

Approved: May 28, 2014

New Castle Planning Board Meeting  
Wednesday April 23, 2014  
7 PM – Town Hall

**Public Hearing: Conditional Use Permit 9.2.5, changes to an existing residential structure within the 100' setback. Applicant: Clarissa Christensen, 87 Piscataqua Street, Map 17, Lot 37 & 38.**

**Members Present:** Chair Darcy Horgan, Ned Robinson, David Houston, Patty Cohen, David McArdle, Eric Katz

**Members Not Present:** Kate Murray

**Also Present:** David Borden, Nancy Borden, Bernie Pelech, Trudy Hodginson, Perri Purcell, John Chagnon, Michael McAndrew, Ann McAndrew, Andy Schulte, Steven Cook

Chair Horgan called the April 23, 2014 meeting of the New Castle Planning Board to order at 7:00 pm and noted that the voting members for the evening would be herself, Eric Katz, Patty Cohen, Ned Robinson and David McArdle.

1. Public Hearing for applicant: Clarissa Christensen, 87 Piscataqua Street, Map 17, Lot 37 & 38. Conditional use Permit 9.2.5, changes to an existing residential structure within the 100' setback.

Chair Horgan noted that all abutters of this property have been notified and the appropriate fees have been paid.

Attorney Bernie Pelech said he is speaking on behalf of Ms. Christensen. He said he would briefly go through the history of the conditional use permit application. Attorney Pelech said the process began with the Conservation Commission holding a site walk and discussing the application during two meetings. He noted that at the Conservation Commission's April meeting they voted unanimously to recommend approval of the application to the Planning Board and the Zoning Board of Adjustment. Attorney Pelech said that the Conservation Commission was impressed with the work done by John Chagnon in managing the storm water runoff and reducing the impervious surface amount within the setback. He noted that the non-conforming property is now becoming more conforming. Attorney Pelech said the applicant went before the Zoning Board who granted the necessary variances. He noted that both boards (Conservation Commission and ZBA) mentioned that the reduction of the impervious coverage within the 100 foot buffer as well as the efforts to mitigate storm water runoff were important in their

recommending approval. Attorney Pelech said that Mr. Chagnon would go through the technical aspects of the application.

John Chagnon said he prepared the application that is before the Planning Board. He said the application was submitted in March and then updated at the beginning of April. Mr. Chagnon said they are asking the Planning Board for approval of the conditional use permit with regard to the 9.2.8.2 of the ordinance for construction at 87 Piscataqua Street. He said the property is two houses located at 87 and 85 Piscataqua Street. Mr. Chagnon said the project is a partial tear down and replacement of the structure at 87 Piscataqua Street. He said the new construction starts at 80 feet from the resource line, noting that there will also be some utility work done to better access the electrical services. Mr. Chagnon said currently the utility pole used is on the northwest corner which feeds underground to the property. He said their electrician has determined that it would be better to bring the service from the pole on the southeast side of the lot to the northeast corner of the building. Mr. Chagnon said there will be some temporary impact in this area between the 50 and 100 foot setback regarding this connection of the utilities. He said there will also be some minor grading done within the 50 foot setback along the front of the house. Mr. Chagnon explained that the property is currently in the flood zone so a portion of it will be raised six inches to protect it from rising waters. He explained that the project proposes to reconfigure and redo the driveway which serves both homes. Mr. Chagnon said the driveway currently dead-ends and they would like to expand that. He said the driveway is included in the coverage calculations. Mr. Chagnon said in order to mitigate the expanded driveway they propose to construct a porous area in front of the garages to infiltrate storm water. He explained that the submitted application package includes a letter from him addressing the justifications for the conditional use permit, site photographs, a copy of the natural heritage inventory report which indicates there is no presence of endangered or other rare species that might be potentially harmed by the project, a copy of the shoreland permit covering the work on the entirety of the lot; including the construction of the replacement home in the back (which is outside of the 100 foot setback, but within the 250 foot shoreland zone – permit has been granted). Mr. Chagnon said as a result of using the porous technology and managing stormwater (with drip aprons at the house site, buffer plantings and porous driveway and patios) there is also a storm water management and maintenance program included in the package. He explained that the sheet C1 is dated January 29, 2014, sheet C2 is dated March 28, 2014, sheet C3 is dated March 28, 2014 and sheets D1 and D2 are January 29, 2014. Mr. Chagnon said the application has been reviewed by the Conservation Commission and they recommended approval of these sheets. He said no changes have been made since that meeting; he explained that the wetland application is pending (because the property is adjacent to and working within the 50 foot setback there is a 75 day approval process), but the Conservation Commission recommended to DES that they approve the project. Mr. Chagnon pointed out that some existing nonconformity with the property will be removed with the proposed changes. He said it makes sense to reuse the existing house site even though it is within the 50 foot buffer. Mr. Chagnon said the proposed project will not increase the disturbance toward the resource since the project is moving away from the resource. He said the proposed project will reduce the square footage of impervious area within the buffer. Mr. Chagnon said the proposed project will maintain the existing buffer plantings to the west of the wall and that the grounds that are disturbed due to the utility impact will be restored. He said there are no hazards to the public created by this project.

Chair Horgan thanked Mr. Chagnon and Attorney Pelech for their presentation. She asked the board members if they had any questions regarding the proposed project.

Patty Cohen asked if the reduction of 55 square feet of impervious area reflects the structure of the home itself or if it includes the surface outside of the driveway and with the creation of the driveway.

Mr. Chagnon said the reduction of impervious surface is within the 100 foot setback. He said the reduction occurs due to the construction of the brick walkway being constructed where formerly there was a structure located.

Ms. Cohen noted that the project proposes creating a large driveway within the 100 foot setback. She said she is curious about that impact and if that is included in the coverage calculations.

Mr. Chagnon responded that the driveway is included in the coverage calculations. He said that the current driveway is 1300 square feet and the proposed driveway is 2400 square feet.

Ms. Cohen said the property currently has an impervious coverage of 5100 square feet and the proposed project has an impervious coverage of 6300 square feet; which is an increase.

Mr. Chagnon agreed that there is an overall increase in impervious coverage on the lot; but there is a reduction of impervious coverage within the 100 foot setback.

Ms. Cohen asked if the Conservation Commission noted any conditions when recommending approval of the application.

Chair Horgan said no conditions were expressed by the Conservation Commission.

Eric Katz asked what the driveway is proposed to be constructed of.

Mr. Chagnon said it will be constructed with gravel, but that is considered to be an impervious surface and has been included in the impervious coverage calculations.

Mr. Katz asked if porous pavement would be a better design for the driveway.

Mr. Chagnon said the site is not suited for the porous material.

Mr. Katz asked how the porous apron will be constructed in front of the garage if the area is not suited for the porous materials.

Mr. Chagnon said the grade of the area in front of the garage will be raised; which will provide enough space for the storage materials needed for the porous pavement.

Ned Robinson said during the Zoning Board of Adjustment meeting there was a representation made that the applicant was exploring the idea of a pervious driveway.

Attorney Pelech showed the existing conditions and the proposed conditions. He explained that a small section of the existing home will be removed to bring it more into compliance with the zoning ordinance. Attorney Pelech noted that 90% of the garage will be constructed outside of the buffer and that a porous walkway and porous driveway apron will be constructed, resulting in a 55% reduction of impervious surface within the 100 foot buffer.

Chair Horgan noted that the majority of the driveway that is being added is located outside of the 100 foot setback. She asked if the change in grade is being done due to FEMA regulations and if the planting around the house will be removed and then replanted after the re-grading is completed.

Mr. Chagnon said the change in grade is being done to comply with FEMA regulations and that the buffer plantings will be removed and then replanted.

David McArdle noted that the six inch change to the grade will bring it to the 2005 FEMA requirements of eleven feet. He noted that when the project was proposed FEMA was working off of the 2005 maps, but just recently (last week) new maps were released by FEMA which changes the required elevation. Mr. McArdle did note that the project is only required to comply with the regulations at the time of application.

Chair Horgan asked if there were any other question from the members regarding the application, there were none.

Chair Horgan opened the Public Hearing for the property located at 87 Piscataqua Street at 7:26pm.

There were no comments from the public.

Chair Horgan closed the Public Hearing for the property located at 87 Piscataqua Street at 7:26 pm.

Attorney Pelech circulated the structure design presently pending before the Historic District Commission. He noted that the applicant met with the Historic District Commission once.

Chair Horgan noted that she attended the site walk of the property with the Conservation Commission. She explained that the members had questions about the utilities which were addressed and resolved. Chair Horgan said the project currently has a non-conforming structure on it and the proposed project will make it a less non-conforming structure. She said the impacts are minimal and the building inspector will be tracking the conservation mitigation factors during construction.

Ms. Cohen said she is concerned about the increasing amount of impervious surface because the Town of New Castle currently has 41% impervious coverage. She said this is the highest in the state of New Hampshire. Ms. Cohen said she is aware that this project reduces the impervious coverage within the buffer, but the overall coverage of the lot is increasing. Ms. Cohen suggested that in the future the Town may want to review this concern with regard to their

ordinances. She said the high percentage of impervious coverage is of concern when there are major storm events and water runoff.

David Houston asked if the garage will be a one car or a two car garage. He noted the design of the garage looks like it is not flush with the house.

Attorney Pelech said it will be a one car garage, but the Historic District Commission requested that the façade of the garage not be flush with the house. He said it will not increase the square footage and is located out of the buffer area.

*Eric Katz MOVED to approve the application for a conditional use permit for Clarissa Christensen's property at 87 Piscataqua Road, map 17, lots 37 and 38, based upon the application dated 4/14 and the appropriate plan sets pending approval by DES; this was SECONDED by Ned Robinson and APPROVED unanimously.*

2. Review of Henry's Market's previous Land Use Approvals and Conditions per the Notice of Decision instructions from the ZBA meeting on March 20, 2014.

Chair Horgan said that this will not be a Public Hearing, but will be a review and discussion of the history of Henry's Market. She explained that Henry's has applied for a liquor license to sell beer and wine for consumption on the property and this started a process within the town. Chair Horgan said the State Liquor Commission asked the Select Board to submit a letter with their opinion of this request. She said the Select Board noted that there is an ordinance in Town that forbids the sale of alcohol in the zone that Henry's is located so they sent Henry's to the Zoning Board of Adjustment to see if they could get a variance.

Chair Horgan reported that the ZBA did approve the variance to sell alcohol at Henry's; however the ZBA as part of their approval, asked the Planning Board to review all past approvals by land use boards in town to see if Henry's is in compliance with all the past approvals and for the Planning Board to communicate to the Select Board the result of that review so the Select Board can then in turn write an opinion to the Liquor Commission. Chair Horgan noted that she sent a packet to all Planning Board members as well as Henry's with that information. She said this is an unusual procedure and something that is normally not done at the Planning Board level. Chair Horgan said she hopes to have a discussion and that there will be no vote or approval at this meeting, but the result will be what the Planning Board writes in their letter to the Select Board. She reported that the packet distributed includes the notice of decision from the ZBA; a synopsis of all of the minutes from the prior ZBA and Planning Board minutes; an email to the Code Enforcement Officer, Don Graves, asking him to review the synopsis for compliance and his response based upon his review.

Mr. Katz said that Henry's was previously granted relief from the prohibition of serving beer wine and liquor and were allowed to have "tastings" from Labor Day through Memorial Day. He asked if that restriction still applies.

Mr. Robinson said the prohibition was removed due to the approval of the variance.

Mr. Katz asked if that allows them to serve alcohol indoors and outdoors.

Mr. Robinson said the serving of alcohol will be governed by how many chairs there are indoor and outdoor. He said serving alcohol outdoors was not specifically mentioned in the ZBA motion.

Mr. Katz said the variance states that they may serve alcohol only in the footprint that was previously approved through the previous variance. He asked if the outside seating was approved through a variance.

Chair Horgan said she believes the intent of the ZBA was to allow alcohol to be served inside only.

Mr. Robinson agreed that he believes that was the intent of the ZBA motion, but noted that it was not specifically stated in the motion.

David McArdle said that the wording is vague and he interprets it to say that alcohol may be served inside and outside.

Mr. Robinson agreed that the wording could be interpreted that way.

Mr. McArdle said there may be state laws regarding serving alcohol outside that Henry's would need to comply with.

Mr. Robinson said there was mention made of the fact that each person who is served may need a chair to sit on. He said he is not aware if that is a State requirement or not.

Chair Horgan noted again that the wording of the motion was; "...serving of beer and wine will be limited to the existing area of the establishment to which variances have been given...".

Mr. Katz asked if Henry's was given a variance to serve outside or if the approval to serve outside came through the Planning Board.

Mr. Robinson said he believes the ZBA assumed that the serving of alcohol would occur indoors, but this was not spelled out.

Ms. Cohen said the serving of alcohol (for "tastings") was allowed in the zoning ordinance book and the Town voted on this change. She said she believes the intent was to allow it indoors only unless the ZBA gave a specific variance to serve outdoors.

Mr. McArdle suggested that the letter from the Select Board to the State Liquor Commission could address this issue.

Mr. Katz said a presumption cannot be made. He said if there was a variance to allow seating outside, then that would fall under the decision that it is an existing area of the establishment.

Mr. Katz said the Planning Board needs to be clear in its letter to the Select Board about this issue.

Mr. Robinson said he believes it was the intent of the ZBA members that voted in favor of the variance to allow the serving of alcohol indoor only.

Chair Horgan confirmed it was a Planning Board decision on August 9, 2009 to allow the outside seating.

Mr. Katz said if it was a Planning Board decision to allow the outside seating, it does not fall under the jurisdiction of the variance so they would not be allowed to serve alcohol outside.

Chair Horgan said the Planning Board should make note in their letter to the Select Board that beer and wine should only be served inside.

Ms. Cohen said there may be additional State regulations to serving alcohol outside also.

Perri Purcell, the manager of Henry's, said that in the Town of Portsmouth if the restaurant owns the property where tables are located outside it is a different permit than if the town owns the property where the tables are located.

David Houston asked if it is their intent to serve alcohol outside.

Ms. Purcell said it is their intent to serve alcohol wherever there is seating.

Trudy Hodginson, an employee at Henry's noted that the restriction of the seating is still present. She noted that the outdoor seating is part of the premises and not Town property.

Chair Horgan suggested expanding the discussion for the moment and returning to this issue later in the evening. She noted that she emailed the Code Enforcement Officer, Don Graves, and asked him to review the approvals that were given to Henry's and to inspect Henry's to see if they were in compliance with all the approvals. Chair Horgan said that Mr. Graves did this and responded with an email to her with what he found. She invited Henry's to respond to that email and Mr. Graves' findings.

Mr. Katz asked if this meeting is a Public Hearing or a work session with Henry's. He asked if anyone can add to the discussion.

Chair Horgan said she would welcome input from Henry's and from the public. She said the board does not need to hear endorsements for Henry's.

Chair Horgan summarized the approvals that Mr. Graves was asked to inspect: (1) there should only be nine seats, (2) including two tables and four chairs outside, (3) there should be two traffic bollards, (4) there should be no open flame for cooking, (5) there should be limited cooking equipment (convection oven and Panini press), (6) no cooking equipment requiring venting (7) no cooking that creates noxious vapors or odors, (8) hours of operation should be 6

am to 7 pm, (9) lighting should be consistent with sky friendly, (10)certain requirements regarding the stone wall and the cemetery.

Chair Horgan noted that Mr. Graves found Henry's not to be in compliance in the following areas: 1 and 2: Currently fourteen seats inside with two tables and four seats outside for a total of eighteen seats, 3: currently there are two residential lally columns located in front of the parking spaces; not traffic bollards, 4, 5, 6 and 7: there is a gas cooktop with an open flame and a fryolater – which requires a vent system and may produce noxious vapors or odors.

Chair Horgan asked Henry's to respond to these areas that were noted to be in non-compliance.

Nancy Bordan noted that she did not orient the Manager, Perri Purcell to the regulations and restrictions imposed by the Town. She said in response they have reduced the number of chairs to nine seats in total, and they are not currently using the gas top or the fryolater.

The members discussed the issue of the "lally columns". Mr. Borden noted that these began as a request from the former owner/manager of Henry's to install them and was not originally required by the Town. Mr. Katz and Ms. Cohen noted however that since the request was approved by the Planning Board and are part of the condition of approval they are required for the safety of the patrons in the establishment.

Ms. Cohen noted that she discussed the issue of the bollards with Mr. Graves, who noted that the residential lally columns are worthless in their role of creating a barrier between the parking space and the front of the building. She said if they are going to be located there they should be effective.

Mr. Robinson said it is in everyone's best interest to have protection there.

Ms. Cohen noted that the area around Henry's is more compact than normal. She said to her it is a safety issue and what is currently there should be replaced with appropriate traffic bollards.

Chair Horgan said that would need to be included in the Planning Board's letter to the Select Board.

The members discussed if the letter to the Select Board should only include the findings of the Code Enforcement Officer or if it should also include the opinions of the Planning Board.

Mr. McArdle said there is the issue of enforcement and the letter that the Planning Board will write to the Select Board. He said the issue of enforcement is not up to the Planning Board.

Chair Horgan noted that the ZBA asked the Planning Board to evaluate the situation and reply to the Select Board.

Mr. McArdle said the evaluation was done by Chair Horgan reviewing all prior approvals and requesting Mr. Graves to inspect Henry's with regard to the approvals.



Mr. Robinson noted that the Planning Board should not change what was approved five years ago with regard to the traffic bollards.

Ms. Cohen said a Public Hearing would be required to do that.

Chair Horgan summarized that with regard to the traffic bollard issue the Planning Board did a review and per the code enforcement officer's finding it was found that the current residential lally columns do not meet the standards of a traffic bollard and therefore do not meet the safety issues.

Mr. Katz said the Code Officer was asked to review Henry's with regard to the specific list of approvals. He said this was done, a list of areas that were in non-compliance was formulated and Henry's has made a statement with regard to what they have done to come into compliance in those areas. Mr. Katz suggested this be summarized and sent to the Select Board.

Ms. Cohen agreed.

Mr. Robinson said that was the thought of the ZBA when they requested the Planning Board's assistance with this issue.

Chair Horgan said that the notice of decision from the ZBA was to conduct a review.

Mr. Katz said he believes the issue of serving alcohol inside or outside should be the Select Board's concern.

Ms. Cohen said the Select Board will be concerned with understanding the intent of the ZBA in that matter.

Mr. Katz noted that the issue of parking has been raised again. He noted that if Henry's remains in compliance with the nine seats it is not in the Planning Board's jurisdiction.

Ms. Cohen said the number of seats was ascertained from the number of parking spaces available.

Chair Horgan asked if there was a desire from the members for further discussion.

Mr. Robinson said that the discussion will only be the Planning Board members expressing their opinions on Mr. Graves' response.

Chair Horgan said she believes it would be helpful to hear what Henry's has to say on any of the issues.

Mr. Robinson said he has no problem with hearing from Henry's.

Mr. McArdle said that the Planning Board has done what the ZBA requested and nothing further needs to be done.

Mr. Robinson said the intent of the ZBA was to have the Planning Board review the prior minutes to see what was outstanding and refer it to the code enforcement officer. He said Chair Horgan did what the ZBA requested and that review should assist the new manager on getting off on the right foot with regard to what the town expects.

David Borden said it is his intent to replace the residential lally columns with bollards.

Chair Horgan noted that Henry's is free to write a letter to the Select Board with regard to any of these issues.

Steven Cook introduced himself as a resident of New Castle and said he realizes it is the job of the Planning Board to provide a letter to the Select Board on these issues. He said that his children go to Henry's two or three times a week after school and that Henry's provides a sense of community to the town. Mr. Cook said he realizes the Planning Board has a responsibility with regard to the past approvals but said he does not envision anything negative coming from this request and said the vast majority of the town sees it as a positive addition to the town.

Chair Horgan thanked Mr. Cook. She said it is understood that the town considers it an instrumental part of our town, but that is not the issue the Planning Board is addressing. She said she would like to have the board discuss the issue of the stove top (which currently has been turned off). Chair Horgan said one of the past approvals was for "limited cooking equipment" which cannot have an open flame. She said it is likely that Henry's will ask to have an electric stove or stove top installed.

Ms. Cohen said whether or not they can have an electric stove or stove top is not in the purview of the Planning Board.

Dave McGuckin said since personnel from Henry's are present tonight, as a practical matter, it would be helpful to hear what direction they plan on going in and what they may request from the Town in the future.

Chair Horgan said since it is a discussion and not a decision making process, she would agree and allowed Henry's to make a statement.

Mr. Borden said they will comply with all approvals. He noted the business has gone through several iterations and is working well. Mr. Borden said the month of March was a good month, mainly because of the time that Ms. Purcell has been willing to put in and the great staff she has hired. He noted that the reducing of the number of seats does hurt the business but they will comply. Mr. Borden said being able to serve beer and wine will be a real plus and they are grateful for that. He said the number of chairs is related to the traffic and there has never been a problem with traffic and parking in six years. He said he does worry about safety and is hopeful that eventually the Select Board will encourage the State to put in a cross walk. Mr. Borden said they will need an electric stove or cooktop (with the proper hoods if needed) and will be careful about noxious fumes and odors.

Ms. Purcell said they will need a stove top to do what they have been doing. She said they cook lunches for the school three days a week and will need a long term solution for that as well as for catering. Ms. Purcell said she would be happy to use an electric stove and asked what procedure she should follow to get that approved.

Ms. Cohen advised her to go before the ZBA (they allowed the “limited cooking equipment of a Panini Press and a convection oven” on July 16, 2009) to request an amendment to that variance. She said because the variance specified the types of cooking equipment they will need to go to the ZBA for an amendment to the variance.

Mr. Robinson suggested meeting with the Fire Chief to discuss what they plan to do and get his support that the plan is safe before going to the ZBA.

The members had a lengthy discussion as to the meaning of the original wording of the variance regarding the “limited cooking equipment” and whether it excludes the use of a cook top without an open flame that does not require venting.

The members discussed at length the procedure needed to be followed by Henry’s with regard to cooking equipment. It was noted that the Code Enforcement Officer may feel that the interpretation of the variance may require input by the ZBA and he may not be able to make a final determination. It was also noted that if the Fire Chief and the Code Enforcement Officer feel what is being proposed by Henry’s is safe and meets all codes and variance requirements they can approve the plan without needing to go back to the ZBA for further input.

Mr. Katz noted that the Building Inspector has been provided all the pertinent information of this issue and he should be able to determine if he feels a plan meets approval or needs further input from the ZBA.

Mr. McArdle said if he were the building inspector he would refer it back to the ZBA since they are the ones who know what their intent was.

Mr. Robinson explained that the ZBA is an appellate review board that should not be creating something that needs to be reviewed. He said the ZBA waits for the Building Inspector to say that a project is not acceptable and then the ZBA has the jurisdiction to either reverse him or to go along with him. Mr. Robinson said it is not their place to decide what the Building Inspector will say.

Ms. Cohen noted that the variance had a very specific motion from the ZBA, so Mr. Graves may refer the issue back to the ZBA for review.

Ms. Cohen said Henry’s will need to decide how they want to move forward and then present it to the appropriate bodies. She said it may need to go back to the ZBA depending upon Mr. Grave’s determination. She noted however, that the issue of not creating noxious odors and vapors is also part of the approval.

Chair Horgan noted that when you cook on a stove top you do not necessarily produce noxious odors.

Mr. Katz said that the terminology is vague. He said what is noxious or offensive to some people is not to others. He suggested the Planning Board continue with what they have been charged to do by the ZBA.

Mr. Robinson said that Henry's needs to devise a plan for the Code Enforcement Officer to review and go from there.

Chair Horgan said that the boards write motions and make approvals that have indefinite time frames. She suggested that if the Town can help Henry's to understand what they can and cannot do it serves the whole town and that is what she is trying to accomplish.

Mr. Robinson expressed his desire for the ability to rewrite the ZBA motion to make it less vague; while noting this is not possible.

Chair Horgan said she wishes to be clear what Henry's needs to do. She summarized that they should discuss with the Fire Chief their plan, then discuss it with the Code Enforcement Officer and move forward from there.

Mr. Robinson continued that if the Code Enforcement Officer approves the plan there is no need to go any further.

Chair Horgan asked if all the members felt that if the Code Enforcement Officer approves of what Henry's proposes they should be able to go forward with the assurance that it will be okay.

Mr. McArdle said he is not comfortable with that statement.

Ms. Cohen said some of the variances and approvals are clear and they should be adhered to. She noted there has been some creep with regard to this business and there should have been attention paid to the motions that were made.

Mr. Robinson said the bottom line is that if they would like to ask for clarification it can be reviewed again by the board that issued the condition.

Chair Horgan asked if Henry's would need clarification if the Chief and Mr. Graves agree to their plan.

Mr. Robinson said he would not think so.

Ms. Cohen said it may still be a question.

Mr. Borden noted that the ZBA approved the serving of beer and wine inside the building and then the Planning Board will write a letter to the Select Board listing the concerns of Mr. Graves

regarding compliance. He said Henry's will comply with all issues and the Select Board will then make a decision.

Mr. Borden asked if Henry's is in compliance, if they can then have a discussion regarding the issue of the stove if they get clarity from the Fire Department about the stove. He asked if they could also go back to the ZBA regarding the number of seats.

Mr. Robinson said the number of seats was calculated by the Planning Board. He said the ZBA made the motion about the stove in an attempt to defeat the request for a gas stove with an open flame. He said he does not recall if there was a discussion regarding an electric cooktop.

Mr. Borden said he recalls that the noxious odor discussion was defined as a complaint by someone that there was a noxious odor. He said they have never had a complaint and that they do not want to be viewed as creeping.

Mr. Robinson said he is in favor of them coming to ZBA if they would like to; but the question is do you need to.

Ms. Cohen said because of the way the motion was framed at the ZBA, the code enforcement officer may like clarification from the ZBA.

Mr. Robinson said that is why the Select Board appointed a ZBA, to hear appeals, and we would be more than happy to do that.

Chair Horgan said if Mr. Graves does not feel he can interpret the variance he should refer it to the ZBA. She said what she is concerned with is if there is approval from the Fire Department and the Code Enforcement Officer and the item is not referred to the ZBA if there will still be an issue.

Mr. Katz asked what would happen if an individual feels aggrieved and appeals it.

Ms. Cohen said her point is if Henry's wants to put in a stove with an electric cooktop that meets all codes; the ZBA could have restricted it in their motion in a way that the building inspector interprets it as a restriction and he is obligated to follow what is in the motion.

Chair Horgan agreed, and said if Mr. Graves says he has read the motion and says he believes this is what they are saying and your proposal meets the variance, they should be able to move forward.

Ms. Cohen said she is concerned that Mr. Graves will say it meets code but is not in compliance with the variance.

Chair Horgan said if that were the case, Mr. Graves would direct them to go before the ZBA, but if he does not they should be able to feel confident in moving forward.

Mr. Katz suggested the Planning Board get back to what they were charged with doing. He said there has been concern over time that there was not compliance and there was an overriding factor that the extents of the approvals have been stretched. Mr. Katz said the ZBA is looking for the town to look down the road and ensure that the applicant remains in compliance in the future. He asked how the Town can ensure that the variances are upheld in the future.

Mr. Robinson said there may be funds in the budget for another compliance officer to help look after this.

Chair Horgan said Mr. Katz brings up a valid point.

Mr. Katz asked if reviews should be imposed in the future.

Chair Horgan said that suggestions could be included in the letter to the Select Board and they could make a decision about how best to keep an eye on future compliance.

Ms. Cohen noted that another business, The Green Bean, comes before the Select Board every year to inform us of their current hours, number of seats and if anything is changing from last year as part of an annual request for us to submit a letter to the State Liquor Commission. She said that Henry's may be required to do this every year also if they acquire a liquor license.

Chair Horgan asked if there were any other issues to be discussed by the board.

Mr. Katz said there is still the issue of whether people need to be seated to be served.

Mr. Robinson said it is not an issue for the Planning Board to address.

Mr. McGuckin said that is determined by State law.

Mr. Katz noted that a ZBA member also brought up the issue of trash collection and how that is being done. He said it was required that the trash be collected privately; but that is not being done.

Mr. Robinson said that the Town picks up the trash and he has never heard of any problem associated with that.

Chair Horgan said the trash issue was not a part of any motions, approvals or variances, but simply a part of a discussion with the ZBA that never became a requirement.

Mr. Robinson noted that the original plan was for the applicant to take care of their trash removal.

Chair Horgan said that never made it into a motion or as a condition.

Mr. Robinson asked how the trash is currently being stored.

Mr. Borden said it is stored along the side of the building on their property.

Chair Horgan said she would write a letter to the Select Board stating what has been found that Henry's should be adhering to and what the Code Enforcement Officer found during his review.

Mr. Robinson said he thinks that is what the ZBA wanted the Planning Board to do.

Mr. Katz asked if the Board would help Chair Horgan craft the letter or if it would just contain the fact that Mr. Graves visited the premises and note the issues found.

Chair Horgan said it is her intention to note what Mr. Graves found from his review; unless the board would like something else to be included.

Ms. Borden asked if they should also write a letter to the Select Board and then meet with them.

Ms. Cohen suggested writing a letter. She said the issue would be on the agenda of the next Select Board meeting on May 5<sup>th</sup> at 10 am and it would be helpful if they would be available to meet with them during that meeting.

Ms. Borden said they would be at the May 5<sup>th</sup> meeting.

Chair Horgan closed the discussion of Henry's Market at 8:57 pm.

### 3. Review and approve minutes from February 19, 2014

The review and approval of the February 19, 2014 minutes was postponed until the May 2014 meeting.

\*The March 2014 meeting of the New Castle Planning Board was canceled therefore there are no March 2014 Planning Board minutes.

### 4. Old Business

There was no discussion of Old Business at this meeting.

### 5. New Business

Eric Katz asked if there is an ordinance concerning driveways and if they need to be built to a certain code.

Ms. Cohen said this issue will be discussed at the May meeting. She noted that due to some concerns of a property on Pisataqua Road it was discovered that the ultimate authority regarding driveways rests with the Planning Board and not the Select Board as it has been handled in the past. Ms. Cohen reported that because this responsibility is part of the Planning Board they will be hearing an application next month regarding a property at 25 Piscataqua Road that is

proposing to blast some rock outcropping on the right of the property to build a new driveway and eliminate the current driveway. She said the Select Board will forward all the information to the Planning Board.

Ms. Cohen noted that they do not need ZBA approval; it does not exceed the maximum building area. She noted they have a viable driveway that they want to reorient and would need to blast rock to do so. Ms. Cohen said there is also a question regarding the line of sight and the fact that the current driveway is not in compliance. She said there is no regulation regarding what the driveway is constructed of and there is no setback for a driveway.

Chair Horgan asked what form the applicant will need to submit for this process.

Ms. Cohen said that is a good question. She said she does not know if the permit information the Select Board received gets transferred to the Planning Board. Ms. Cohen suggested that the Planning Board may want to write their own permit or application that is required when someone wants to put in a driveway.

Mr. Katz asked who you need to go before when you want to construct a driveway.

Ms. Cohen said they will need to go before the Planning Board unless the property is located on Route 1B, in that case they would need to go before the State.

#### 6. Correspondence

There was no correspondence discussed at the April 23, 2014 Planning Board meeting.

#### 7. Adjourn

*David McArdle MOVED to ADJOURN the April 23, 2014 meeting of the New Castle Planning Board at 9:26 pm; this was SECONDED by Eric Katz and APPROVED unanimously.*

Respectfully submitted by,

Sue Lucius, secretary to the New Castle Planning Board