

Topsfield Zoning Board of Appeals
September 22, 2009

Chairman Moriarty called the meeting to order at 8:00 PM. Board members present were Bob Moriarty, Kristin Palace, Tony Penta, Lisa Stern-Taylor and Scott Dow. Roberta Knight, Community Development Coordinator was also present as well as the applicants, their representatives and interested residents. See attendance sheets for specific public hearings.

Historical Commission / Significant Structures Re Joint Jurisdictional Issues: At this time, Selectman Martha Morrison and Historical Commission members Kindra Clineff, Mary Ferrill and Daniel Phipot met with the Board to discuss better communications concerning issues that involve jurisdictional matters for both boards. The two boards tend to interface on jurisdictional issues concerning non-conforming properties, significant structures and the Demolition Delay By-law.

Chairman Moriarty noted that the Zoning Board has jurisdiction concerning non-conforming properties under the Zoning Bylaw. The owners of these properties have associated rights. If a structure on a non-conforming lot is removed from the property under the Demolition Delay Bylaw instead of being demolished, the property owner may lose the “footprint” rights for re-development of the property. Another issue that may involve both boards is when the ZBA is requested to review an addition to a significant structure. Chairman Moriarty noted that the Zoning Board is not a design board and would take input from the Historical Commission when considering renovations to a non-conforming structure. It was agreed that both Boards would work to develop a better mechanism to facilitate an interface between the boards concerning properties with joint jurisdictional issues under the respective bylaws; and work to develop procedures with the Inspectional Services Department that would coordinate with the issuance of an occupancy permit.

Selectman Morrison noted that the Historical Commission would like to amend and “clean-up” the Demolition Delay By-law which has impact on property rights. She requested that the Zoning Board review the Bylaw and proposed amendments relative to process and procedures.

1 Howlett Street / Topsfield Historical Society / Parson Capen House: At 8:30PM, Chairman Moriarty called to order the public hearing to consider the application of appeal by the Topsfield Historical Society concerning the denial by the Topsfield Inspector of Buildings relative to the enforcement of the Zoning By-laws pursuant to Article III, Table of Use Regulations to allow a mixed use at 1 Howlett Street located in the Central Residential District with the addition of a single family apartment to be constructed at the Parson Capen House, classified under Section 2 Community Facilities, Sub-Section 2.8 Museum.

Norman Isler, a member of the Topsfield Historical Society, represented the Applicant. He explained that until the early 1970's the Parson Capen house contained a residential living unit which was used by a caretaker. The use was discontinued in order to house the Society's historical records, as the Society had no other place for those records. Mr. Isler noted that the Society would like to once again have a live-in custodian at the Parson Capen House in order to accommodate and educate visitors beyond the current limited museum schedule. The site is particularly popular with architecture majors who wish to tour the house. Having someone on the site would greatly facilitate the educational process relative to historical information concerning the house, its architectural features and its historic role in pre American history. Mr. Isler requested on behalf of the Society that the Zoning Board consider its application of appeal of the Inspector of Building's decision, and sought approval for the re-instatement of the residential use classification for the Parson Capen House.

Chairman Moriarty noted that the Zoning By-law does not allow multiple uses on the same piece of property in the residential districts, nor does the Board have the authority to grant use variances. Further, the Bylaw does not allow the residential use as an accessory use to the museum. Only in-law apartments are allowed with specific conditions. However, Chairman Moriarty noted that under M.G.L. Chapter 40A, Section 3, the so-called "Dover Amendment", local zoning bylaws are limited to regulate uses for non-profit educational organizations. The Society would need to demonstrate its status as an educational non-profit organization.

Mr. Isler noted that the Society is organized as a non-profit corporation and is certified as a charitable organization under IRC 501(c)(3). Mr. Isler provided details as to the Society's history and its educational component. Among other educational endeavors, the Society has provided docent services for visitors, provides educational programs for the local schools and members of the public and has published two books relative to the recording of the history of Topsfield and is executor of the John Kimball Foundation that provided financial aid to students of history. William Whiting, who is also a member of the Society, described the recent programs of the Society to publish information about the Capen House and the other holdings of the Society on the Internet with the intent to make such material available for educational and research purposes.

Abutter Bob Guiggey queried as to whether the addition would alter the original structure's historical significance and its inclusion on the National Historic Register. Chairman Moriarty noted that the design was not under the Board's jurisdiction. The Historical Commission would review that issue since the location of the property is in the Historic District.

Chairman Moriarty noted that the sense of the Board is that the use of the "house" falls within the intent of the Dover Amendment. The Inspector of Buildings may look at the renovations for the addition in terms of site plan review. The Society may again need to apply to the Board; however, the Inspector of Buildings would make that determination.

Chairman Moriarty made the motion to overturn the decision of the Inspector of Buildings that a use variance is required for the addition of the residential unit on the basis that the Applicant is a non-profit organization subject to the Dover Amendment, M.G.L. Chapter 40A, Section 3, and thus use is not subject to regulation; seconded by Member Kristin Palace; so voted 5-0.

126 Main Street: At 9:20PM, Chairman Moriarty called to order the public hearing to consider the application of Sarah Schultze for a finding pursuant to Article III, Section 3.05 of the Zoning By-Law for 126 Main Street for the renovation of an existing non-conforming structure by the alteration of the roofline with the addition of two front dormers and a full back shed dormer and for the construction of a two-car detached garage.

The Applicant Sarah Schultze reviewed her application with the Board. Although she applied for a finding for a two-car garage, Ms. Schultze explored alternative options with the Board. The first option discussed was for a one-car attached garage along the front of the house with same front set back. The Board rejected this option since it would make the existing non-conforming structure more non-conforming. Ms. Schultze explored a second alternative option of a one-car attached garage to the back of the house. The Board then reviewed the submitted proposal for a two-car detached garage. The members suggested that the Applicant look at constructing a one-car detached garage instead of the two-car garage due to the small lot size with a building area constricted by the septic system, wetlands, and a common driveway. The Board advised the Applicant to engage the services of a professional engineer to develop an engineering plan showing the location of the garage relative to setbacks, turning radii and driveway easement for either options of a detached or attached rear garage. The plan should not adversely impact the neighbors that share the common driveway. The Board requested to see the described terms of the easement for the common drive.

The discussion then centered on the dormers. Ms. Schultze informed the Board that she was no longer considering the construction of the rear shed dormer. She would like to move forward with the construction of two gable dormers on the front roofline similar in size and shape to the existing front dormer. Both the Board and members of the Historical Commission who were present for the hearing agreed that they would need to review a detailed architectural drawing before respective decisions would be rendered.

The Board approved the continuance of the public hearing on both issues; however, the Board informed Ms. Schultze that a separate application must be filed if she chose to pursue the construction of a one-car attached garage.

Chairman Moriarty made the motion to continue the public hearing to November 24, 2009; seconded by Member Lisa Taylor; so voted 5-0.

Station Sweet Shoppe: At this time, Ms. Knight informed the Board that the Station Sweet Shoppe plans to move its location to the Village Shopping Center, and she was asked to query the Board as to whether the owner would need to file a new application for a special permit. The Board reviewed the special permit for the Sweet Shoppe at the 7 Grove location and noted that the decision was both particular to the ownership and location. Therefore, any change in location would require a new application for a special permit.

The meeting was adjourned at 10:10 PM.

Respectively submitted,

Roberta M. Knight
Community Development Coordinator