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TOWN OF CARLISLE
OFFICE OF
Zoning Board of Appeals

66 Westford Street
Carlisle, MA 01741
978-369-5326

Minutes: Board of Appeals, January 4, 2021

Call to Order

The meeting was called to order at 7:30 p.m. Pursuant to the Governor's Executive Order Concerning Open Meetings during the COVID-19 crisis, there was no in-person attendance. Participation was entirely remote utilizing the teleconference application Zoom Meeting.

The Chair noted that the audio portion of meeting was being recorded and asked if any other were recording. Ranjan Mathew said that he was recording the audio portion of the meeting.

Roll Call and Declaration of Quorum

Chair Snell recognized the required quorum of Members. Present were Members Travis Snell (Chair), Steven Hinton and Manuel Crespo (Clerk) and Associate Members Eric Adams, Gretchen Anderegg and Jay Lee.

Statement of Compliance

The issue of compliance regarding posting of the hearing was confirmed by the Chair. According to Secretary Wang, the Meeting Notice was posted in Town Hall on December 21, 2020. The agenda was posted December 23, 2020

Approval of Agenda

Chair Snell asked those present if there were any matters other than those listed on the agenda which the public would like to add to the agenda. When none were offered, the agenda was accepted.

Approval of prior minutes

The Board voted to accept the minutes from December 7, 2020 as amended.

Public Comments

Chair Snell asked those present if there were any matters other than those listed on the agenda which the public would like to present to the Board. None were offered.

New Business – Application 2101

Chair Snell opened the public hearing for the application of NOW Carlisle 225 LLC for an Earth Moving Permit in accordance with Article VIII of the General Bylaws to cut and fill earth material from portions of property located at Bedford Road/Kay's Walk lot 10-4-X, 11-1-0 and 11-1-2.

Participation was entirely remote utilizing the teleconference application Zoom meeting, there was no in-person attendance. Present were the Applicant's representative Dan Gainsboro and Attorney Pamela Brown, Dan Carr of the engineering firm Stamski and McNary, Inc., Mosquito reporter Mark Brittle, Secretary Peggy Wang and members of the public. Associate Member Gretchen Anderegg as an abutter recused herself from the hearing and while present, was not part of the deliberation or decision.

Materials Considered by the Board of Appeals

ZBA_2101_01 Application and correspondence from Attorney Pamela Brown dated December 3, 2020.
ZBA_2101_02 Cut/Fill Report prepared by Stamski and McNary, Inc. dated November 17, 2020
ZBA_2101_03 Grading Plan prepared by Stamski and McNary, Inc. dated November 17, 2020

Petitioner's Comments

Attorney Pamela Brown, the petitioner's representative, explained that this is an application for earth moving to provide fill required on the site for the to be constructed Woodward Village residential community. The development will include eighteen (18) units and significant open space preservation. Fill will be required to level the grade of the property. Rather than bringing in multiple trucks loads of fill from offsite there is an opportunity with an adjacent property to cut and move earth across the property boundary.

Dan Carr from Stamski and McNary, Inc. reviewed the cutting and fill areas on the Grading Plan (ZBA_2010_03). He explained that the wetland crossing will require the majority of the fill. Chair Snell asked what permits have been obtained to date. Carr said the Planning Board has approved a Residential Open Space Community Permit, the Board of Health has approved a permit for the sewage disposal system and the Conservation Commission has approved a permit for the work within 100 feet of the wetlands.

Board's comments

The Board asked the Conservation Administrator Sylvia Willard if the presented plan was part of the Conservation Commissioner's consideration when they issued the Order of Conditions. Willard explained that she had not reviewed the application but that the Commission anticipated that fill would be required at the wetland crossing. Willard added that the Commission considers taking fill from an adjacent property as a good thing to prevent invasive plants from being brought onto the property, but they have not yet met on this specific part of the plan. She noted that the clearing on one section of the property was not on the plans the Commission reviewed and asked if the area is in the buffer zone and the size of the area. Mr. Carr showed on the screen that the area in question was not in the buffer zone. Attorney Brown said that the area is four tenths (4/10) of an acre, well under the one (1) acre clearing. Willard said that it would be good to set work limits in that area.

Administrator Willard and Mr. Carr went on to discuss the phasing of project. Willard noted that the Conservation Commission would like the petitioner to submit the final plans presented at this hearing (ZBA_2101_02 & 03) if approved by Zoning Board.

Public comments

Chair Snell asked those present if there were any comments and when none were offered the public hearing was closed.

Deliberation

Member Crespo questioned if the final Earth Moving Plan needs to be approved by or filed with Conservation Commissioner prior to any activity. It was determined that the standard conditions included in the decision would regulate other Land Use Boards requirements. Dan Gainsboro, representative for the Applicant, said that any plans the Conservation Commission requires will be submitted.

Decision

The Board of Appeals makes the following findings, based upon the evidence presented at the public hearing:

1. There was no correspondence submitted and no members of the public spoke at the hearing.
2. The plans submitted in connection with the transfer are designed to minimize changes in existing contours in keeping with attractive land utilization, effective drainage, suitable road gradients, access or other design considerations; and
3. The volume proposed for the transfer does not exceed the minimum practical amount required to accomplish the construction, development or improvement in accordance with the plans therefor; and
4. Effecting the transfer will not be detrimental or injurious to abutters or the neighborhood, either by the alteration of existing topography or by substantial change in the use of the streets in the neighborhood.

The decision is subject to the following conditions:

1. The Earth Moving License is subject to the provisions in Article VIII of Carlisle General Bylaw.
2. This decision does not relieve the Petitioner or any other person of the necessity of complying with all other applicable federal, state or local statutes, ordinance or bylaws and/or regulations.
3. All work is to be done in accordance with the approved plan referenced herein.
4. Any revisions, amendments or modification to the approved plans deemed unsubstantial by the Board shall be approved at a regularly scheduled public meeting.
5. Violations of any conditions contained herein or failure to comply with the Permit shall subject the Applicant or subsequent property owners to a zoning enforcement action in accordance with the remedies set forth in M.G.L. c. 40A.
6. Time frames for executing this Decision are as follows:

License shall be granted for one (1) year from the date permit becomes final.

Based on the findings, Member Hinton, made and Member Adams seconded a motion to issue an Earth Permit with the standard conditions for application 2101.

Consistent with the informal historic practice of the Board, all Members and Associate Members that participated in the public hearing also participated in the vote, and the motion was approved by a vote of 5 to 0 as follows.

Board of Appeals vote:

Snell (Member)	Affirm
Crespo (Member)	Affirm
Hinton (Member)	Affirm
Adams (Associate Member)	Affirm
Lee (Associate Member)	Affirm

Appeals

The Applicant was advised that the written Decision would be prepared and signed within twenty-one (21) days. A copy of the Decision will be mailed to the Applicant and abutters at which time the twenty (20) day appeal period begins. At the end of the appeal period, if no appeal is filed, the Applicant shall pick up the Decision along with the Town Clerk certified Grand of Permit which must be recorded with the Register of Deeds in Lowell, MA and filed with the Building Commissioner before work begins

Old Business – Application 2012

Chair Snell re-opened the public hearing for application 2012 APPEAL that was continued on December 7, 2020. Participation was entirely remote utilizing the teleconference application Zoom meeting, there was no in-person attendance.

Present were Members Travis Snell (Chair), Manuel Crespo (Clerk), Steven Hinton and Associate Members Eric Adams, Gretchen Anderegg and Jay Lee. Also present were the Applicant, Ranjan Mathew, the Applicants Attorney Robert Galvin, Town Counsel Tom Harrington, Mosquito reporter Mark Brittle, Secretary Peggy Wang and members of the public.

Chair Snell noted that on December 11, 2020 all the Members currently present participated in the site visit at 114 Sunset Road. They looked at the barn stalls and the entire property, he thanked the Svateks for allowing them to visit.

Documents entered into the record since the December 7, 2020 hearing

ZBA_2012_08 Email of support for the Mathews from Margaret Woodruff dated December 9, 2020

ZBA_2012_09 Email from the Building Commissioner regarding boarding of horses without a Special Permit dated December 14, 2020

ZBA_2012_10 Email from the Building Commissioner with a link to Mass Municipal law dated December 16, 2020

ZBA_2012-11 Board of Health permits and inspection reports for 114 Sunset Road

ZBA_2012_12 Letter of support for the Svateks from Tracy Bardy and undersigned by 20 other parties dated December 23, 2020

ZBA_2012_13 Letter from the Applicants Attorney summarizing the Building Commissioner's erred as a matter of law dated January 4, 2021

Applicant's testimony

Chair Snell asked Attorney Galvin if he had any new or additional information to present to the Board. Attorney Galvin asked the Board if they had read the letter he submitted early in the day (ZBA_2012_13). He did not want to restate the content of the letter but offered a summary.

Attorney Galvin reminded the Board that the Svateks have never answered the question regarding the boarding of other peoples' horses. He said that the Mathews could learn to live with the Board upholding the Building Commissioner's decision and urged the Board to consider the following conditions; limit the number of horse trailers to two (2), lighting in the riding area be directed away from the Mathews, a clearly defined manure management plan, no riding lessons be allowed and meet all rules and regulations of the Board of Health.

Board's Comments and Questions

Chair Snell asked the Members if they had any questions of the Applicant regarding the Building Commissioner's determination that the Svateks veterinary clinic and boarding of horses is allowed as of right or requires a Special Permit.

Member Lee noted that in his letter to the Board (ZBA_2012_13) Attorney Galvin indicated that the Mathews can live with the current more favorable conditions at 114 Sunset Road and asked if the Applicants wanted to withdraw their appeal based on changes, specifically the reduction in the number of horses.

Attorney Galvin responded that the Board of Health reported there were seven (7) to nine (9) horses on the premises but now it appears there are only two (2) horses. He and Mathews still believe the Commissioner's decision was wrong.

Member Hinton noted that during the December 11, 2020 site visit there were seven (7) horses. The Members continued to discuss which issues to focus on in order to uphold or overturn the Commissioner's decision. Chair Snell asked the Svateks if they had any new information that the Board should consider. The Svateks responded that nothing has changed in the use of the property during the time they lived there.

Public Comments

Bob Casinghino, 21 The Common Royalston, Massachusetts, asked for clarification regarding the number of horses on the property. Jim Fitzgerald, 116 Bingham Road, asked if there is a maximum number of horses allowed and what defines commercial property.

Mr. Mathew read some facts about the amount of waste one (1) horse produces and noted that the Svatek's property is up higher than his possibly resulting in a flow into the Mathew's property. Chair Snell asked Rob Misek, 70 Orchard Acres, if he had a comment because it looked as if he'd raised his hand. Mr. Misek said that his question had been covered.

Board's Additional Comments

Member Adams noted that the veterinary business conforms to section 3.2.11.1.5 and said that the primary use of the property is residential. He considered the veterinary business to be a small commercial use allowed by right. Chair Snell asked Town Counsel Tom Harrington to comment. Attorney Harrington told the Members that they need to determine if the Building Commissioner got it right or wrong. If wrong, how MGL applies. If the Board is satisfied with the decision you don't need go to the second part of the analysis. He noted that his reading of the facts in the Building Commissioner's decision it is saying that the veterinary business is valid home occupation and that the stalling is a valid accessory of use.

Chair Snell noted that there have been two (2) public hearings with lots of correspondence submitted, he moved to close the public hearing. Member Hinton vote (nay) because he had two (2) questions for the Svateks. He asked how many people live at 114 Sunset Road, the response was four (4). Then he asked if the family rides together at events, Jessica Svatek said they do, and the trailer is used to get to the events.

Chair Snell reminded the Members that the focus of the discussion should be on the Building Commissioner’s decision and that we are conducting a fair and open hearing. He made the motion to close the public hearing, all voted in favor of the motion, Snell (aye), Hinton (aye), Adams, (aye) Crespo (aye), Anderegg (aye) and Lee (aye).

Deliberation and Decision

Chair Snell opened the deliberation by saying the focus of the Board centers on the fact that the October 8, 2020 decision of the Building Commissioner was correct or should be overturned. He noted that the Board has listened to two (2) issues; the veterinary business, is it commercial or an accessory use. Second, is the stalling of horses also an accessory use because there is no riding academy and no advertising.

The Members discussed the mobile aspect of the veterinary business not being tied to the use of the property and that the boarding of horses is allowed under MGL. In this case the horses are mostly used by the family. They noted that there is no signage, no parking lot or evidence of any business activity.

The Board of Appeals makes the following findings, based upon the evidence presented at the public hearings and the December 11, 2020 site visit to 114 Sunset Road:

1. The barn at 114 Sunset Road is a permissible stable under Section 3.2.1.11.1 of the Zoning Bylaw.
2. There is no physical evidence that a riding academy is operating on the premises, no external change has been made to alter the residential appearance of the home, and no outward evidence that the premises is being used for any purpose other than residential, in accordance with Section 3.2.1.11.5.
3. The above two uses are secondary to the use of the premises for dwelling purposes.
4. The principal use of 114 Sunset is residential.

Based on the findings Member Hinton made and Member Anderegg seconded the motion to uphold the October 8, 2020 Decision of the Building Commissioner to deny the petitioners’ request for zoning enforcement for the property located at 114 Sunset Road.

Consistent with the informal historic practice of the Board, all Members and Associate Members that participated in the public hearing also participated in the vote, and the motion was approved by a vote of 6 to 0 as follows:

Board of Appeals vote:

Snell (Member)	Affirm
Crespo (Member)	Affirm
Hinton (Member)	Affirm
Adams (Associate Member)	Affirm
Lee (Associate Member)	Affirm
Anderegg (Associate Member)	Affirm

Appeals

The Applicant was advised that any Appeal from this Decision made by an aggrieved party shall be made pursuant to Massachusetts General Law Chapter 40A Section 17 and shall be file within twenty (20) days of the filing of this Decision with the Office of the Town Clerk.

Adjournment

Chair Snell asked the Board Members and those present if there were any additional issues to discuss. When none were offered the meeting adjourned at 9:16 pm.

Respectfully submitted

Peggy Wang