

**CITY OF CONCORD, NH
ZONING BOARD OF ADJUSTMENT
SEPTEMBER 1, 2021 MEETING
MINUTES**

Attendees: Chair Christopher Carley (Conflict with Case #51-21), Nicholas Wallner (Conflict with Case #39-21), Laura Scott, James Monahan, Andrew Winters and Laura Spector-Morgan (for Cases 39-21 and 51-21)

Absent: none

Staff: David Hall, Code Administrator
Rose Fife, Clerk of the Board

Guest: Ernie Cartier-Creveling

Meeting commenced at 7:00 pm.

51-21 John J. Flatley Company: Applicant wishes to install a third freestanding sign, proposed to be an Electronic Message Center (EMC sign), and requests the following:

- 1) That the Zoning Board make a determination whether the unshielded illumination from an EMC is prohibited under Article 28-6-7(n), Signs Prohibited, which prohibits an illuminated sign that directs illumination (not reflected light) onto adjacent streets.

Variances to:

- 1) Article 28-6-9(c)(1), Permitted Freestanding Signs, to allow 3 freestanding signs on the property where a maximum of 1 freestanding sign is permitted,
 - 2) Article 28-6-7(r), Signs Prohibited, to allow an electronic message center type sign when such type of sign is not allowed,
 - 3) Article 28-6-9(a), Table of Maximum Sign Dimensions, to allow a freestanding sign (EMC sign) with a height of 50' and area of 220 s.f., where a maximum height of 20' and maximum area of 100 s.f. is allowed, and
 - 4) Article 28-6-9(c)(3), Permitted Freestanding Signs, to allow a freestanding sign to have a horizontal dimension of 22', when a maximum horizontal dimension of 16' is allowed,
 - 5) Article 28-6-7(n), Signs Prohibited, to permit an illuminated sign that directs illumination (not reflected light) onto adjacent streets. (If ZBA determines relief is necessary)
- for property located at 10 Ferry Street on the portion of the property located in an OCP Opportunity Corridor Performance District.

A motion to recess the case to the October 6, 2021 meeting was made by Wallner, seconded by Scott and passed by a unanimous vote.

39-21 ECRPDK, LLC: (**Recessed Hearing**) Applicant requests that the Board overturn the Code Administrator's decision that the subject property must comply with Article 28-7-7(g)2, and rule that the subject property may have a non-conforming parking spot in the setback area on its southerly side, for property located at 46 North State Street in a CVP Civic Performance District.

The Board for this case consisted of Carley, Winters, Scott, Monahan and Spector-Morgan.

A motion to open the recessed case was made by Scott, seconded by Winters and passed by a unanimous vote.

Testified: Attorney Friedrich Moeckel of Tarbell and Brodich. Also testifying was Attorney Steve Goldman.

Attorney Moeckel submitted additional paperwork to the Board. This property is located on the corner of Montgomery Street and N State Street. In 2016 the property was purchased by ECRPDK. Attorney Moeckel submitted a boundary

worksheet done by Richard Bartlett and Associates which was prepared in 2014. A driveway exists between 46 N. State Street and Montgomery Street. He also submitted a copy of a Google image captured on 8.18 as well as copies of Bing Maps from 2013. Lastly 3 photographs were submitted as well as the last page of a letter received from Code Administration. The vehicle in the photo is the owner of ECRPDK. There aren't enough parking spaces, so he is parking there. Historically there was a law firm there. The use would need over 23 spaces but he only has 7 spaces. In order to make this property more conforming they need to add spaces. By adding this one space, it makes it less nonconforming. Attorney Moeckel feels that parking within 5 feet of the property line is grandfathered. The purpose of 28-8-1 is to reduce nonconformity. Adding this parking space reduces the nonconformity. There is only room for 7 parking spaces. The Ordinance states that a property owner may reduce the nonconformity, by right, if there is no net increase in the number of off street parking spaces required. Code Administration's decision to impose the 5 foot setback requirement was unreasonable and unlawful. Per Article 674:33 the Board can reverse that decision.

Spector-Morgan asked when the restricted provision was adopted? Attorney Moeckel thought it was in the 1980's or 1990's. Spector-Morgan asked when the parking began. Attorney Moeckel answered that it has been there forever. It's not clear when the 5 foot provision arose. He also explained the pavement shown on the plan submitted. The easement starts on the easterly side of 46 N. State Street but it doesn't say where it ends.

Carley asked if his interpretation regarding the right to reduce the nonconformity is that they can do this because they have always done it that way. Attorney Moeckel explained that the property has always historically had parking within 5 feet of the property line. Carley asked why they didn't ask for a variance. Attorney Moeckel explained that under Article 28-4-8 5a and b, the property owner has the right to park there as it does not increase the on-street parking load. Carley explained that would take care of the reduction in nonconformance. He asked where the right arises to allow this? Is it because they have always done it that way? Attorney Moeckel explained that it has always existed, so by maintaining it, it would not increase a nonconformity. Maintaining the historical distance to the property line is allowed.

Monahan asked if the property owner added an addition spot #8? This one would not be the spot that has always been within 5 feet of the property line, but others have been? Attorney Moeckel said that was correct.

Winters asked when the space had been added. Attorney Moeckel thought it has been added sometime in April or May of 2021. Monahan asked why they only added 1 spot? Attorney Moeckel explained that it was all they needed. They can add no more as there isn't more room near the building. Winters asked how many spaces total. Attorney Moeckel answered there was a total of 8. He wants 11, there are 10. He would like 7 spaces for 46 N State Street and 3 spaces are dedicated to the tenants. Winters asked if all of those 10 are nonconforming? Attorney Moeckel answered they were. Carley asked if what he is stating is that because the other spaces have been in violation on this property, it would be acceptable to install a new space in violation of the ordinance in another area on this lot. Attorney Moeckel agrees with Carley's conclusion.

Attorney Steven Goldman testified. He has owned 46 N. State Street from 1983 to 2016. The plan submitted which was done by Richard Bartlett Associates he has seen as it was designed to delineate the boundary line between 24 Montgomery Street and 46 N State Street. The plan shows the pavement, which was the entire driveway and parking area on the north side of property. The pavement goes virtually to the end of the property. Cars were parked, historically, close to the northerly property line, approximately 6 inches. He used to also own 48 N State Street to utilize the extra parking. A portion of the berm was part of the 46 N State Street property. There was landscaping and a tree there, so the area wasn't utilized.

Carley asked what was the importance of whether the garden was on his property or on 24 Montgomery Street property? Attorney Moeckel explained that it speaks to adverse possession. Carley asked if the car was parked where the tree used to be? Attorney Moeckel said it was.

In favor: none.

In opposition: Attorney John MacIntosh as well as Attorney Mark Dunn, who has been a tenant since 1995 in John MacIntosh's building. Attorney MacIntosh testified that 3 properties are affected by this. Concord Housing Authority placed a stipulation in their deed that the 3 property owners can use it for egress and ingress solely. It is not a parking area. The area that is being suggested as nonconforming in the back has a buffer zone from 2, 3 or 4 feet with plants and growth. It is within a couple of feet of the building. To his knowledge they never had any complaints. Carley asked if the buffer is on their side of the stockade fence. Attorney MacIntosh said it is on his side. The area discussed is a driveway maintained by 24 Montgomery Street. It has always been that case since he moved in 30 years ago. The stump you see is a tree he

removed as it was encroaching on the driveway and it could have fallen on the roof of the abutter. The driveway has always been nonconforming. It is not 24 feet wide, as required, but approximately 16 feet wide with the landscaped area. As it exists it is not conforming. No one has ever parked in that spot in the 30 years that he has been there. This was a self-help effort done by Mr. Rowley over the weekend where he removed landscaping and replaced it with gravel. It's a hazard. It's substandard already. If the car is 6 feet wide, the landscaped area is only 7 feet wide, so often it is on the asphalt of the driveway. He doesn't believe you could get a plow in there with a 7 foot blade or a fire truck or ambulance. Allowing this new spot would be a hazard. How does a driveway become a parking spot when it was limited to a driveway?

Attorney Dunn testified. He submitted the title chains for 46, 48 North State Street and 24 Montgomery Street. He showed where Winter Street used to be. When 1970's urban renewal program was done, they bought the house on the corner and granted driveway easements. In the deeds given, rights of way were granted to North State Street and Montgomery Street properties. The easements were to be used solely as a right of way. The driveway is narrow. In the winter it is worse. He thinks the garden area should be left as such. If the vehicle is not snug up against the house it makes entrance and exit difficult.

Code: David Hall displayed Article 28-8-4(a)1 of the City of Concord Zoning Ordinance to show how Code Administration came to the conclusion that this was not an appropriate use.

Rebuttal by Attorney Moeckel. He doesn't believe this Board can decide matters of property dispute. Attorney Dunn said that this area was always the garden, but it doesn't seem so to him. The width was not expressed. Common sense shows that no one was using that as a driveway. Attorney MacIntosh said that Mr. Rowley is parking within 1-2 feet of his building. The cars on the north side are parking within 1-2 feet. Mr. Rowley is parking within 1-2 feet of Montgomery Street which matches what Mr. Rowley is doing now.

DECISION: Carley reviewed the testimony as given.

Spector-Morgan: The easement and deed issues are interesting, but not the Board's issue. The safety issue is legitimate. They all agree they can decrease the nonconformity by adding a space but the new space needs to be legal. That's not how the law of nonconforming use works in her understanding. Nonconformity on an existing part of lot cannot be expanded on another spot on the lot. She will vote to uphold the decision of the Code Administrator.

Winters: Agrees.

Scott: Agrees.

Monahan: He doesn't believe the burden of proof has been met.

Carley: Agrees.

A motion to deny the applicant's request to overturn the Code Administrator's decision was made by Spector-Morgan for reasons as stated above, seconded by Monahan and passed by a unanimous vote.

44-21 Greater Tilton Area Family Resource Center: Applicant requests a Special Exception from Article 28-2-4(j), Table of Principal Uses, to operate a Social Service Center (Educational and Institutional Use B-6), for property located at 202 North State Street, in a UT Urban Transitional District.

The Board for this case and all other cases consisted of: Carley, Wallner, Winters, Scott & Monahan.

Testify: Michele Lennon, Director of Greater Tilton Area Family Resource Center. She contacted Mr. Walker because they want to rent 202 N State Street for a new family outreach business. Because the property is in a UT zone they needed to file the application. Carley explained that in order for the Board to grant a special exception, the Board needs to find that they meet the criteria for such. Ms. Lennon explained that they are a comprehensive family support business. The Friends Program was in this location. They are a similar business. Their main programs include parent education and training. Carley asked how many people would be coming and going. Ms. Lennon explained it would be limited, i.e. by appointment only. They do have walk-ins occasionally. Carley asked if it would be fair to say 1-2 people? Ms. Lennon said yes, 1 to 2 people or a family. Individuals also make appointments.

Scott explained that she used to work at the Friend's program. This is the same offerings.

Wallner asked if they would create any undue traffic? Ms. Lennon answered they would not. Wallner asked if they would be overloading any public or private drainage. Ms. Lennon answered they would not. Wallner asked if they would create excessive demands on municipal water and sewer. Ms. Lennon answered they would not.

In favor: none.

In opposition: none.

Code: none.

DECISION: Carley reviewed the testimony as given.

A motion to approve the request was made by Wallner, seconded by Scott and passed by a unanimous vote.

45-21 Louis G. Day: Applicant wishes to store a 30-foot recreational travel trailer on a vacant lot and requests variances to:

- 1) Article 28-2-4, Allowable Principal and Accessory Uses in Zoning Districts, to allow the storage of recreational equipment on a lot where a principal residential use has not been established, where such use is not allowed as a principal use and, is only allowed as an accessory to a principal residential use; and
 - 2) Article 25-5-34, Outdoor Storage of Recreational Equipment, to allow the storage of recreational equipment within the required side yard setback,
- for property located at 30 Blackwater Road in an RO Open Space Residential District.

Note: This request is for storage only, trailer is not to be used for any purpose.

Testified: Louis G. Day. He bought a piece of land and thought he could do what he wanted on it. Carley read in his application is that his plan is to convert a recreation vehicle into a permanent building. Mr. Day explained that he bought the camper last summer. He bought the land this year in February and he took the camper out of storage to save himself the cost. He needed to repair the roof. And he put the trailer on the land where he has electric so he could work on it.

Scott asked him to explain what he wanted to do. Mr. Day would like to store the camper there so he can work on it. Scott asked for clarification that he was looking for a place to work on it but he does not plan to live there. Mr. Day confirmed that was correct. Wallner asked what else was on the property. Mr. Day said just his vehicle. Winters asked if there were no other buildings on the property. Mr. Day said that was correct, there is no other building on the property. He is waiting for his septic to be approved and once he gets that he can put his permit in to build his home. Monahan asked if this was temporary storage. Mr. Day said it was. The house won't be completed until next summer. He'd like to have the foundation in this year and built this winter. Carley asked Mr. Hall, Code Administrator, if there were a house on this property would Mr. Day be able to store it there. Mr. Hall read the section of the Ordinance. It may be stored on the property but not in the front yard or side yard. It may not be used for living space.

Winters asked if they could grant it for a year? Discussion ensued regarding this. Wallner brought forward that the Board had allowed a setback variance for a temporary amount of time in March 2021.

Carley asked why he wasn't able to move the RV into the setbacks. Mr. Day wasn't aware of the setback issue, just of the storage issue. Monahan explained that because there is no home there, there is an issue with the setback. Mr. Day explained he has 100 feet in on the right hand side of the property and that is where it would be placed. Carley asked if he could move it to the left. Mr. Day explained that was where the septic system would be going. Winter asked if there was anything unique about the property. Mr. Day explained that he had a 125 foot incline. Carley explained that if the Board granted a temporary variance both the side yard setback and keeping of the RV on the land would expire at the same time. Mr. Day explained that there will be a section in the back yard where the camper would be. Winters asked if the RV would be visible to the neighbors. Mr. Day answered that it would be right now as he just cut in for his driveway.

Scott asked Mr. Day how much work needs to be done on his RV. Mr. Day responded it would take him 2 to 6 months. The job itself won't take much time, it's waiting for the parts that takes the time. Carley asked if when it is fixed/finished, will he keep it on the property? Mr. Day stated that once the home is done he will. Scott asked if the camper repairs get completed and the house isn't finished, would he live in the camper. Mr. Day answered that he would not as he is staying at his mother's until his home is done.

In favor: none.

In opposition: Norman Lacoy, an abutter who lives at 33 Blackwater Road. He owns property across the street and the RV is visible from his yard. The RV has been there since the middle of June. He noticed that Mr. Day is there overnight. There doesn't seem to be much progress as far as building a home on the property. He owns 45 acres across the road from him. This affects the value of his land and his property because there is a trailer there. And it says it is zoned RO. It's his understanding that there should not be a trailer there. Winters explained that the RV could be stored in the back yard. Mr. Day has owned the land since last fall and Mr. Lacoy believes that the presence of the RV decreases his property value. If he wants to subdivide his land and sell building lots, he doesn't think he'd have much luck selling it due to the RV there. Carley asked Mr. Lacoy how he would feel about it being kept there for a year until the house is finished. Mr. Lacoy would be in opposition of that. He checked with Mr. Nadeau and there have been no permits issued yet.

Code: none.

Rebuttal: Mr. Day explained that there have been some issues between him and his neighbor.

DECISION: Carley reviewed the testimony as given.

Wallner: The Board did something similar in March. He's in favor of the request as submitted for a period of 12 months.

Monahan: Agrees with Wallner.

Scott: Would like to agree, but there is a difference between the case in March where there was already a house, etc. on the parcel. This is someone who wants to pull a permit, wants to build a house, etc., but isn't at that stage yet. Her concern is that if they grant this, contingent on 12 months, but then the permits aren't pulled in those 12 months, then they have allowed a trailer to sit there to be worked on and stored for 12 months. He doesn't meet the burden of proof.

Winters: The case earlier this year was specifically for Article 28-9-2, which is a specific element of the code that authorizes them to issue a temporary permit. Here, he doesn't believe the board has the authority to issue a variance for a year.

Carley: He is inclined to deny the request. He cannot see the justification under the ordinance. The request doesn't meet the criteria for a variance. He sees the appellant's point, but he doesn't think the board has the grounds to grant the requests.

A motion to deny both requests was made by Winters, and seconded by Scott and passed by a 3-2 vote with Wallner and Monahan in the minority.

46-21 David Keller: Applicant wishes to build a 7-foot 3½ inch by 19-foot storage addition onto an existing garage/carport structure and requests variances to:

- 1) Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 2 feet +/- from the front property line where a 25-foot setback is required, and
- 2) Article 28-4-1(h), Table of Dimensional Regulations, to permit a structure to be located 14 feet 9 inches +/- from the easterly side property line where a 15-foot setback is required,

For property located at 8 Cote Street in an RM Medium Density Residential District.

Testified: David Keller. He'd like to add to his garage on the left side of his property. He needs storage space for bicycles and lawn mowers in the summer time and motorcycles in the winter time. He discovered, for the first time, that his driveway was City property. The garage and carport are already grandfathered in to be nonconforming. Carley asked if the garage and carport are on the property line. He confirmed that they are. He submitted a letter from the neighbor who lives next door.

Carley asked if the shed were 7 feet off the side of the garage? Mr. Keller said it was. Carley asked the length. Mr. Keller answered 19 feet. Monahan asked if the property were flat. Mr. Keller said it was flat. Winters asked if he could put it elsewhere on the lot as he had a large lot. Mr. Keller answered that technically he could, but there would be no driveway to support it. It would be less obtrusive as well.

In favor: none.

In opposition: none.

Letter was submitted by Matthew Gfroerer of 12 Cote Street. He is in favor of the request.

Code: none.

DECISION: Carley reviewed testimony as given.

Scott: This is a large property and there are other locations, but the use of the proposed structure would be better adjacent to the road. It won't harm the neighborhood or have a negative impact. She is in favor.

Monahan: Agrees. The uniqueness is that the property line is at the structures.

Wallner: Agrees. He feels that the encroachment is minor.

Winters: He is not as concerned with the setback up against the road. The neighbors do not seem to be concerned either. He agrees with his colleagues.

Carley: Agrees. Asking him to move it to the other side of the yard would be a poor use of the property.

A motion to grant the requests was made by Monahan, seconded by Winters and passed by a unanimous vote.

Minutes

A motion to approve the Minutes of August 4, 2021 was made by Wallner, seconded by Winters and passed by a unanimous vote.

*Respectfully submitted,
Rose M. Fife, Clerk
Zoning Board of Adjustment*