

OFFICE OF TOWN CLERK  
8 WEST COMMON STREET  
TOPSFIELD, MASSACHUSETTS 01983  
TELEPHONE NUMBER: 978-887-1505

REGISTRY RECORDING INFORMATION

CERTIFICATE OF NO APPEAL

November 23, 2009

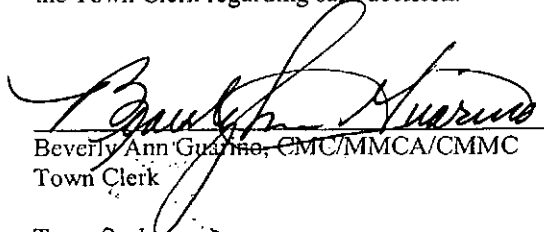
Mr. Norman Isler, President  
Topsfield Historical Society  
135 Perkins Row  
Topsfield, MA 01983

RE: 1 Howlett Street  
Topsfield, MA 01983

To Whom It May Concern:

I, Beverly Ann Guarino, the duly elected Town Clerk of the Town of Topsfield, do hereby certify that the Zoning Board of Appeals overruled the denial of the Inspector of Buildings based on the Board's interpretation of M.G.L. Chapter 40A, Section 3 whereby local zoning by-laws may not restrict the use of land or structures for educational purposes by non-profit educational corporations. A copy of said decision is attached.

The decision dated Tuesday, November 3, 2009 was filed with the Town Clerk of the Town of Topsfield on Tuesday, November 3, 2009 at 9:44 a.m. Further, I state that the required twenty (20) days have lapsed since said date and no appeal has been filed with the Town Clerk regarding said decision.

  
Beverly Ann Guarino, CMC/MMCA/CMMC  
Town Clerk

Town Seal

c: Chairman Topsfield Zoning Board of Appeals  
Chairman Topsfield Planning Board  
Inspector of Buildings  
Principal Assessor  
Community Development Coordinator  
Topsfield Historical Society



508883 (1203) Blch:287764  
Southern Essex District Registry  
4/30/2010 10:24 AM DCSN Pg: 1/5



## Topsfield Zoning Board of Appeals

### Certificate of Decision

**Property Address: 1 Howlett Street**

**Applicant: Topsfield Historical Society**

RECEIVED OFFICE OF TOWN CLERK  
Topsfield, MA 01983

Date *Nov. 3, 2009* Time *9:44 AM*  
*Beverly Ann Guarino*  
Beverly Ann Guarino,  
Town Clerk

DATE: *10.23.2009*  
A TRUE COPY  
ATTEST

*Beverly Ann Guarino*  
Town Clerk  
Topsfield, MA 01983

Appeal of Inspector of Buildings Decision pursuant to M.G.L. Chapter 40A, Section 15: Appeal of Inspector of Buildings decision dated August 11, 2009 pursuant to Article III, Table of Use Regulations to deny the allowance of 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.

**Hearing Date: September 22, 2009**

### The Application

An application was filed on August 25, 2009 with the Topsfield Town Clerk by the Applicant for an appeal relative to the decision by the Topsfield Inspector of Buildings to deny a request for a building permit to demolish the library building and construct a single family apartment attached to the back of the Parson Capon House. The Inspector of Buildings determined, in a decision dated August 11, 2009, that the construction of the residential unit would constitute the creation of a mixed use property at 1 Howlett Street which is in the Central Residential District. The Parson Capen House is currently classified as a museum under the Topsfield Zoning By-law Article III, Table of Use Regulations Section 2, Community Facilities, Sub-section 2.08. The Central Residential District does not allow mixed uses on a single property.

### 1. The Hearing

Pursuant to duly published notices in the Tri-Town Transcript on September 4, 2009 and September 11, 2009 and mailings sent to all abutters on the List of Abutters certified by the Assessors, a public hearing was held on the Hearing Date.

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.

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.

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 may not restrict the use of land or structures for educational purposes by non-profit educational corporations.

## 2. Decision

After due consideration of the Application and the testimony presented at the Hearing, the Board overruled the decision of the Inspector of Buildings to deny the allowance of a mixed use at 1 Howlett Street and that a variance would be required for the addition of a single family apartment to the Parson Capen House. The Board based its decision on its interpretation of M.G.L. Chapter 40A, Section 3, commonly known as the "Dover Amendment" that places limitations on local zoning bylaws to regulate uses for non-profit educational corporations. The Board determined that the Society demonstrated its status as a non-profit educational organization and therefore the mixed use was not subject to regulation.

Moriarty, Chairman	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Absent/Abstain
Dow, Member	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Absent/Abstain
Palace, Member	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Absent/Abstain
Stern-Taylor, Clerk	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Absent/Abstain
Penta, Member	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Absent/Abstain

## 3. Appeals

Appeals of the above decision shall be filed pursuant to M.G.L. 40A, § 17 within 20 days of the date of filing of this certificate with the Topsfield Town Clerk.

4. **Validation**

This Decision shall be recorded at the Essex Southern District Registry of Deeds and shall not be effective until such time as evidence thereof shall be submitted to the Topsfield Town Clerk and the Building Inspector.

**Dated: November 3, 2009**

Respectfully submitted:

A handwritten signature in black ink, appearing to read "R. Moriarty, Jr.", written over a horizontal line.

Robert J. Moriarty, Jr.  
Chairman

Document: 508883

DCSN

ESSEX SOUTHERN DISTRICT REGISTRY OF DEEDS  
RECEIVED FOR REGISTRATION

On: 4/30/2010 10:24 AM

Noted on Cert: 1203