

**MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT**

April 10, 2017

Pending 4-11-2017

MEMBERS PRESENT: Bruce Kudrick, Chair; Tom Hebert, Vice Chair; Dana Carlucci, Mark Simard

ALTERNATS PRESENT: Ann Bond, William Faith

EXCUSED: Paul Paradis

STAFF PRESENT: Everett Hodge, Code Enforcement Officer; Susan Gifford, Recording Secretary

Chairman Kudrick called the meeting to order at 7:00 p.m. The clerk took the roll call. Ann Bond was designated to vote for Paul Paradis.

There were 4 regular members and 1 alternate member present. Therefore, there was a full five-member board present for this hearing.

Chairman Kudrick explained the rules of the hearing. The Board makes its decision based upon the facts presented by the applicant. If any of these facts are subsequently found to be different, the Board reserves the right to revisit its decision.

Case #17-01-Z

Applicant:	Strong Foundations Charter School 715 Riverwood Drive Pembroke, NH 03275
Property Owner(s):	Cole Family Trust/Strong Foundations Elementary School, Inc. 715 and 717 Riverwood Drive Pembroke, NH
Agent(s):	Jeff Lewis Northpoint Engineering, LLC 119 Storrs Street, Ste. 201 Concord, NH 03301
Property Address:	715 Riverwood Drive Pembroke, NH 03275 Tax Map 632) Lot (18-9) and (18-10). Both lots are in the C-1A Commercial/Light Industrial and the AC Aquifer Conservation Zoning District.

Continuation of Case 17-01-Z from March 27, 2017: A request has been made for a Variance from Article XIII §143-105 **Non-Conforming Structures** section A. The applicant, Strong Foundations Elementary School, Inc. of Pembroke is requesting permission to enlarge a non-conforming structure at 715 Riverwood Drive. The applicant is proposing to construct a new 15,570 square foot attached multi-purpose educational building on map (632) Lot (18-10) at 717-719 Riverwood Drive. Lot (18-10) is owned by the Cole Family Trust, 900 Jimeno Road, Santa Barbara, CA 93103. A proposed one story 2,077 square foot addition will be added to the existing school building at 715 Riverwood Drive Map (632) Lot (18-9). Lot (18-9) is owned by the Strong Foundations Elementary School, Inc. 715 Riverwood Drive, Pembroke, N.H Enlarging or altering a non-conforming structure in a way which increases its non-conformity is prohibited under Article XIII §143-105 section A. Both lots are in the C-1A Commercial/Light Industrial and the AC Aquifer Conservation Zoning Districts.

At the March 27, 2017 ZBA meeting, it was voted to continue the public hearing on **Case 17-01-Z**, a request for a **Variance** from Article XIII Section 143-105 **Non-Conforming Structures** Section A, at 715-717 Riverwood Drive, to the April 10, 2017 ZBA meeting for the following reasons:

Additional information is requested from Town Counsel regarding RSA 674:54 Governmental Land Uses and if RSA 674:54 applies to Charter Schools.

Chairman Kudrick opened the continued public hearing for Case #17-01-Z at 7:05 p.m.

The clerk read a letter dated April 3, 2017 to Jeff Lewis, Northpoint Engineering, LLC from Bruce Kudrick, Chair, Pembroke Zoning Board of Adjustment into the record. The letter indicates that Steven Whitely, Town Counsel, concluded that “I do not believe that charter schools fit within the definition of “government use” and therefore RSA 674:54 is not applicable to preclude them from having to comply with local regulations and approval requirements. The language of RSA 194-B:3, does not state that such schools should be treated like “school districts” and therefore exempt.”

The letter continues “Based on the town’s past acceptance of the school’s position as being exempt from local regulations, however, the Zoning Board of Adjustment will not require the school to obtain a Variance for the proposed expansion at 715-717 Riverwood Drive. Strong Foundations must still comply with any and all applicable building and life safety requirements and regulations. Please contact me before the April 10th hearing if you wish to withdraw your application or have any additional questions.”

The clerk read a letter dated April 7, 2017 from Jeffrey Lewis, PE, Northpoint Engineering, LLC to Bruce Kudrick, Chair, Zoning Board of Adjustment into the record regarding Variance Application for Strong Foundations Elementary School, 715 & 717 Riverwood Drive, Map 632, Lots 18-9 and 18-10, Pembroke, NH. The letter states “On behalf of Strong Foundations Elementary School (applicant), I am hereby withdrawing the Variance request that we had submitted on March 3, 2017 requesting relief from Article XIII Section 143-105. It is our understanding that, per your letter dated April 3, 2017, the Town will not require a Variance for the proposed expansion of the school at 715-717 Riverwood Drive.”

Bob Bourque, Pembroke, NH requested that the Chair of the Zoning Board of Adjustment send a detailed letter to the Planning Board Chair regarding this situation. If an error in procedure has occurred, the Planning Board would like to know about it and take steps to make sure it does not happen again.

Dana Carlucci summarized Case #17-01-Z, a request for a Variance from Article XIII Section 143-105 **Non-Conforming Structures** Section A. The applicant, Strong Foundations Elementary School, Inc. of Pembroke is requesting permission to enlarge a non-conforming structure at 715 Riverwood Drive. Increasing a non-conforming structure is not allowed. The applicant is proposing to construct a new 15,570 square foot attached multi-purpose educational building on Map (632) Lot (18-10) at 717-719 Riverwood Drive. Lot (18-10) is owned by the Cole Family Trust, 900 Jimeno Road, Santa Barbara, CA 93103. A proposed two story 2,077 square foot addition will be added to the existing school building at 715 Riverwood Drive, Map (632) Lot (18-9). Lot (18-9) is owned by the Strong Foundations Elementary School, Inc., 715 Riverwood Drive, Pembroke, NH. Enlarging or altering a non-conforming structure in a way which increases its non-conformity is prohibited under Article XIII Section 143-105 section A. Parcel 632-18-10 will be purchased and merged with parcel 632-18-9. Both lots are in the C-1A Commercial/Light Industrial and the AC Aquifer Conservation Zoning District. The land at the back of both lots drops off, keeping the building area to the front. Parking will be increased to get overflow parking off the street. It was determined a variance was not needed when the school began operations in 2007. Beth McClure, Founder and Principal, states decision was made because a public school is allowed to occupy a site in the C1 zoning district. There is an undeveloped piece of land adjacent to the existing school. On February 27, 2007, Planning Board met with the school. Town Counsel and Planner stated

that Strong Foundations was a governmental agency exempt from Planning Board site review. Expansion of a non-conforming use is not allowed. The entity occupying the property is a governmental agency. The public hearing will be continued to April 10, 2017 for additional information from Town Counsel.

Chairman Kudrick reviewed the history of the site. On February 27, 2007, conceptual plans were presented to Planning Board to obtain feedback. In 2007, the town planner wrote a letter that Strong Foundations was a governmental agency exempt from Planning Board site review. Prior to meeting with Planning Board in 2007, Strong Foundations also meet with the Pembroke Board of Selectmen. Everett Hodge noted there is a letter dated March 9, 2011 from the Pembroke Planning Board saying that Strong Foundations is exempt from major site plan review.

Chairman Kudrick stated that in 2007 and again in 2011, the Planning Board and the Town Planner gave Strong Foundations permission for expansion of the school without Planning Board site review. The recent letter from Town Counsel states that because of actions taken in the past, a variance is not needed for Strong Foundations 2017 planned expansion. However, any other school of this type needs to obtain all variances and approvals. There is non-conforming land use and structures on the site. If the occupancy changes, the new owner would need to go the Zoning Board of Adjustment.

NO ACTION NEEDED AS APPLICANT WITHDREW VARIANCE APPLICATION 17-01-Z.

Tom Hebert stated that there is a definite traffic problem on Riverwood Drive due to the Strong Foundations' prior expansions. Everett Hodge stated that in 2011 the applicant went to the Planner with a conceptual plan and the parking issue was brought up at that time. The parking issue was not addressed. A conceptual plan at the Planning Board is non-binding discussions by both parties. Tom Hebert was in the area at pickup time and observed a lot of traffic. William Faith suggested that the town ask for a detailed plan showing how Strong Foundations is addressing traffic issues. It was discussed that the turnaround at the top of the road is located after the sign for the National Guard facility.

Everett Hodge stated that parking for schools is based on 2 parking spaces per classroom. Based on square footage there would be less parking spaces. Mark Simard suggested that if the road is posted as "No Parking" the Pembroke Police can enforce parking violations. Chairman Kudrick stated that Northpoint Engineering provided a plan last month that included a new entrance and more parking at Strong Foundations Elementary School.

Case #17-02-Z

Applicant:	Dana and Jocelyn Carlucci 8A Prospect Street Pembroke, NH 03275
Property Owner(s):	147-149 Main Street LLC 141 Main Street Pembroke, NH 03275
Property Address:	147/149 Main Street Pembroke, NH 03275 Tax Map (VE) Lot (166) in the B-2 Central Business District and the AC Aquifer Conservation Zoning Districts.

Case 17-02-Z The applicant, Dana and Jocelyn Carlucci 8A Prospect Street, Pembroke, N. H. 03275 is appealing the Code Enforcement Officer's e mail of March 10, 2017 regarding the removal of the "Trevor's Toy Box" sign at 145 Main Street. The property is owned by 147-149 Main Street, LLC 8 A Prospect Street, Pembroke, NH. N.H. and located at 147-149 Main Street, Map (VE) Lot (166) in the B-2 Central Business District and the AC Aquifer Conservation Zoning Districts.

Dana Carlucci recused himself from Case 17-02-Z. William Faith was designated to vote for Dana Carlucci. Ann Bond is designated to vote for Paul Paradis.

Everett Hodge noted that he received a letter dated March 23, 2017 from the owners of Main Street 145 Realty LLC, 141 Main Street, Pembroke, NH stating they would be unavailable between April 6 and April 13, 2017 to attend a hearing and respond to any questions. They requested that the hearing date be moved to a date after April 13, 2017 so they would be able to attend.

Tom Hebert stated that out of respect to the property owner whose property the sign is on, he would prefer to continue the hearing to a date that the owners would have an option to attend.

Chairman Kudrick stated that if the property owner is not present, the Zoning Board of Adjustment should not discuss the case. There are three cases scheduled for the April 24, 2017 meeting. The next open date on the town calendar is Monday, May 8, 2017.

MOTION: Tom Hebert moved to continue the public hearing on **Case 17-02-Z**, an appeal of the Code Enforcement Officer's e mail of March 10, 2017 regarding the removal of the "Trevor's Toy Box" sign at 145 Main Street. The property is owned by 147-149 Main Street, LLC 8 A Prospect Street, Pembroke, NH. N.H. and located at 147-149 Main, to the **May 8, 2017** ZBA meeting for the following reason(s):

To allow the property owner the option to attend the hearing.

Mark Simard seconded.

VOTE: BILL - YES TOM - YES BRUCE - YES
ANN - YES MARK - NO

PUBLIC HEARING ON CASE #17-02-Z CONTINUED TO **MAY 8, 2017** ON A 4-1 VOTE.

MINUTES OF PREVIOUS MEETINGS

MOTION: Tom Hebert moved to approve the minutes of March 27, 2017 as amended. Mark Simard seconded.

VOTE: ANN - YES TOM - YES BRUCE - YES
MARK- YES BILL - YES

MINUTES OF MARCH 27, 2017 APPROVED AS AMENDED ON A 5-0 VOTE.

OTHER

Annual election – Chairman Kudrick noted that the ZBA annual election of officers will be held May 8, 2017, the first Board meeting in May per its rules and procedures.

OLD BUSINESS

Update signs case – Chairman Kudrick noted that Federal Court ordered a mediation meeting in Boston MA. Two selectmen were planning to attend on 3/28/2017, but the meeting was cancelled due to illness of the judge. If the matter cannot be mediated, the next level of appeal is Supreme Court in Washington DC.

Pending 4-11-2017

NEW BUSINESS – Everett Hodge distributed copies of the zoning regulations incorporating changes made at Town meeting in 2017.

NEXT MEETING

Date of next ZBA meeting – Everett Hodge noted the next ZBA meeting would be on **Monday, April 24, 2017 at 7:00 p.m.**

ADJOURN **Motion:** Tom Hebert moved to adjourn. Bill Faith seconded. Vote was unanimous in favor of motion. Meeting adjourned at 7:37 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary