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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, March 1, 2021

### Call to Order

The meeting was called to order at 7:31 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.

### Roll Call and Declaration of Quorum

Chair Snell recognized the required quorum of Members. Present were Members Travis Snell (Chair), Steven Hinton, 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 February 24, 2021

### Public Comment – 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 February 1, 2021 and February 8, 2021 as amended, Snell (aye), Crespo (aye), Hinton (aye), Lee (aye), Anderegg (aye) and Adams (aye).

### Old Business – Application 2102

Chair Snell reopened the public hearing that was continued on February 1, 2021 for the application of Eric Hamilton requesting a Variance, pursuant to Section 7.5, to build a deck 34 feet from the lot line where 40 feet is required under Section 4.3.2. The property is located within the Residence B District at 652 Lowell Street. Participation was entirely remote utilizing the teleconference application Zoom Meeting, there was no in-person attendance.

Present were the Applicant, Eric Hamilton, Secretary Peggy Wang and Mosquito reporter Wanda Avril. Secretary Wang reported that no correspondence had been received.

### Documents entered into the record

ZBA\_2102\_01 Certified Plot Plan prepared by Stephen J. Russo, P.L.S. dated December 17, 2021.

ZBA\_2102\_02 Photograph from the north side of the house showing the topography of the property.

### Applicant's testimony

The Applicant, Eric Hamilton, told the Board that there had been a deck attached to the house when he purchased it but it has been removed. He planned to build a new deck but not the same size or in the same location. After the old deck was removed and the new footing were put in place for the propose deck, Mr. Hamilton applied for a building permit. The Building Commissioner informed him that a variance is required to build the deck because the proposed location

encroaches into the lot line. Referring to the plot plan (ZBA\_2102\_01), the Applicant noted that the proposed deck encroaches the lot line on the south western side of his lot. The abutter's land at that point is a non-buildable sliver of land attached to his northerly neighbor on Lowell Street. When asked by the Board why he is not looking to move the deck farther in the south eastern direction, Mr. Hamilton said at 12 feet from the house, the property takes a steep decline and in that area are bushes and plantings that keep the soil from eroding. He showed the decline in a photograph (ZBA\_2102\_02). He was asked if he considered wrapping the proposed deck around the house to avoid the encroachment into the lot line. The Applicant said that the chimney and oil tank prevent him building next to the south western side of the house.

**Board's comments**

The Board asked the Applicant what hardship, financial or otherwise prevent him from building within the required distance from the lot line. Mr. Hamilton said the cost of the footings already poured cause a financial hardship and steep decline on the south eastern side of the house prevent building more than 12 feet into that direction. The location of the chimney and oil tank prevent building on the south western side of the house. The Board reviewed the plot plan (ZBA\_2102\_01) and asked the Applicant if the neighbor to the south was okay with the proposed deck. Mr. Hamilton said the neighbor to the north (the abutting southerly land) was okay with the proposed deck but that he had not spoken with the neighbor to the south whose property did not directly abut his property. The Board noted that no correspondence has been receive and no abutters were present at the public hearing. The Board also noted that the sliver of unbuildable land to the south acts as a buffer to the nearest neighbors to the south.

**Public comments**

When Chair Snell asked if there were any comments from the public and none were offered, Chair Snell moved and Member Anderegg seconded the motion to close the public hearing. The Board voted 6 to 0 in favor of the motion, Snell (aye), Hinton (aye), Crespo (aye), Lee (aye), Anderegg (aye) and Adams (aye).

**Deliberations**

The Members considered the hardship related to the investment of the footings that were already put in place and the unique situation of the abutter's unbuildable land that creates a buffer zone of privacy. They noted that the Applicant had considered all the different possibilities to not build in the setback, but none were viable. The Board discussed that a relief of 10 feet is greater than normally approved but they noted that each decision is unique. In this case the circumstance of the unbuildable abutting land creates a unique reason to approve the application.

**Decision**

Chair Snell moved, and Member Adams seconded the motion to grant the Variance for application 2102 under Section 7.5 to build a deck 29 ½ feet from the lot line where 40 feet is required under Section 4.3.2.

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, the motion was approve by a vote of 6 to 0 as follows:

Board of Appeals vote:

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

The Board informed the Applicant that by building the proposed deck in the setback, the existing conforming structure will become non-conforming and any future construction requiring a building permit will be subject to review and approval by the Zoning Board of Appeals.

### **Findings and Conditions**

In reaching their decision to approve, Members based their decision, in whole and in part, of the following findings:

1. Criteria 1: *“owing to circumstances relating to unique soil conditions, shape, or topography of such land or structures especially affecting such land or structures but not affecting generally zoning district in which it is located,”*

Due to the topography the propose structure cannot be built more than 12 feet from the eastern side of the existing structure and due to the location of the chimney and oil tank cannot be built on the southern side of the existing structure. The Board found that this criterion was satisfied.

2. Criteria 2: *“a literal enforcement of the provision of the ordinance or bylaw would involve substantial hardship financial of otherwise, to the petitioner or applicant,”*

The Board found that literal enforcement of the Bylaw would thereby involve substantial hardship to the Applicant.

3. Criteria 3: *“and that desirable relief may be granted without nullifying or substantially derogating from the intent of the purpose of such ordinance or bylaw.”*

The Board found no evidence that the construction of the deck in the proposed location created a substantial detriment to the public good. The Board noted that there was no opposition to the proposed structure, no correspondence was received, and no members of the public appeared/spoke at the hearing. They found that granting relief did not derogate from the propose of the Bylaw.

The decision is subject to the standard conditions and the following specific condition:

The proposed structure cannot be converted to habitable space without coming to the Zoning Board of Appeals.

### **Appeal**

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 filed within twenty (20) day of the filing of the Decision in the Office of the Town Clerk.

### **Application 2103**

Chair Snell reopened the public hearing that was continued on February 1, 2021 for the application of Peter Donohoe requesting a Special Permit under bylaw section 3.2.2.9 to continue teaching small group classes. The property is located within the Residence B District at 41 Trillium Way. Participation was entirely remote utilizing the teleconference application Zoom Meeting, there was no in-person attendance.

Present were the Applicant, Peter Donohoe, Secretary Peggy Wang and Mosquito reporter Wanda Avril. Secretary Wang reported that no correspondence had been received regarding the application.

### **Applicant’s testimony**

The Applicant, Peter Donohoe, told the Board that since early March of 2020 there have been no in-person group classes, group classes have been entirely on screen. There have been a few one-on-one sessions. He has done away with the spin classes for now and still wants to get back to in-person group classes once it will be allowed by the Governor.

### **Board’s comments and questions**

The Board asked the Applicant to comment about the screening that was planted after the 2017 decision. Mr. Donohoe said that the trees were a good addition, and he has not received any complaints from the neighbors. Member Hinton asked the Applicant if it is fair to say that you are not requesting any changes to the conditions that were in the 2018 decision. Mr. Donohoe responded that he is not asking for any changes.

### **Public comments**

When Chair Snell asked if there were any comments from the public and when none were offered, Snell made the motion and Anderegg seconded the motion to close the public hearing. The Board voted 6 to 0 in favor of the motion, Snell (aye), Hinton (aye), Crespo (aye), Adams (aye), Anderegg (aye) and Lee (aye).

### **Deliberations and decision**

The Board deliberated the case and determined it appropriate to grant the SPECIAL PERMIT for a period of three (3) years. Member Hinton made and Associate Member Eric Adams seconded the motion to grant the SPECIAL PERMIT to Peter Donohoe to teach small group classes for a period of three (3) years under the same conditions granted in BOA 1809 SP.

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

Board of Appeals vote:

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

### **The decision was based on the following findings:**

- 1) The business is operating in compliance with the 2018 conditions and has not grown since 2018.
- 2) A Special Permit is necessary to operate a business in the Residence B District under the terms of Zoning Bylaw section 3.2.2.9.
- 3) The Applicant is a resident of the premises as required under Zoning Bylaw Section 3.2.2.9.
- 4) There is adequate off-street parking for ten (10) cars.
- 5) The plans presented at the hearing are not detrimental to the neighborhood.
- 6) No abutters were present at the hearing and no correspondence was received.
- 7) There have been no complaints filed with the Building Commissioner regarding the operation of the business since the 2018 public hearing.

### **The decision is subject to the following conditions:**

- 1) The hours of operation for the business shall be:  
Personal Training and Group Classes – Monday through Saturday – 9:00 am to 8:00 pm.  
One-on-One individual training sessions – Monday through Saturday – 7:00 am to 8:00 pm.
- 2) A maximum of ten (10) clients on the property at any time.
- 3) A maximum of two (2) instructors on the property at any time.
- 4) All cars related to the business shall be parked off-street.
- 5) The business shall not operate as a nuisance.
- 6) This Special Permit is granted to the business owner Peter Donohoe operating under the name of “Donohoe Training at the Barn” only and cannot be transferred to any other person(s) through sale or assign.
- 7) The permit is granted for a period of three (3) years to expire on October 4, 2023.
- 8) This Decision does not relieve the Petitioner of complying with all other applicable federal, state, or local statutes, ordinances or bylaws and/or regulations.
- 9) Violations of any conditions contained herein or failure to comply with the Special Permit shall be subject the Applicant to zoning enforcement action in accordance with the remedies set forth in G.L.c. 40A.

### **Appeal**

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 filed within twenty (20) days of the filing of this Decision in the Office of the Town Clerk.

### **Adjournment**

Chair Snell asked those present if there were any additional issues to discuss. When none were offered the meeting adjourned at 8:35 pm.

Respectfully Submitted - Peggy Wang

27-55-0

N/F WING WA WONG  
HOVILLE  
BK.29446 PG.213

S 04°18'00" E  
150.00'

# CERTIFIED PLOT PLAN

IN  
**CARLISLE**  
SHOWING  
**PROPOSED DECK**  
AT  
**652 LOWELL RD.**



**LOT G**

45,000 S.F.

27-56-6

**RECORD OWNER**

ERIC J. AND COLLEEN E.  
HAMILTON  
BK.29755 PG.156

**BASIS OF BEARINGS**

1934 COUNTY LAYOUT

**PLAN REFERENCES**

PL.BK. 86 PLAN 35B  
PL.BK. 124 PLAN 87  
PL.BK. 182 PLAN 47

**CARLISLE  
ZONING DISTRICT B**

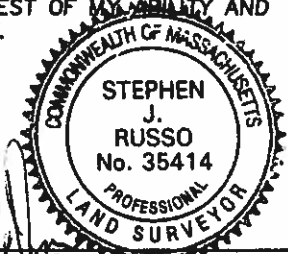
**MINIMUM REQUIREMENTS (REQ.)**

LOT AREA	2 AC.
FRONTAGE	250'
FRONT	40'
SIDE	40'
REAR	40'
BLDG. COVERAGE (MAX)	25%

27-57-0

N/F KIM L. CRONIN  
BK.21454 PG.263

I CERTIFY:  
THAT THIS ACTUAL SURVEY WAS  
MADE ON THE GROUND ON DEC.  
9, 2020 AND THAT THE  
STRUCTURES AND MONUMENTS  
ARE LOCATED AS SHOWN TO  
THE BEST OF MY ABILITY AND  
BELIEF.



STEPHEN J. RUSSO, P.L.S.

N 85°42'00" E  
300.00'

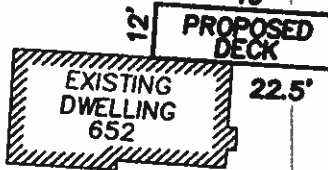
BUILDING SETBACK  
LINE (TYP.)

BUILDING SETBACK  
LINE (TYP.)

300.00'

S 85°42'00" W

40' 29.7'



S 76°22'12" E  
64.63'

S 78°57'44" E  
43.77'  
38.48' SB FND.

I.P. FND.

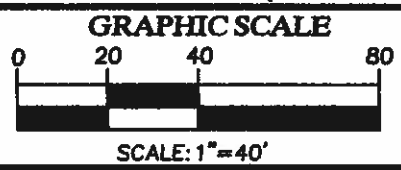
I.P. FND.

150.00'

N 04°18'00" W

**LOWELL (1934 COUNTY L.O.) ROAD**

**STEPHEN J. RUSSO, P.L.S.**  
LAND SURVEYOR  
17 HART PL. WOBURN, MA 01801  
1-781-935-5579



SCALE: 1" = 40'  
DATE: DEC. 17, 2020

2BA-2102-01

FW: 3/1/21 ZBA meeting

Peggy Wang <pwang@carlslema.gov>

Sun 2/28/2021 12:52 PM

To: travsnell@yahoo.com <travsnell@yahoo.com>; eecrespo@comcast.net <eecrespo@comcast.net>; Jay Lee <jllee1@yahoo.com>; Adam <en@adamsbeasley.com>; Gretchen An <ereg@rechenandereg@aol.com>  
Cc: Zoning Board of Appeals <zba@carlslema.gov>

This is an email with a photograph from Eric Hamilton regarding his application for a variance.

From: Eric Hamilton <eric@hamilton1@gmail.com>

Sent: Thursday, February 25, 2021 3:31 PM

To: Peggy Wang <pwang@carlslema.gov>

Cc: eric.hamilton@us.af.mil

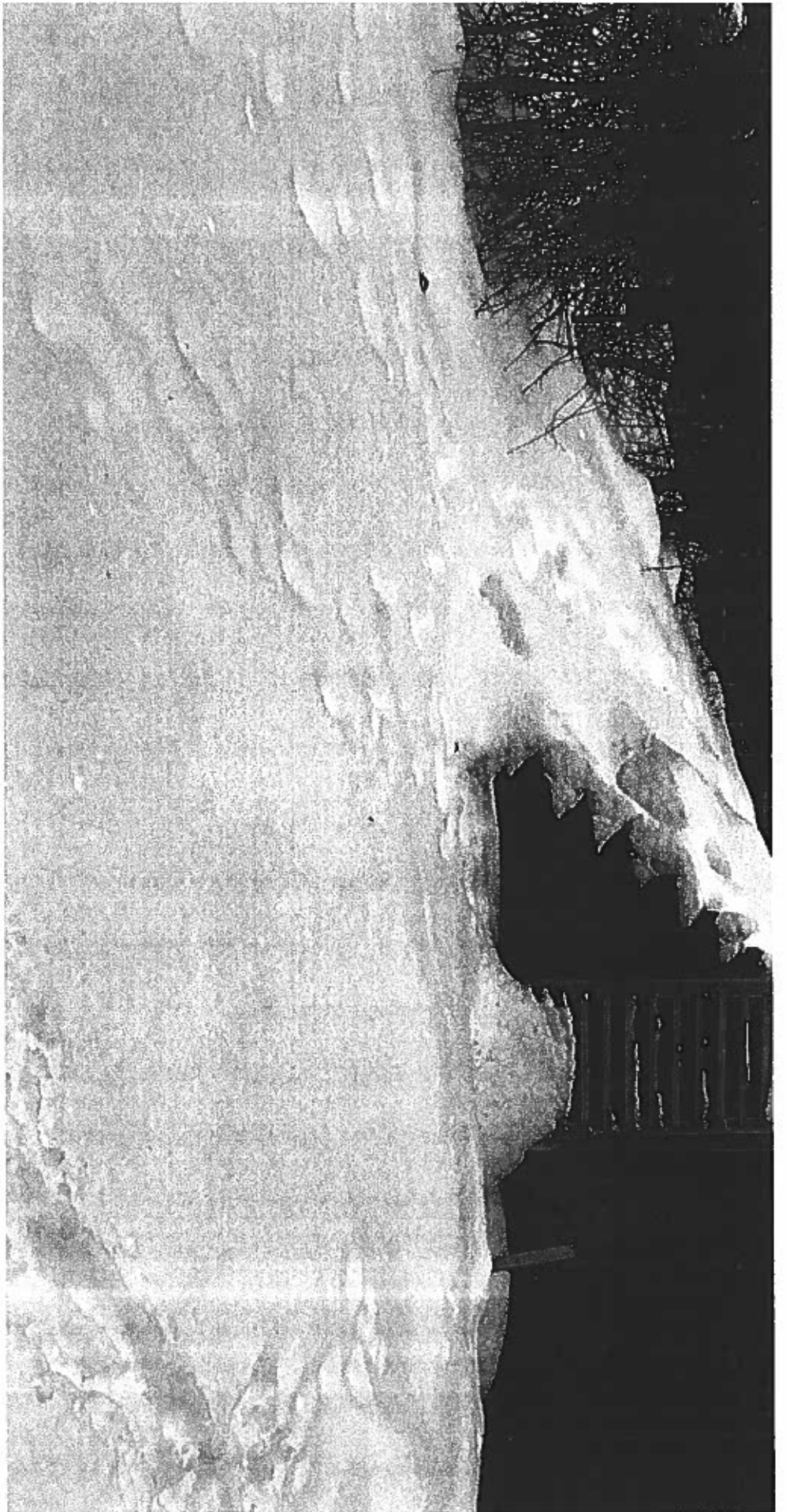
Subject: Re: 3/1/21 ZBA meeting

Thank you Peggy, you also asked for what constraints I have on the deck - please find a picture from the north side of the house, you will see after 10 feet from the house, there is a dropoff with trees and to age that would need to remove and bury large footings on a slope to continue in that direction any more than 12 feet. That would accelerate erosion on that slope, and reduce the stability of the structure.



Page 1 of 2

ZBA-2102-01



Thanks!

Eric

Sent from my iPhone

On Feb 25, 2021, at 11:00 AM, Peggy Wang <[pwang@catlslema.gov](mailto:pwang@catlslema.gov)> wrote:

Mr. Hamilton,

Here is the link to the 3/1/21 ZBA meeting for your application.

Regards,

Peggy Wang  
ZBA Admin Assistant