motion to adjourn the meeting.*

131  
132 Respectfully submitted,

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134  
135  
136 Mr. Donald Burns  
137 Secretary