

APPROVED
New Castle Board of Adjustment
June 19, 2014

Public Hearing Re: Leonard Korn & Elyse Barry, 21 Laurel Lane, Map 11, Lot 36
Public Hearing Re: Donald & Greta McAvoy, 10 Fellows Court, Map 13, Lot 24
Public Hearing Re: David & Nancy Borden, 52 Main St., Map 18, Lot 55

BOARD MEMBERS PRESENT: Todd Baker; Russ Cox; Mark Gardner; Ned Robinson;
Susan Stetson

BOARD MEMBERS ABSENT: Donald Moore

Chairman Robinson called the meeting to order at 7:00 p.m.

Public Hearing Re: Leonard Korn & Elyse Barry, 21 Laurel Lane, Map 11, Lot 36:

GUESTS: Leonard Korn & Elyse Barry, applicants; Attorney Tim Phoenix, representing the applicants; Jon Bailey, Builder.

Chairman Robinson announced this was a public hearing for Leonard Korn & Elyse Barry, 21 Laurel Lane, Map 11, Lot 36. The applicants request a variance to the provisions of Article IV, Section 4.2.1 to add 24.63 sf of Building Area to the existing structure which will bring the Building Area of the Structure to 4,610.63 sf where the existing Building Area is 4,586 sf and the allowable Building Area is 4,448 sf. Additionally, the applicants request a variance to the provisions of Article VII, Section 7.5.1 to permit the expansion of a nonconforming structure that will make it more nonconforming. The public hearing has been properly advertised, abutters have been notified and all fees paid. The voting members for this public hearing will be Baker, Cox, Stetson, Gardner and the Chair.

Attorney Timothy Phoenix is here on behalf of Leonard Korn and Elyse Barry and he introduced Jon Bailey, Builder. The applicant is requesting to add 24.63 sf of floor space to the bathroom within the existing footprint of the building.

Attorney Phoenix explained the project in detail, (Attachment A, Page 1 & 2) and said they have plans that show the proposed construction from various views. He referred to the photographs of the existing bathroom and various photographs of the home, (Attachment B.)

Attorney Phoenix also distributed letters from three of the four immediate neighbors, Holzaepfel, King and McCormack, (Attachment C.) They were not able to contact the fourth abutter, Sylvester, but the applicant said she spoke to Mrs. Sylvester and told her what is happening. They do not have a problem with the proposed project.

Attorney Phoenix displayed a photograph that shows a sloping roofline over the bathtub with a skylight window in the present bathroom, (Attachment B.)

Under the calculations in the zoning ordinance, the lot size is 16,988 sf which would allow 4,448 sf of building. The applicants have existing building area of 4,586 sf. The building area with the proposed expanded bathroom would be 4,610.63 sf.

Attorney Phoenix said that the New Castle Zoning Ordinance requires building area to include one half of a basement if you have a walkout basement and that is, whether or not, the basement is finished. The zoning ordinance also defines gross floor area, excluding basements, but it defines building area as gross floor area including walkout basements. The point is were this not on a sloping lot and had a fully enclosed basement, they would not have to be here requesting a variance.

Attorney Phoenix also pointed out that all of the construction is within the rear wall of the home and this is a very small addition to the home.

Attorney Phoenix addressed the five variance requirements:

1. *Variances will not be contrary to the public interest, (Attachment A, Page 2 & 3)*
2. *The Spirit of the Ordinance observed, (Attachment A, Page 2 & 3)*
3. *Granting the variance will not diminish surrounding property values,(Attachment A, Pg 3)*
4. *Denial of the variance results in a unnecessary hardship, (Attachment A, Page 3 & 4)*
5. *Substantial justice will be done by granting the variance, (Attachment A, Page 4)*

Chairman Robinson asked for the Board's comments.

Cox asked if the basement would be used as a living area. Attorney Phoenix replied no.

Baker asked if the applicant had any future plans for the basement area. Attorney Phoenix replied no.

Elyse Barry said when they started formulating plans to remodel the bathroom; they spoke with Jon Bailey, Builder, about the possibility of just lifting the ceiling and not to take the bathroom out enough to require a variance.

Jon Bailey explained to the Board that due to structural issues they have to raise the roof in order to give enough room for the bathtub.

Attorney Phoenix hopes the Board will grant the applicants a variance. They plan on raising the roof to give room for the bathtub and put the weight of the tub on the outside wall of the house.

Chairman Robinson asked for public comments. There were none. He closed the public portion of the public hearing.

He asked for the Board's comments.

Cox said the building limitation ordinance was to prevent the bulking up of buildings. This particular alteration does not wind up bulking up anything and he feels that this application when the walkout basement gets added into the square footage, presents a hardship against doing anything. It is all within the confines of the existing structure.

Baker agrees with Cox and he feels it is a very reasonable request.

Gardner agrees with both, Baker and Cox.

Cox moves for the Board of Adjustment to approve the variances requested for Leonard Korn and Elyse Barry, as submitted.

Stetson seconded the motion. Unanimously Approved.

Chairman Robinson closed the public hearing for Leonard Korn and Elyse Barry.

Public Hearing Re: Donald & Greta McEvoy, 10 Fellows Court, Map 13, Lot 24:

GUESTS: Donald & Greta McEvoy, applicants; Anne Whitney, Architect

Chairman Robinson announced this was a public hearing for Donald & Greta McEvoy, 10 Fellows Court, Map 13, Lot 24. The applicants request a hearing to consider whether a variance should be granted to the provisions of Article IV, Section 2.1.5 to add 116 sf of Building Area to the existing structure which will bring the Building Area of the structure to 2,976 sf where the existing Building Area is 2,714 sf and the allowable Building Area is 1,952 sf. Additionally, the applicants request a variance to the provisions of Article VII, Section 1.2 to permit the expansion of a nonconforming structure that will make it more nonconforming. The public hearing has been properly advertised, abutters have been notified and all fees paid.

Cox has disqualified himself as a voting member for this public hearing. The Chair asked the applicant if he wished to continue with only four (4) voting members this evening. McEvoy has no problem with four (4) voting members.

Donald McEvoy, applicant, said they were here in April and were denied a request for a variance. McEvoy said they have revised their plan and scaled it back. They are requesting a total of 116 sf. addition to the existing structure and changing the basement to a garage/basement. (See Proposal, Attachment D.)

The Chair asked McEvoy if he still planned to raise the roof.

McEvoy replied in the affirmative. He introduced Anne Whitney, Architect.

Anne Whitney addressed the revised plans. Basement – there is no expansion of the footprint in the basement. It is just the allocating of 50% to 100%. The basement gets a little smaller and the garage gets a little bigger. They have added 146 sf to the building area but that does not change the footprint.

First Floor – they do not have any changes to the building area but they are taking part of the existing porch that wraps around on the front and right side and filling that with some living space.

Second Floor – they plan to have 116 sf of added living space.

Porch - the porch is considered 100% building area – There will still be some porch on the entire front of the building.

Whitney said they are working in the basement and they are going to be relocating the stairway. The reason for the 116 sf addition is they plan on reconfiguring the second floor. They are still going to have the same three bedrooms, two bathrooms, but they will be slightly reconfigured and there will be better closet space. Currently, there is only one closet on the entire second floor. In terms of living area, they are adding 116 sf but they are still going to have the same number of bedrooms and bathrooms.

Baker asked Whitney to explain the changes from the present proposal versus the former proposal.

Whitney said the proposal they had before the Board in April presented an addition out to the edge of the porch. The other addition on the second floor is a one-story roof; they had to change this roof line to incorporate that space as another bedroom.

Chairman Robinson asked, for the record, if the footprint was the same.

Whitney replied the footprint stays the same.

The Chair asked if the Board had further comments. There were none.

Whitney addressed the five criteria.

1. *Variance will not be contrary to the public interest, (Attachment D)*
2. *The Spirit of the ordinance is observed, (Attachment D)*
3. *Substantial Justice is done. (Attachment D)*
4. *The values of surrounding properties are not diminished. (Attachment D)*
5. *Literal enforcement of the provisions of the ordinance would result in unnecessary hardship.*

Chairman Robinson asked Whitney if there were any plans for use regarding the right hand side of the basement.

Whitney replied the right hand side of the basement would be used for storage and/or a mud room.

The Chair asked for public comments. There were none. He closed the public portion of the public hearing.

The Board's Deliberations followed.

Baker feels it is a reasonable request and it is not bulking up.

Gardner would be hard pressed not to vote in favor of this plan as he voted in favor of the prior request.

Stetson feels the plans were in scale with the neighborhood, i.e., with the properties on either side. The 116 sf is reasonable and she would be in favor of the project.

Chairman Robinson said it was a better plan than what was presented to the Board earlier.

Baker moved for the Board of Adjustment to approve the variance requests, as presented this evening. Gardner seconded the motion. Approved.

The Chair closed the public hearing for Donald and Greta McEvoy.

Review of the ZBA Minutes of April 17, 2014:

Cox moved to approve the ZBA minutes of April 17, 2014, as amended. Gardner seconded the motion. Approved.

Public Hearing Re: David & Nancy Borden, 52 Main St., Map 18, Lot 55:

GUESTS: Attorney Bernie Pelech, representing the applicants; Perrie Purcell, Manager, Henry's

Chairman Robinson announced this was a public hearing for David & Nancy Borden, applicants; 52 Main St., Map18, Lot 55. The applicants request a hearing to waive the provisions of Article V, Section 5.1 of the New Castle Zoning Ordinance to permit Henry's Market Café to provide 4 off street parking spaces where 17 are required. In addition, the applicants request a special exemption as provided in Article 4, Section 4.1.6.1 of the Zoning Ordinance in order to permit Henry's Market Café, located within the Mixed Use Zone, and occupying less than 1,000 square feet, to have 14 indoor seats and 4 outdoor seasonal seats. As part of their new business plan, applicants propose to install a commercial vent with an Ansul Fire Prevention System attached and a gas (open flame) stove. The Fire Prevention System will be designed and installed, in compliance with applicable provisions of the Fire Code, by properly licensed professionals under the supervision of the New Castle Fire Department. Additionally, applicants propose to serve alcoholic beverages at the outdoor seasonal seats subject to the approval of the New Hampshire State Liquor Commission. The public hearing has been properly advertised, abutters have been notified and all fees paid.

Attorney Bernie Pelech handed a petition signed by 180 citizens of New Castle, (12 people are not from Town) and, for the record, read the petition. *"We, the undersigned, residents of the Town of New Castle wish to voice our support with the Historic District Commission and Zoning Board for the application presently pending to allow Henry's to install a vent system, to have a*

gas stove, and to have 14 seats inside the restaurant and 4 seats outside the restaurant. We also support the requests of Henry's for wine service at the outdoor tables."

Attorney Pelech said they came before this Board in 2008 to establish Henry's and the Board gave their approval then. Over the past six years, Henry's has become a meeting place for downtown New Castle. Henry's is located in the Mixed Use District and the Mixed Use District is defined as principally a residential district with certain non-residential uses permitted by special exception. The purpose is to allow traditional, village, commercial, and retail uses such as stores, shops, and offices, where such uses are of limited scale and compatible with surrounding residential uses. Henry's Market fits this definition as it is a small market/store and café serving light meals. The use is of limited scale and compatible with the surrounding residential uses.

The support for Henry's Market by the residents of New Castle has been overwhelming. The square footage of the restaurant will not change; the only changes being requested are to allow the vent which the State of New Hampshire requires, to allow an open flame which provides for quicker, more convenient, and economical cooking of food, and for slight increase in the number of seats inside the building. The special exception and variances the Board granted in May, 2008 and May, 2009, allowed the establishment of a market and cafe which most New Castle residents found to be a benefit to the town.

Attorney Pelech submitted a letter from David & Nancy Borden, (Attachment E.)

Attorney Pelech said that the vent system is a requirement and it has an Ansul Fire Suppression System. It will meet all of the codes and the Bordens will get it stamped and endorsed by the Fire Chief.

Attorney Pelech said the special exception they are requesting requires the applicant to demonstrate that the special exception criteria are met., (Attachment F.)

- 1. All driveways and parking areas shall be developed in accordance with subdivision regulations and shall contain facilities for night illumination where and if appropriate. (Attachment F, Page 2)*
- 2. The proposed use is so designed, located, and operated that the public health, safety, welfare, and convenience will be protected. (See Attachment F, Page 2)*
- 3. The use will be compatible with adjoining development and the proposed character of the Zone District where it is to be located. (See Attachment F, Page 2)*
- 4. Any special exception which may be authorized by the board of adjustment may be required to have fencing, screening, landscaping, or buffer zones sufficient to obscure such uses from view from abutting properties. (See Attachment F, Page 2)*
- 5. Adequate off-street parking and loading shall be provided in ingress and egress so designed as to cause minimum interference with traffic on abutting streets. (See Attachment F, Page 2)*
- 6. The applicant has twice appeared before the Planning Board for site plan approval and agrees that should the necessary special exceptions and/or variances be granted to again return to the Planning Board. (Attachment F, Page 3)*

7. *Granting of the special exceptions will certainly not adversely affect abutting or nearby property values. (Attachment F, Page 3)*

Attorney Pelech said that the applicant's request to increase the seating also triggers a need for a parking variance. Previously, a variance was granted to allow 4 parking spaces on site where 14 were required. The addition of 9 seats would require an additional 3 parking spaces so thus the applicant is seeking a variance to provide 4 on-site parking spaces where 17 spaces are required. This variance would be from the provisions of Article 5, Section 5.1

Attorney Pelech addressed the variance criteria:

1. *Will granting the variance result in a substantial change in the characteristics of the neighborhood. Is it contrary to the spirit and intent of the ordinance.*
2. *Is it contrary to the public interest.* Attorney Pelech submitted that it is not contrary to the spirit and intent of the ordinance nor the public interest because it is not going to substantially alter the characteristics of the neighborhood. This is a test that the Board members have to apply. If the essential characteristics of the neighborhood are not going to be substantially altered by granting the special exceptions, then the spirit and intent of the ordinance is not violated and the public interest is not being harmed.
3. *The values of surrounding properties are not diminished; Is this going to result in any diminution of value.* Attorney Pelech does not feel that Henry's Market is going to diminish any surrounding properties, in fact, it is going to make that building safer because of the fire suppression system. It is being discharged to the rear and it is not in close proximity to any other structure or homes. And it is not going to affect surrounding property values.
4. *Substantial Justice is Done* – Will substantial justice be done by granting the reflected variance. Attorney Pelech believes that substantial justice will be done by granting the variance. That requires the Board to perform the balancing test as to, whether or not, the hardship on the Bordens is outweighed by some benefit to the general public in denying the variance. There were 170 people from New Castle who think that allowing Henry's Market/Café their requests are a good thing.
5. *Hardship – Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.* – Attorney Pelech asked is there a hardship? Definitely. Is it due to special conditions of the land? Yes, special conditions of the land are that we have a very small lot, we have residential units, we have Henry's Market and we only have four (4) parking spaces and no room to create any additional parking spaces. Fortunately, we have on street parking in close proximity, we have a municipal and town lot here also and we have a situation here that many of the people who patronize Henry's Market are also here for other business so that it is not as if that is there only destination. Attorney Pelech also mentioned that one of the biggest parking demands is for meetings such as this meeting that usually starts at 7pm. and Henry's is closed by that time. We do have some compatibility of uses with regard to the parking demands.

Attorney Pelech said we do have special conditions. The next part of the hardship test - Is it a reasonable use? Yes, it is a use that is allowed by the zoning ordinance so it is a reasonable use. It is something that is anticipated in the Mixed Use District.

Attorney Pelech referred to a letter sent by Doug and Ann Pinciario and a letter sent by Richard Spaulding, in support of Henry's Market, (Attachment G.)

The Chair asked for the Board's comments.

Baker asked for clarification regarding Henry's Market meeting with the Planning Board.

Attorney Pelech said one of the issues was the bollards and the Bordens agreed to put more substantial bollards in. Another Planning Board issue was the number of seats and one of the issues was the fryelator which they stopped using because it was not allowed to be used. It was not one of the conditions that the ZBA placed upon the approval.

Attorney Pelech said that the Planning Board came up with a list of things that needed to be done and included in that list was to come before the ZBA.

Chairman Robinson asked Darcy Horgan, Chairman, Planning Board, to speak on this issue.

Darcy Horgan, Planning Board Chair, said that the ZBA had given the Bordens a Conditional Approval, conditioned upon the Planning Board taking a look at all of these approvals from all of the land use boards since 2008 to see if Henry's Market was in compliance or not. The Planning Board did the research and pulled all of the minutes and recorded whatever documents were listed, and they reviewed what all of the motions were at every meeting.

The Planning Board compiled another document that listed all of the decisions made and gave it to the Code Enforcement Officer in town as it is his job to make sure that whatever was decided was being complied with. Don Graves took that list and went over to Henry's to make sure that the applicant had complied with the decisions made by the boards. He then generated a letter to the Selectmen saying that the Bordens were in compliance with some areas and, no, they were not in compliance with some areas. As a result of Don Graves investigation, where they were not in compliance, Henry's subsequently got into compliance and generated a letter to the Selectmen saying what they had done to get into compliance.

Chairman Robinson said there were several fire codes problems, part of which is being addressed now, and also, it is his understanding that all work that is done in the future will be under the supervision of the Fire Marshall.

The Chair said it is his understanding that the fire code states that the maximum occupancy is determined based on the number of exits, the location of the exits, etc.

Stetson said that the Assistant Fire Chief was at Henry's when she was there and he said there was a calculation for occupancy based on the square footage of the room. He also was unsure whether the hood could accommodate the fryelator.

The Chair replied it is a fire code issue with regard to the hood, the vent and the Ansul System is required by the fire code. There is also a question with regards to the fire code and sprinklers.

The intent is clearly to follow the rules of fire code. He is unsure whether this Board would have any authority to grant any variances to the fire code.

Stetson asked if this Board were to grant a variance as far as seating, would it have to be based on the fire code rather than giving a variance for a specific number of seats.

Attorney Pelech replied if the fire code says 14 and we are asking for 14, fine. Regarding the Special Exception Approval it should be the maximum 14 or whatever is allowed by the fire code.

Chairman Robinson said whatever is going to be presented is something that has been run by the Deputy Chief.

Baker asked what requests have been given that would fulfill any issue they may have with the Planning Board.

Darcy Horgan replied the Borden's do not need to come before the Planning Board.

Baker asked for clarification regarding the stove.

Purcell replied they are planning to use a six (6) burner stove

Stetson thought it should not be the ZBA's responsibility to see how the venting works.

The Chair said it is his understanding that the Fire Marshall would make the requirements based on the fire code. Under the RSA's it would appear that it is something that would be decided by the Fire Marshall or someone that the Fire Marshall would designate.

Stetson mentioned that the Assistant Fire Chief said the applicant is also required to have another fire extinguisher in the place. Is this something this Board needs to add in or is this not in our purview?

The Chair replied it is the Fire Department's issue. On the other hand, we do not have the jurisdiction to waive that. He feels there should be a Fire Suppression System, often known as a Sprinkler System, to protect the residents in the building.

Baker said the ZBA's responsibility here is to address zoning issues.

Attorney Pelech said that the only reason they needed to come before the ZBA is because when they received the Special Exception in 2008 there were conditions. No open flame, no venting system, no fryelator, and a total of 9 seats. Henry's is in compliance now as the Planning Board Chair previously indicated.

Chairman Robinson asked for public comments.

Andrew Moore, 12 Walbach St. said he would like to see Henry's flourish and succeed. There are issues of parking but many of us are fortunate that we can walk to Henry's. He encourages the ZBA to exercise the authority that has been vested to the Board, your good judgment and good sense of community spirit to find ways to assure that Henry's can continue to succeed.

Margaret Sofio, 63 Beech Hill Road, said that Henry's is a place she can come after she gets her mail to get a cup of coffee and a sandwich. She hopes there are ways that the Board can see to make it profitable for Henry's Market/Café to be able to continue.

Patty Cohen, Selectwoman, said she had the privilege to being on the Planning Board in 2009 when Henry's first applied. She wanted to say a few words in support of Henry's and say how heartfelt that they have been including an integral part of the community and they have done a great job.

Cohen wants to state her concerns in one aspect to this Board about the non-compliance issue. The Planning Board went through hours and hours of meetings and we were careful about the number of seats as that was a very important issue and we were also careful about odors. However, the one point she wants to express to the Board is the fact that over the years the number of seats grew. At one point, the applicant came before the Planning Board or the ZBA to request more seats in addition to other things, i.e., the fence that was adjacent to the cemetery. The request for doubling the seats at that time is the same request that the applicant is presenting now and the seats have appeared over time. Her only concern is the compliance piece and we have a Code Enforcement Officer to look at that but also to look at why that happened in addition to the cooking issue.

Steve Cook, 110 Mainmast Circle, agrees with everything that has been said. It is a shame what happened before but it is under new management now and they are here trying to follow the law process. He thinks their request is very reasonable.

Attorney Pelech said with regard to compliance, they welcome the Building Inspector to come and inspect Henry's at any time.

Trudy Hodkinson, 18 Mainmast Circle, said Henry's has catered for the public and has catered for the school. Tonight is a new beginning and they are here this evening with a reasonable request.

Geoff Hayhurst owns a small percentage of Henry's and he has been here since the opening. He wanted to comment on the non-compliance issue and explain how things evolved.

The Chair said the Board wants to go ahead and not rehash what happened in the past.

Darcy Horgan 70 Little Harbor Road, spent a great deal of time reading all of the minutes of all the past meetings regarding Henry's. The major concerns at the time were parking and noxious odors. Would it create a parking problem, would it create complaints because of noxious odors?

That is why restrictions took place and the motions were made the way they were made because there was no history at all. It was a protection for the community, for the neighbors and not to overcrowd the downtown.

Since then we have history now, She has many meetings at Henry's and she has lunch there frequently. The Planning Board does not have a parking problem and she has not heard from anyone about noxious odors. Horgan agreed that the applicants keep coming back for more. They have done that and rightfully so. They were learning on what the community wanted and what they could put out. She feels that almost 200 signatures is a testimony to how many people want Henry's to survive.

Chairman Robinson asked for further public comments. There were no further public comments. He closed the public portion of the public hearing.

The Board's Deliberation followed.

Cox would like to say that he is in favor of granting a variance to Henry's. He read his letter to the Board, (See Attachment H.)

Cox would propose two conditions and recommend conditional approval of the applicants request.

Condition One. A fully automatic sprinkler system to be installed in the restaurant within the next six months. Occupancy to be approved by Fire Chief, and all buildings exits reviewed and approved.

Condition Two. Parking in front of the building to be limited to transient parking during business hours with violators subject to parking fines, and if repeated offenses occur, closure of the premises. Delivery trucks are prohibited from double parking. Signs are to be installed by the applicant with these limitations.

Cox replied he wants a fully automatic sprinkler system and he does not want to depend upon the Fire Department or anything else. He wants a fully automatic sprinkler system as it is the only reliable way with a multi-family building with a restaurant on the ground floor. A fire suppression can fail. He does not want to depend upon anything but a fully automatic sprinkler system.

Baker happens to have a building that is a multi-use building and with a restaurant on the second floor. We have complied with all of the fire codes but we did it in a different way. An Automatic Sprinkler System may be the most efficient way but that is for an expert to determine. I do not feel that selecting the fire suppression is the ZBA's job.

Cox replied it is absolutely the ZBA's role.

Baker said it is the ZBA's job to decide if the venting system is appropriate and if the seats are warranted and we can say that the ZBA wants everything approved by the Fire Chief and the Fire Marshall. Let them decide that.

Gardner agrees with Baker and he can understand how Cox feels. It is not the ZBA's job to micro- manage but if this Board were to approve this application, we would have to make it specifically subject to a review by the Fire Marshall, subject to a Fire Suppression System that meets the fire codes and approval by the N.H. State Liquor Commission. If we put that language in the approval he thinks the ZBA has done their job.

Cox wants to do more than the ZBA's job, he wants to protect the public safety.

Gardner feels the ZBA is protecting the public safety by referring to the people who are the experts.

Cox said the experts say that the sprinkler system is the most effective.

Gardner said Cox might be correct but let us defer to what the Fire Department says.

Stetson asked for the Chair's input.

Chairman Robinson appreciates the work that Cox has done on this issue and he agrees with the goal that he has in mind. However, he would like to have someone who knows more about Fire Suppression than the ZBA does.

The Chair has spoken with both, the Building Inspector and the Deputy Fire Chief, and they have both discussed the vent, the hood, and the Ansul System being the best. He questioned them about the Sprinkler System and they both felt that the Ansul System is better. He is not an expert in the field.

Baker said that the Ansul System is a very popular system and it comes on automatically.

The Chair agrees with Baker.

Baker said that public safety is very important and this Board should let the Fire Department make the decision.

Discussion followed on the parking issue.

The Chair had a great deal of discussion with the Fire Department and they said with new construction a Sprinkler System would have to be on each floor and that is not practical with an old building. The Fire Department felt if there was a Sprinkler System on the first floor, that would protect the restaurant and there would be enough time for residents of the apartments to vacate the building.

The Chair was also told there were five things the Fire Department was concerned about: Parking, Seating, Venting, Separation between the restaurant and the users of the building, and they were anxious to hear what the HDC had to say about the restaurant in the historic district. Those were comments partly from the Building Inspector and partly from the Fire Chief.

Gardner would like to propose a motion that deals with the Special Exception, specifically, and should address most of Cox's concerns and it should address the majority of the ZBA's concerns.

Gardner moves for the Board of Adjustment to approve the special exception, as submitted, subject to a review and approval of the request for increasing the seating capacity and Fire System Suppression plans by the Fire Marshall, and approval by the New Hampshire State Liquor Commission on their request to serve alcohol outdoors. Baker seconded the motion.

Gardner revised the motion.

Gardner moves for the Board of Adjustment to approve the special exception, as submitted, subject to the review and approval of the request for increasing the seating capacity and the Fire System Suppression plan by the Fire Marshall, a review of the ingress and egress of Henry's Market and the apartment units by the Fire Marshall, and approval by the New Hampshire State Liquor Commission on their request to serve alcohol outdoors.

Baker seconded the motion.

Cox said that the building code requires sprinkler systems in this type of building. He does not see why we would put it only in the restaurant. He feels it is the only reliable system and it has been proven through the years as being the most reliable and this is a variance that goes on forever.

Baker said if the sprinkler system is truly more efficient, the Fire Marshall will make that decision.

**Cox said if no sprinkler system, he will vote no.
Baker votes in favor of the special exception.
Gardner votes in favor of the special exception
Stetson votes in favor of the special exception**

Motion Granted for the special exception.

Chairman Robinson said the Board needs to deal with the Motion for the variance to permit four (4) off-street parking spaces where 17 spaces are required.

Discussion followed among the Board.

Baker moved for the Board of Adjustment to approve a variance, as submitted, subject to the Fire Marshall's review of the occupancy, as submitted. Stetson seconded the motion.

Approved.

Chairman Robinson closed the public hearing for David & Nancy Borden.

Baker moved to adjourn the meeting. Gardner seconded the motion. Meeting adjourned at 9:30 pm.

Respectfully Submitted,

Anita Colby
Recording Secretary

- Attachment A: Proposal and the Variance Requirements for Leonard Korn/Elyse Barry
- Attachment B: Photograph of existing bathroom and various views of Home at 21 Laurel Lane
- Attachment C: Description of proposed bathroom remodel at 21 Laurel Lane and direct abutters
- Attachment D: Statement of Intent re: Don & Greta McEvoy; Five Variance Requested;
- Attachment D: Photographs of home and adjacent residences 10 Fellows Court
- Attachment E: Letter to ZBA from David & Nancy Borden
- Attachment F: Application and Five Variance Requests for David & Nancy Borden
- Attachment G: Letters from Doug Pinciario and Richard Spaulding on behalf of Henry's Market
- Attachment H: Letter from Russ Cox Listing his Conditions for Approval re: Henry's