

**MINUTES
PEMBROKE ZONING BOARD OF ADJUSTMENT**

May 8, 2017

Pending 5-10-2017

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

ALTERNATES PRESENT: Ann Bond, William Faith

EXCUSED: Mark Simard

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

Chairman Kudrick called the meeting to order at 7:20 p.m. The clerk took the roll call.

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 #17-02-Z

Applicant:	Dana and Jocelyn Carlucci 8A Prospect Street Pembroke, NH 03275
Property Owner(s):	Main Street 145 Realty LLC 443 Deerpath Lane 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. **Clarification:** The sign is on property owned by Main Street 145 Realty LLC, 443 Deerpath Lane, Pembroke NH. The property owned by Dana and Jocelyn Carlucci, 8A Prospect Street, is 147-149 Main Street, LLC 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 Mark Simard.

Chairman Kudrick explained that because there is a four member board tonight, the applicant has the option to reschedule the public hearing to a date when five Zoning Board of Adjustment members are present. If the applicant proceeds with a four member board and the case is not approved, the fact that there were four members is not grounds for appeal. Dana and Jocelyn Carlucci were present. The applicant opted to proceed with the appeal this evening with a four member board.

Please state the decision that you would like reviewed:

The March 6, 2017 decision by the Code Enforcement Officer that the "Trevor's Toy Box" was that the sign cannot be removed. The grounds are per a March 10, 2017 email to Everett Hodge from Dana and

Jocelyn Carlucci in response to an email dated March 6, 2017 that the Town could not have the sign remove

Copies of March 6, 2017 email, March 10, 2017 email, August 11, 2016 letter to Justine “Tina” Courtemanche, Chair, Pembroke Board of Selectmen regarding proposed amendments to the Town of Pembroke Sign Ordinance in 2017 from Stephanie Verdile, Town Planner; and tax assessment card for 147-149 Main Street LLC regarding building. The actions taken by the Planning Board in August 2016 were intended to clarify that the Town of Pembroke is dedicated to constructively working to have its regulations and the town enforcement of those regulations be consistent with *Reed v Town of Gilbert*.

Dana Carlucci, 8A Prospect Street, Pembroke NH stated that he and Jocelyn are the owners of 147-149 Main Street LLC. Trevor’s Toy Box use was denied a while ago. Passive adult entertainment is only allowed in certain areas of Pembroke, and not in the B2 zoning district. The sign for Trevor’s Toy Box is located at 145 Main Street.

The downtown Suncook area has 13 properties on the National Historic Register and there have been a number of renovations downtown. For 16 years, we had the same tenant in our building. We had a subsequent tenant one year. We are showing the office space to find a perfect fit. A massage therapist who viewed the space had concerns about the well-publicized case. The sign is a deterrent to getting renters in the space. Dana placed two calls to Larry Preston and his email message box was full. I explained to the massage therapist that Trevor’s Toy Box never opened for business. She went to Town Hall and talked to Everett Hodge. Dana stated that he emailed Everett Hodge on 3/6/17 and received the following response “Dana, Right after the case was resolved in court, David (Jodoin) asked Walter Mitchell if we could require having the sign removed. Walter said we could not. I agree with your concerns and explained the situation to your proposed tenant when she came in.” Dana stated he did some research and the ordinance does not allow the sign because there is no business related to it.

Dana Carlucci read his 3/10/17 email into the record. Trevor’s Toy Box was denied by the Zoning Board a while ago, Section 143-58 of our Zoning Ordinance Permits Signs for Lawful Uses, Permitted Uses or by Special Exception. Since Trevor’s Toy Box sexual paraphernalia business is unlawful, not permitted and did not receive a special exception, the sign is not permitted in the B2 zoning district. Since it is not a federal, state, or municipal sign, and not a traffic, regulatory or informational sign, it is not exempt. It does not meet any exceptions listed in 143-59(8).

As mentioned in my email dated March 6, 2017, the Suncook Village Business District is already a “hard sell.” If we can attract people by offering a “draw”, spaces will rent, giving building owners revenue to improve their buildings, which in turn, would increase property values and produce tax dollars for the Town. The Trevor’s Toy Box sign is a deterrent for a good business to occupy our space and probably others. Jos and I know the pulse of the community and hope that our continued investment into the downtown encourages others to do the same.

All being said, I am assuming the sign received permits per 143-59A, (1), (2), (3), (4), (5) in either case, I sincerely believe removing the sign is in the Town’s best interest and that the sign is illegal per our zoning ordinance. I am requesting the sign be removed under Section 143-59 C and D. I am in hopes that this matter will be handled with due diligence. Sincerely, Dana and Jocelyn Carlucci.”

Again, Dana stated, there is no business located at this sign. The State of NH Secretary of State’s office does not recognize Trevor’s Toy Box LLC as a business. Business status is Admin Dissolution and principal purpose is listed as OTHER/retail sales/leather apparel and e-commerce adult toys. Twitter

(undated) lists Trevor at TrevorsToyBox as “we are a BDSM store located in Pembroke NH... while the bricks and mortar store is not opened yet, our online store is opened.”

Dana Carlucci stated that the new sign ordinance adopted at Town Meeting 2017 143-59D allows the town to order abandoned and discontinued signs to be removed. If this were a directional sign, it would only be allowed in the C1 zoning district. New sections include 143-57-143-66. Section 143-59-8 was in the old ordinance but does not exist in the new ordinance. 143-128, NH RSA 676:17 and ordinance section 143-59-E do apply. A photo dated 3/25/2008 of the proposed storefront is included in Dana Carlucci’s submission this evening.

Larry Preston, 443 Deerpath Lane, Pembroke NH stated that we have past history with the town. We lost the case. The business was never there. The sign was permitted by the town and is legal under both the old and new sign ordinance. I don’t understand the legal basis or the applicant’s rationale for the argument to remove the sign.

John Duggan, 443 Deerpath Lane, Pembroke NH stated that the food pantry downtown brought in unsavory people, some of whom did not even live in town. We did not complain that Dana Carlucci did not have a sign indicating what was located in the building. I own most of the property downtown. Mr. Petit rented out his 3 office spaces. I own Mr. Appliance over the restaurant and would have sold my buildings had I known the complaints that would arise.

Chairman Kudrick asked Mr. Duggan to keep his comments to the case please.

John Duggan stated if you want the sign down, I guess we will have a fight.

Chairman Kudrick asked Everett Hodge if the property owners got a permit for the sign. Yes, Everett replied, a permit was issued March 7, 2013 for Trevor’s Toy Box sign as replacement for the existing Mr. Appliance sign.

Ann Bond asked if the store never opened, why a sign was allowed in the proposed name of the business. Everett Hodge stated there are no regulations in the ordinance about a business that never opens, or a business that closes and a sign remains.

Chairman Kudrick stated that the timeline includes David Jodoin asking Town Counsel if the sign could be removed on March 25, 2014. In March 2014, Pembroke Estates, LLC made a request to open store at 145 Main Street, Map VE Lot 167 selling Wicca/Pagan worship supplies. At that time property owner was advised to change the name on the sign to reflect the nature of the new business and products.

The sign itself, language and content, is not offensive. An order to remove the sign may open the town to first amendment rights and freedom of speech arguments. In a face to face meeting, Everett Hodge confirmed that Town Counsel advised not to pursue removal of the sign in 2014.

Dana referred to an email dated March 24, 2014 to David Jodoin and Everett Hodge, regarding Trevor’s Toy Box sign that reads in part “In the absence of a more credible reason, what I was working on was that it is, in effect, an illegal off-premise sign. Those are allowed in the district, but only if they are directional in nature. Here, this seems to refer to another business (owned by these same people), and that other business is now commonly identified in the community with this name. But it is not directional; therefore illegal.” Dana Carlucci stated that off-premise signs are not allowed in the B2 zoning district under

Section 143-59-D. In *Removal of signs*, abandoned or discontinued signs must be removed by the person or corporation responsible within 14 days of written notice to remove the sign.

Larry Preston, 443 Deerpath Lane, stated if I go to the Secretary of State's office and change the product of Trevor's Toy Box to Annalee dolls, I would be selling a product approved by the court.

John Duggan, 443 Deerpath Lane, asked what about a sign reading "Rainville Shoes" that has been downtown 70 years. Currently there are bicycles in there. Is that a legal sign?

Chairman Kudrick stated our purpose tonight is looking at a particular sign, going through the ordinance and determining if the sign is legal or illegal, and coming to a solution.

Jocelyn Carlucci, 8A Prospect Street, Pembroke NH asked is Trevor's Toy Box a business? If not, why is the sign still there? If I were a massage therapist I would not want my business associated with the negative press of a prior case. I thought maybe this is an oversight by the town. Trevor's Toy Box is an actual allowed business and as time goes on, it would be related to a positive business in the shop.

Everett Hodge confirmed that the shades are pulled down in the front window of the shop and it does not look like the 3/25/2008 photograph. Everett completed a site visit with Larry Preston years ago and the only product in the store was several leather jackets.

Chairman Kudrick summarized Case #17-02-Z. Dana and Jocelyn Carlucci are appealing a March 2017 decision by the Code Enforcement Officer regarding a sign at 145 Main Street reading "Trevor's Toy Box." The sign itself does have a permit in the Downtown Suncook B2 District. After the sign permit was issued, the business was not allowed in that location. The shop has been vacant for the past four years. The applicant has been having trouble renting space at their property located at 147-149 Main Street. One potential client, a massage therapist, declined to rent because with all the history associated with Trevor's Toy Box, it gave her an uneasy feeling. The Building Inspector did inform the concerned property owner that the sign could not be removed as it may involve constitutional First Amendment rights. A doll store could locate a business in the vacant shop. No other complaints about the sign have been received from any other business owners downtown.

There being no further discussion, Chairman Kudrick closed the public hearing at 7:58 p.m.

The Board continued to discuss whether the sign was allowed by permit. In the past, Town Counsel has advised that sign cannot be removed. However, a process for sign removal is included in the newly adopted sign ordinance.

William Faith stated that this is a conundrum. Passive adult entertainment is not allowed in the B2 zoning district. A sign permit was issued for a sign reading "Trevor's Toy Box." Potential renters would have to be aware of past conversations to know the history of the sign. Our right as a town is to ensure the sign is located with an associated business. However, the sign in and of itself, is not offensive. William Faith stated we should not rush to judgment and should review the ordinance carefully before making a decision.

Chairman Kudrick agreed that we want to make the right decision based on all of the information. Tom Hebert stated that the sign was permitted before the business use was denied. The proposed business did not open in that location. Ann Bond stated that there is an affiliation with an online business but the business itself is not allowed in the B2 zoning district. The business does not exist in the building with

the sign. William Faith added that the sign itself is not offensive. Ann Bond asked, when the business use was denied, why was the sign not removed at that time? Everett Hodge googled “Trevor’s Toy Box” at the meeting and came up with the following:

- Ebay stores, Clothing, 145 Main Street Pembroke NH
- 4/1/2013 controversial store
- Trusted by 41,000 market place customers.

Chairman Kudrick stated that Section 143-59-D does allow abandoned signs to be removed under specific circumstances. The Zoning Board of Adjustment wants to continue to do the best job it can for the town residents. To do so, they need as much information as possible. I would be more comfortable talking with and getting more information from the town attorney

MOTION: William Faith 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. **Clarification:** The sign is on property is owned by Main Street 145 Realty, 443 Deerpath Lane, Pembroke NH and Dana and Jocelyn Carlucci, 8A Prospect Street, own 147-149 Main Street, LLC, Pembroke, NH located at 147-149 Main, to the **June 12, 2017** ZBA meeting for the following reason(s):

To allow time for the Board to meet with Town Counsel to review the Zoning Regulations relating to this case.

Ann Bond seconded.

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

PUBLIC HEARING ON CASE #17-02-Z CONTINUED TO **JUNE 12, 2017** ON A 4-0 VOTE.

Chairman Kudrick stated that the original abutters for this application would not be renoticed. The public hearing on Case #17-02-Z was continued to June 12, 2017. All interested parties are encouraged to check the Town website or call the Zoning Department to get information pertaining to future meetings and locations.

Dana Carlucci returned to the Zoning Board of Adjustment. William Faith was designated to vote for the vacant position. Ann Bond was designated to vote for Mark Simard.

OTHER

Vote for one Full Board member –

MOTION: Tom Hebert moved to appoint William Faith as a regular ZBA member. Ann Bond seconded.

VOTE: ANN - YES TOM – YES BRUCE – YES
DANA – YES BILL -YES

WILLIAM FAITH APPOINTED REGULAR ZBA MEMBER ON A 5-0 VOTE.

Everett Hodge noted that Chairman Kudrick, ZBA Chair, should communicate to the Board of Selectmen the name of the full Board member so it can be officially recorded.

ELECTION OF OFFICERS

MOTION: Tom Hebert moved to nominate Bruce Kudrick as Chair of the Pembroke Zoning Board of Adjustment for the coming year. Dana Carlucci seconded.

Discussion: Bruce Kudrick noted that in the past, the role of Chair and Vice Chair was rotated among the members and still could be done.

VOTE: DANA - YES TOM – YES BRUCE – YES
 BILL – YES ANN - YES

BRUCE KUDRICK ELECTED CHAIR ON A 5-0 VOTE.

MOTION: Dana Carlucci moved to nominate Tom Hebert as Vice Chair of the Pembroke Zoning Board of Adjustment for the coming year. William Faith seconded.

VOTE: DANA - YES TOM – YES BRUCE – YES
 BILL – YES ANN - YES

TOM HEBERT ELECTED VICE CHAIR ON A 5-0 VOTE.

MINUTES OF PREVIOUS MEETINGS

MOTION: Tom Hebert moved to approve the minutes of April 24, 2017 as amended. William Faith seconded.

VOTE: ANN - YES TOM – YES BRUCE – YES
 DANA – YES BILL -YES

MINUTES OF APRIL 24, 2017 APPROVED AS AMENDED ON A 5-0 VOTE.

NEXT MEETING

Date of next ZBA meeting – Everett Hodge noted the next ZBA meeting would be on **Monday, May 22, 2017 at 7:00 p.m.**

ADJOURN **Motion:** William Faith moved to adjourn. Ann Bond seconded. Vote was unanimous in favor of motion. Meeting adjourned at 8:24 p.m.

Respectfully submitted,
Susan P. Gifford
Recording Secretary