

**Call to Order:**

The meeting was called to order at 7:05 p.m. by Chairman McLaughlin who read the following statement: “Notice of this meeting was given as required by the Open Public Meetings Act in the Annual Notice of Meetings. This notice was sent in writing to the South Jersey Times on January 17, 2013. A copy was posted on the second floor bulletin board of Town Hall and a copy was given to the Township Clerk.”

The Board saluted the flag.

Roll call: Present – Mr. Carney, Mr. Fitzgerald, Mr. Fritz, Mr. Manfredi, Mr. Salvadori, Ms. Hui, Mr. Kozak, Mr. McLaughlin. Absent – Mr. Price, (excused), Ms. Pellegrini, (excused), Mr. Sander, (excused). Also present – Mr. Debrosse, Solicitor, Mr. Caligiuri, Council Liaison, Mr. Weikel, Zoning Officer.

**Memorialization of Resolutions:**

1. #13-10 – App. #13-04 – Joan Rumpf – Side Yard Variance Approved

Motion by Mr. Kozak, seconded by Mr. Fritz to adopt resolution #13-10. Roll call vote: Ayes – Mr. Kozak, Mr. Fritz, Mr. Manfredi, Mr. Salvadori, Ms. Hui, Mr. McLaughlin. Nays – Zero Abstentions – Zero.

Mr. McLaughlin stated that the Board would move forward with the other items on the agenda until the applicant arrived.

**Reports:**

No reports.

**Approval of Minutes:**

1. 2/05/13 regular meeting.

Motion by Mr. Salvadori, seconded by Mr. Fritz to approve the minutes from the February 5, 2013 regular meeting. Voice vote; all ayes, motion passed.

**Discussion: for Board Action**

1. #13-02 – Harold Paul Kanady – Certificate of Non-Conformity

Present – Mr. Kanady, applicant, Mr. Makowski, applicant’s attorney.

Members packets contained: 1. A copy of the applicant’s application, including letters and photographs marked as exhibits.

The applicant is asking for a Certificate of Non-Conformity so that he can continue to repair the trucks he uses for his business on the property located at 1887 York Avenue, also known as Block 15403, Lot 12.

Mr. Kanady was sworn in by Mr. Debrosse. Mr. Makowski introduced himself as the applicant’s attorney. Mr. McLaughlin asked Mrs. Farrell if the application contained the necessary information to be deemed complete. Mrs. Farrell replied that it did. Motion by Mr. Salvadori, seconded by Mr. Fritz to deem application #13-02 complete. Voice vote; all ayes, motion passed.

Mr. Makowski stated that Mr. Kanady has been working a business from this property from the early 1970’s and it has been the same in character and intensity since the 1980’s. He stated Mr. Kanady will testify to the fact that the business was in operation at this property before the ordinance change in 1990.

Mr. Debrosse explained to the Board that a Certificate of Non-Conformity is a mechanism to grandfather in a non-conforming use. Mr. Kanady must prove that the business existed and the nature of the use on the site prior to May of 1990 when the ordinance was changed. Anything that increased the intensity of the use or expanded the use after May of 1990 will be separate from the use that existed prior to that date. The Board will need to determine what the use was prior to May of 1990 and that will be the use that is grandfathered.

Mr. Kanady stated he moved to the property in 1970 when his grandparents bought the house. He became the owner when his grandmother took ill in the early 1980’s. Back in the 1970’s he operated a towing business from the property. Right after that he built a dump truck and started that business. He referenced several of the photographs marked as Exhibit A which depicted his tow truck and the first dump truck he used for his business in the early 1980’s. He stated that it was approximately 1983 when he legally started his dump truck business. The trucks were stored and operated from 1887 York Avenue. The nature of the businesses he operated from the property was towing on the weekends and hauling materials for South State.

**Discussion: (continued)**

1. #13-02 – Harold Paul Kanady (continued)

Mr. Kanady also stored approximately eight or ten other vehicles on the property. He stated in his spare time he would purchase a pick-up or car and fix them up and sell them. He did this to generate extra income so he could keep his other business going. He also worked on his own trucks, the tri-axle dump trucks that he used for his hauling business. At that time his cousin Bill Johnson would help him as well as a couple other guys on the weekends. Back then Mr. Kanady stated he was a driver, mechanic, basically whatever he needed to be for the business. Mr. Makowski asked what role Mr. Kanady plays now in the business. Mr. Kanady stated he is still involved in everything that goes on with the trucks, but he doesn't do as much as he did back then.

Mr. Makowski asked Mr. Kanady to describe what is depicted in the some of the other photographs marked as Exhibit A. Mr. Kanady stated that the first page of photographs shows the same dump truck, there is a photograph of a younger Bill Johnson working on the dump truck, and photographs of the dump truck in various stages of repair. Mr. Makowski asked Mr. Kanady if from the 1980's to May of 1990 he operated the same type of business from the York Avenue property. Mr. Kanady replied that he did and that he purchased more vehicles as well. The second page of photographs depicted different dump trucks on the site right around 1990. Mr. Kanady stated at that time he was still building trucks and fixing trucks on that property. He stated he built every one of the dump trucks depicted in those photographs on the York Avenue property. He also does snow plowing with the trucks for the State. In total he was doing some towing for the Monroe Township and Glassboro, hauling sand and stone, and doing paving for South State, and plowing snow and salting for the State when necessary. Mr. Kanady stated that he also worked on the Route 55 project at the beginning which was approximately in 1985 or 1986. He showed a picture of the truck he built to do that job. This was all done at the York Avenue property; he would park his trucks there and also build/repair the trucks on that property. By 1990 he had approximately four tri-axle trucks that were running for the business and one that he was building. The tow truck has been on the property since the 1970's. Mr. Kanady testified that he is doing the same type of work on the property today as he was back then; however he doesn't do as much building as he did back then, but he will buy trucks and work on them. By May of 1990, Mr. Kanady stated he had a lot of vehicles on the property, some of them looked like junk but they weren't junk; he used them to build other trucks and fixed some of them up to sell. He stored them on the side of the garage and behind the garage at the property on York Avenue.

**Discussion:**

1. #13-02 – Harold Paul Kanady (continued)

Mr. Kanady stated that at that time there was a small garage on the property, it is still there, where he would work on components of the trucks, store tools and equipment, but he would have to work on the trucks outside because they were too big to fit in the garage. In 1990 he worked for South State, Pierson, and he was just starting to work for Henkels and McCoy doing a lot of utility work. He still used the tow truck on occasion and would sometimes use it on his own jobs but by then he was out of towing for any townships because he wanted to concentrate on his truck business. Also in 1990, after the trucks were done working for the day, they would be driven back and parked/stored on his property at 1887 York Avenue. The other vehicles, cars and pick-up trucks were still being stored at the property and even though other people thought they were junk, he would fix them, paint them, and resell them. Some vehicles were there for parts. Mr. Kanady testified that in 1990 he had about three or four employees.

Mr. Makowski asked Mr. Kanady if he does anything different on the property now than he did back in 1990 and before. Mr. Kanady stated that he basically does the same thing, he works on his trucks except now he works on them inside a new garage he had built instead of outside near people's houses. He thought building the bigger garage would help clean up the property since he can store a lot of the parts and the trucks in the garage. It also helps to reduce any noise the neighbors might hear from his working on the trucks. He stated that his neighbor Mr. Johnson told him if he built a garage he would leave him alone because Mr. Kanady would be away from the other houses while working on the trucks, so he built the garage. The garage was built in 1999. The smaller garage is still used for storage of tools and to work on smaller components. Mr. Kanady stated that he did plant a lot of trees and landscaping to make the property look nicer and to shield parts and vehicles as well as the working on them from his neighbors. He planted the trees across the front around 1988 so the trees are pretty mature now. There was a lot of landscaping done on the side as well. There were photographs included in the exhibits depicting the applicant's property and the trees and landscaping around the property. The photographs show that you can hardly see the property because of the size of the trees. Mr. Kanady testified that he does about the same level of work now with regard to intensity as he did back then. He is still working on trucks that he buys and the older ones to maintain them. He stated that he must maintain the vehicles because he works for the DOT and they require him to keep his trucks in proper working order.

**Discussion: (continued)**

1. #13-02 – Harold Paul Kanady (continued)

Mr. Kanady also commented that it cost him a lot more money to run his business today due to increasing insurance costs and the price of fuel and parts for the vehicles. The business has gotten better but he is still doing the same work as he has been doing all these years. Included in Exhibit A are a couple of letters from neighbors who are in support of Mr. Kanady and stated that he has been operating his business from the York Avenue property prior to 1990.

Mr. Makowski asked Mr. Kanady if obtained the proper permits to construct the garage he built in 1999. Mr. Kanady replied that he did. At the time he indicated that he was going to use the garage for storage. He does use it for storage but he also started using it to work on his trucks so that he wouldn't disturb the neighbors. Mr. Kozak asked Mr. Kanady how many tri-axle trucks he runs for the hauling business from the York Avenue property. Mr. Kanady stated that no trucks run out of that location for hauling. He only uses the York Avenue property for repairs to his trucks; the trucks for hauling and other uses run out of his other property on Glassboro Road. Mr. Kozak asked how many trucks may be at the York Avenue location for repair at one time. Mr. Kanady stated that he may have two, on occasion maybe three trucks there if he is waiting for parts, etc. No trucks are started early in the morning or late at night for the hauling business from the York Avenue location. Mr. Kozak asked Mr. Kanady if he received approvals to use the garage for repairs. Mr. Kanady stated he did not; he received the approvals to use the garage for storage but he then started using it to repair his own trucks for his business, not other people's vehicles, in the garage. Mr. Kozak asked if Mr. Kanady was running the trucks for hauling from the York Avenue address prior to 1990. Mr. Kanady stated that the trucks would run in and out for hauling. He stopped using the York Avenue property to run the trucks for hauling when he purchased a property on Glassboro Road in 2003. He owns two properties now on Glassboro Road and uses those properties for his hauling business. He still does the repairs on the trucks at the York Avenue property. Mr. Weikel asked if a copy of the permit for the garage was included in the applicant's file. Mrs. Farrell stated that she did not get a copy of the permit. Mr. Weikel stated that the reason Mr. Kanady is before the Board is because a summons was issued for running the business from the York Avenue property. Mr. McLaughlin asked if any of Mr. Kanady's employees work at the York Avenue property. Mr. Kanady stated that there are two or three people working there repairing the trucks. Mr. McLaughlin asked how many tri-axle trucks are on the York Avenue property. Mr. Kanady stated that the tow truck is still there as well as the other smaller vehicles, and right now one tri-axle he is working on in the garage.

**Discussion: (continued)**

1. #13-02 – Harold Paul Kanady (continued)

Mr. Kanady testified that he has fewer vehicles on the York Avenue property now than he did in 1990. He has moved most of them to another property he owns and is still in the process of moving some. He does still have his farm tractors, his backhoe, and a bulldozer on the property. He does still do snowplowing for the State. Mr. McLaughlin asked if Mr. Kanady's business has expanded since 1990. Mr. Kanady stated that he still works for the same company's he mentioned earlier but he has purchased other properties to use for storage of the trucks and running the business; he only uses the York Avenue property for repairing his trucks and the other vehicles he has purchased. Mr. Fritz asked Mr. Kanady if he has conducted one continuous business from the York Avenue property since the 1970's. Mr. Kanady replied that he had the towing business in the 1970's and started the hauling business in approximately 1983; he then eventually phased out the towing business.

Mrs. Farrell commented that the garage that Mr. Kanady built in 1999 was not part of the business and that he never received approvals to run the business from that garage. Mr. Kanady stated that he did not get approvals to run the business from the garage; however he working on his vehicles in the garage. He can work on them in front of the garage or on the side of the garage. She stated that he built the garage for his personal use and for storage not to run his business. Mr. Kanady stated that yes it was built for storage and he uses it for storage he does not run his business from the garage but he repairs his personal vehicles, the trucks for his business, in the garage. He stated that he did not realize he couldn't use the garage to repair his vehicles without approval. Mr. Makowski commented that technically Mr. Kanady's business is not a LLC or a corporation; he is a sole proprietor. Mr. Weikel stated he stipulated on the bottom of the permit for the garage that Mr. Kanady could not run the business from the garage. Mr. Weikel stated he would go to his office and get a copy of the permit.

The Board took a brief recess.

Mr. Debrosse stated that the application for the permit to build the garage stated that the garage would be used for private use to store a motor home. The permit that was issued indicates the size of the garage and that is was to store a motor home not for commercial use. Mr. Makowski stated that he is using it to repair vehicles inside as opposed to outside where he thought it was beneficial for his neighbors. In addition he did testify that Mr. Johnson told him he would not bother him if he put the trucks in the garage.

**Discussion: (continued)**

1. #13-02 – Harold Paul Kanady (continued)

Mr. McLaughlin commented that he understood Mr. Kanady to say that he built the garage because the neighbor stated he would not bother him about the trucks or the business if he moved it inside the garage. Mr. Makowski stated that yes, Mr. Kanady did testify to that. Mr. Kanady stated that he believes the garage can be used for his repair of his vehicles, he does not take in other people's vehicles to repair, he only works on his own vehicles which he uses for his business but they are registered to him. Mr. Makowski commented that his client may have misunderstood when he was asked if the garage would be used as a commercial garage, meaning would he be taking in outside work, not for his own personal repairs on his vehicles for his business. Mr. Makowski stated that he didn't think not letting Mr. Kanady use the garage to repair his trucks made a lot of sense since he was doing it so as not to disturb the neighbors, where previously he would be working on the trucks outside. He didn't feel the garage was an expansion of the business since he is not a commercial repair shop; he is just working on the trucks for the business that was started back in the 1980's.

Mr. Debrosse stated that the Board must determine whether the garage counts as an expansion of the use; however since the same work is being done that was being done outside, it might not change the use of the property. The other issue is that garage is being used for something that is outside of the permit, so that if the Certificate of Non-Conformity is granted, Mr. Kanady may require a use variance to use the garage to repair his trucks. Mr. Makowski replied that if the Certificate of Non-Conformity is granted maybe they can look at the garage as being approved since he is before the Board for the whole issue of the use of the property and he is only doing indoors what he was doing outdoors. There is not an expansion of the use. Mrs. Farrell asked if Mr. Kanady is going to follow through on the approvals for his other two properties on Glassboro Road for storage of his vehicles and his business or does he intend to bring those vehicles back to the York Avenue property. Mr. Makowski stated that Mr. Kanady is not going to move his repair shop to the properties on Glassboro Road; he intends to still do the repairs on the York Avenue property. He will keep the trucks on the property on Glassboro Road. Mrs. Farrell asked how many trucks Mr. Kanady will have on the York Avenue property at one time for repairs. Mr. Kanady stated he might have two or three at one time. Mr. Kozak stated that Mr. Kanady abandoned the hauling business from the York Avenue property when he moved it to the Glassboro Road properties so that he cannot bring the use back to York Avenue even if he was running that business from there prior to 1990.

**Discussion: (continued)**

1. #13-02 – Harold Paul Kanady (continued)

Mr. Makowski stated that Mr. Kozak's statement was a little broad when saying he abandoned his business from York Avenue because Mr. Kanady still has an office on that property as he has had since before 1990 where he conducts his business. It was only for his neighbors complaining that he moved the trucks and had the guys meet at another location to pick up the trucks. Mr. Kozak stated that Mr. Kanady testified that he started using one of the Glassboro Road properties for the hauling in 2003. Mr. Makowski stated that Mr. Kanady does run his business from the York Avenue property; he has not abandoned the business on that property; he just moved the trucks to another location for the hauling; he dispatches from the York Avenue property and he does the repairs. Mr. Kanady stated that he did move the trucks because of the neighbor's complaints; he does understand because there would be times when the trucks would have to go out in the middle of the night when it was snowing etc, to lay salt down for the State, so he moved the trucks to the Glassboro Road property. Mr. Kanady stated that he gets blamed for every truck that goes down Route 322 in the middle of the night, even though he may only have one truck running.

Mr. Debrosse stated again that it is up to the Board to determine if the nature of the use has expanded or changed from 1990 to today and whether the use of the garage for the repairs is an expansion of the use. Mr. Kozak asked Mr. Kanady why he didn't indicate he was going to use the garage for repairs on his trucks when he applied for the permit. Mr. Kanady stated that when he was asked if he was going to use the garage for a commercial use when he applied for the permit he stated he was not because he didn't think repairing his own vehicles was considered using the garage as a commercial use since it wasn't a public garage where he would be doing work on other people's vehicles. Mr. Makowski stated he didn't think using the garage to repair the trucks is an expansion of the business he was already doing on the property; he just moved the use indoors. Mr. Kozak disagreed and stated that if he had a commercial business outside of his property but built a garage and started bringing his vehicles for his business there to repair them, he would be using is garage for commercial use. Mr. Makowski stated that Mr. Kanady has been doing the repairs outside since the 1980's, he is not changing the intensity of the use or expanding the use, he just moved the use indoors. Mr. Kozak replied that the garage was built for storage. Mr. Makowski stated that they are before the Board on whether the property was being used for Mr. Kanady's business before the ordinance change in 1990, not why the garage was built or its purpose. That garage did not change the use or expand Mr. Kanady's business. Mr. Kozak stated the minute a building is built the use is intensified.

**Discussion: (continued)**

1. #13-02 – Harold Paul Kanady (continued)

Mr. Weikel asked if the applicant is granted a Certificate of Non-Conformity will the Board have the control or say over what part of Mr. Kanady's business is grandfathered. Mr. Debrosse replied that the Board will specify what part of Mr. Kanady's business will be grandfathered and permitted to continue on the York Avenue property. Anything above what is considered grandfathered by the Board and covered under the Certificate would require Mr. Kanady to obtain a use variance.

Mr. Salvadori asked if the tools used for repairing the trucks moved into the new garage for storage. Mr. Kanady replied that he did move those tools into the garage. Mr. Caligiuri asked Mr. Kanady if he would repair the trucks in the rain before he built the garage. Mr. Kanady replied that yes they would work on the trucks in the rain and the cold; they would put up tarps or whatever was necessary to continue to work on the trucks. Mr. Kozak asked how many trucks Mr. Kanady uses for the hauling business. Mr. Kanady stated that he has eight trucks for hauling but he uses other types of vehicles for his business depending on what the client needs. Mr. Kozak stated that Mr. Kanady testified that he only had four trucks running for the business prior to 1990 and now he says he has eight which is an expansion of the business. Mr. Kanady stated he has had many types of trucks in the past and at one time he had thirteen tri-axles but he has downsized the number of large trucks over the years. Mr. Kozak stated that the business of repairing the trucks is expanded because he has more trucks. Mr. Makowski stated that Mr. Kanady built trucks back then and had many different types of trucks on the property. Now he doesn't build them so much but he repairs trucks that he buys and uses or sells like he testified to previously.

Motion passed to open the discussion to the public.

Mrs. Farrell stated that she has an email that was sent by William and Doris Johnson who live on York Avenue and are not able to be present at the meeting. The letter was passed around so the Board could read it. There was also a letter submitted written by Risti Talbot, who was not present, but was in objection to the applicant's application. That letter was not submitted to the Board directly. Mr. Debrosse stated that the Board can consider the weight of the letters submitted since the letters were directed to the Board or the Township. There was a brief pause while the letters were read by the Board members.

**Discussion: (continued)**

1. #13-02 – Harold Paul Kanady (continued)

1. Bunny Bouchard, 521 Pitman Avenue, Pitman was sworn in by Mr. Debrosse. Ms. Bouchard stated that she owns the property next to Mr. Kanady's property, at 1893 York Avenue. She currently rents the property. She stated that she brought many photographs but she doesn't want to give the originals to the Board and she didn't know what pictures will be relevant. Ms. Bouchard stated that there are four people against this applicant being approved but she is the only one present; however she brought their letters and pictures. She claimed that Mr. Kanady did not own the property on York Avenue until 1994 and his grandmother did not conduct a business on that property when she owned it. She said the applicant stated that his business hasn't really changed in the last forty years but the neighbors don't agree with that; she stated that it went from a small towing and repair business to a huge trucking company and whatever else he feels like doing. She questioned when Mr. Kanady's trucking business was registered with the State of New Jersey and stated that the Johnson's, Ms. Talbot, and she do not agree that there was a trucking company operating in the 1970's or 1980's. She stated that Mr. Kanady only did repairs on the property in the 1970's and then after his step grandfather died, he expanded as far as having vehicles at the property. She stated that it is her understanding that a grandfather clause involves continuing a business without change or expansion. Mr. Kanady has changed and expanded his business. She asked for paperwork proving that Mr. Kanady was conducting a trucking business on the property prior to 1990. The garage is being used for repairs and not for storage of his motor home. They want the Township to put an end to the nightmare and if the Township approves his application, the neighbors want a decrease in their property taxes. She stated that Mr. Kanady has done whatever he wants on his property and the Township has let him get away with it. Ms. Bouchard stated that the hauling business was not started back in the 1980's but later and it has continued to grow. She stated she has letters that were previously written to the Township when Mr. Kanady applied to receive approval for his business on Glassboro Road. Ms. Bouchard stated that there is no record of a business until 2008 with the State. Mr. Debrosse stated that that doesn't necessarily mean the business wasn't being run prior to that and the use of the property changed. Ms. Bouchard stated that a business still has to be registered and it didn't matter whether he was an LLC or a corporation. She also questioned why he doesn't pay a lot more taxes than she does since he has built a large garage. The Board stated that they do not have control over the tax assessment. She displayed a picture depicting the trucks being washed on the property and indicated it was a danger to their wells.

**Discussion: (continued)**

1. #13-20 – Harold Paul Kanady (continued)

Ms. Bouchard had numerous photographs of the property, letters, and information that the Board could not review during the meeting. Mr. McLaughlin stated that there is too much information being submitted and the meeting should be continued. Mrs. Farrell stated that she will make copies of all the information for the Board and the applicant for the next meeting.

Motion passed to close the discussion to the public.

Mr. Kanady responded that there are tax records from 1983 under H. Paul Kanady showing that he has been in business since then. With regard to the smoke and fumes from the trucks, the State inspects those trucks and they must pass for pollution every year because if they didn't he wouldn't be allowed to use them. He has the records for those tests. Most of this is a family feud; Mr. Johnson used to work for him and is a relative. Mr. Kozak asked if the residential street is restricted from having large trucks using it for a business. Mr. Makowski stated that he has been doing this repair business prior to 1990 on the property. Mr. Kozak stated that the police haven't given their approval for him to use his trucks on the residential street for his business. Mr. Debrosse stated that the Board does not have jurisdiction over the street. Ms. Hui asked when the other homes were built and was Mr. Kanady's business being operated there before some of the other homes were built. Mr. McLaughlin replied that the Board did not have that information at this time.

Motion by Mr. Carney, seconded by Mr. Fritz to table the application until the March 5, 2013 regular meeting. Voice vote; all ayes, motion passed.

**Public Portion:**

Motion passed to open the meeting to the public. There being none, motion passed to close the meeting to the public.

**Adjournment:**

The meeting was adjourned at 9:00 p.m.

These minutes are an extract from the meeting that was held on the above date and are not a verbatim account or to be construed as an official transcript of the proceedings. The tape of the meeting is stored in the office of the Board. Ninette Orbaczewski, Clerk Transcriber.