

Call to Order:

The meeting was called to order at 7:00 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. In addition, notice for this evening’s public hearings was sent in writing to the South Jersey Times on April 23, 2013.

The Board saluted the flag.

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

Memorialization of Resolutions:

1. #13-15 – App. #13-09 – Steven Schankweiler – Side Yard Variance Approved

Motion by Mr. Fritz, seconded by Mr. Salvadori to adopt resolution #13-15. Roll call vote: Ayes – Mr. Fritz, Mr. Salvadori, Mr. Manfredi, Ms. Hui, Mr. McLaughlin. Nays – Zero. Abstentions – Zero.

2. #13-16 – App. #13-08 – Richard Jacobi – Use Variance Approved

Motion by Mr. Salvadori, seconded by Mr. Fritz to adopt resolution #13-16. Roll call vote: Ayes – Mr. Salvadori, Mr. Fritz, Mr. Manfredi, Mr. McLaughlin. Nays – Zero. Abstentions – Zero.

Public Hearings:

1. #13-05 – Deborah Shiflet – Rear & Front Yard Variances

Present – Deborah Shiflet, applicant.

Member’s packets contained: 1. A copy of the applicant’s variance application, photographs of the property, and a survey.

Public Hearings: (continued)

1. #13-05 – Deborah Shiflet (continued)

The applicant is proposing to build a single-family home on an existing foundation which will require her to obtain a rear yard variance of fifteen feet where fifty feet is required and she is proposing thirty-five feet and a front yard variance of twenty feet where fifty feet is required and she is proposing thirty feet. The property is located at 243 Piney Hollow Road also known as Block 7302, Lot 11.

Ms. Shiflet was sworn in by Mr. Marmero. Mr. McLaughlin asked Mrs. Farrell if the application can be deemed complete. Mrs. Farrell replied that it can be deemed complete. Motion by Mr. Salvadori, seconded by Mr. Fritz to deem application #13-05 complete. Voice vote; all ayes, motion passed.

Ms. Shiflet testified that she is before the Board to request rear and front yard variances since they are going to be rebuilding a home on the existing foundation. Mr. Marmero commented that the previous home complied with the zoning at the time; but with the new zoning requirements it does not. Mr. Marmero asked if the home was demolished. Mr. Kozak commented that it wasn't completely demolished.

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

Motion by Fritz, seconded by Mr. Fitzgerald to grant the rear and front yard variances as requested by the applicant. Roll call vote: Ayes – Mr. Fritz, Mr. Fitzgerald, Mr. Manfredi, Mr. Salvadori, Ms. Hui, Mr. Kozak, Mr. McLaughlin. Nays – Zero. Abstentions – Zero.

2. #13-10 – Scott & Virginia Kaye – Percentage of Lot Coverage

Present – Scott & Virginia Kaye, applicants.

Member's packets contained: 1. A copy of the applicant's variance application, photographs and a survey of the property.

The applicant's are requesting a lot coverage variance of seven percent where thirty-five percent is required; they are proposing forty-two percent in order to be allowed to construct an in-ground swimming pool with a concrete walkway. The property is located at 1669 Carriage Drive, also known as Block 103.0101, Lot 22.

Public Hearings: (continued)

2. #13-10 – Scott & Virginia Kaye (continued)

Mr. and Mrs. Kaye were sworn in by Mr. Marmero. Mr. McLaughlin asked Mrs. Farrell if the application can be deemed complete. Mrs. Farrell replied that it can be deemed complete. Motion by Mr. Salvadori, seconded by Mr. Fritz to deem application #13-10 complete. Voice vote; all ayes, motion passed.

Mr. Kaye testified that they are constructing an in-ground pool and would like to have a concrete walkway around the pool. Mr. McLaughlin commented that the applicant would need a seven percent lot coverage variance in order to have the concrete walkway around the pool. Mrs. Farrell stated that the applicant's have received an approved lot grading plan. Mr. Salvadori commented that the property looks relatively flat and asked if there were any drainage issues. Mr. Kaye replied that there aren't any drainage issues on the property. Mr. Fritz asked if the applicant's plan to put a shed in the back yard as well. The applicant's testified that they do not have any plans to put a shed in their yard.

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

Motion by Mr. Fritz, seconded by Mr. Salvadori to grant the lot coverage variance as requested by the applicant. Roll call vote: Ayes – Mr. Fritz, Mr. Salvadori, Mr. Fitzgerald, Mr. Manfredi, Ms. Hui, Mr. Kozak, Mr. McLaughlin. Nays – Zero. Abstentions – Zero.

Certificate of Non-Conformity – for Board Action:

1. #13-02 – Harold Paul Kanady – (continued from 4/16/13)

Present – Harold Paul Kanady, applicant, John Makowski, applicant's attorney.

Member's packets contained: 1. Letter prepared by John Makowski citing legal argument as to Mr. Kanady's standing to be before the Board.

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.

Certificate of Non-Conformity: (continued)

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

Mr. Marmero reviewed the applicant's request for the Board. He stated that the applicant was before the Board requesting a Certificate of Non-Conformity to be allowed to continue a use that is no longer conforming in the zone. Mr. Kanady presented his case to the Board and the public had a chance to speak at the meeting of February 19, 2013. At that time, the Board wanted additional time to review materials submitted by the public. Mr. Kanady came back to a meeting on March 5, 2013 at which time he and his attorney were given new information received by the Board concerning the zoning of Mr. Kanady's property prior to 1990. Mr. Kanady's attorney asked for a continuation so that he could review the information given to him concerning the zoning and Mr. Kanady's standing. Mr. Makowski has provided a letter citing case law pertaining to the continuance of non-conforming uses. Mr. Marmero advised the Board that they can make a decision based on Mr. Makowski's letter and the previous testimony and evidence submitted or they can ask Mr. Kanady for further testimony and then reopen to the public.

Mr. Marmero also reviewed the standard for a non-conforming use. The person who has a non-conforming use can apply in writing to the Zoning Board for the issuance of a certificate which certifies the use or structure existed before the adoption of the ordinance that rendered the use or structure non-conforming. The ordinance in this case went into effect in February 1979. The Board must determine, based on the testimony given, what that was and if they will allow Mr. Kanady to continue that use on his property. Mr. Marmero commented that there aren't any records of what, if any, zoning existed prior to 1979 and that the zoning of Mr. Kanady's property was made residential in 1979.

Mr. McLaughlin inquired as to the case law cited in Mr. Makowski's letter. Mr. Marmero replied that Mr. Makowski does cite the law correctly in that the change of ownership does not terminate the non-conforming use and if the non-conforming use continues and is still in existence the applicant is entitled to apply for the Certificate of Non-Conformity. The use isn't considered abandoned by the change of ownership. Mr. Marmero stated that it is the Board's decision to determine what the use was on the property prior to 1979.

Ms. Hui asked if Mr. Kanady had standing to be before the Board since he hadn't registered his business with the State until 2008. Mr. Marmero replied that Mr. Kanady stated he was operating his business from this property prior to that so he has standing before the Board; the issue of registering with the State is a separate matter and not under the Board's jurisdiction since it is an outside agency.

Certificate of Non-Conformity: (continued)

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

Mr. McLaughlin commented that the Board has seen evidence of a business on the property in the 1970's. He asked the Board if there were any motions to either reopen testimony or for a decision to resolve the matter. Ms. Hui asked if Mr. Kanady's business was a legal business back in the 1970's. Mr. Marmero stated that there isn't any record of zoning prior to 1979 so that it really cannot be determined if the business was legal or not prior to 1979. Mr. Fritz asked if the Board would be grandfathering the use but if the property were to be sold the business wouldn't be permitted. Mr. Marmero replied that the use would still be permitted if the property were sold if the Board granted the certificate; whatever the business was prior to 1979 would be grandfathered in.

Mr. Kozak asked if it mattered that the business grew after 1979. Mr. Marmero stated that the non-conforming use, once determined, cannot be expanded unless the applicant came back for a variance to allow the expansion. Mr. Kozak commented on the pole barn that was constructed and being used for the repair business after 1979. Mr. McLaughlin commented that Mr. Kanady's testimony was not that he was expanding the business; he was just taking the work he was doing outside and doing it inside the building in order to keep the neighbors from complaining. Mr. Kozak commented that the permit issued for the building clearly stated it was to be for storage. Mr. Salvadori stated that this matter and the issue of Mr. Kanady's business has been allowed to continue for many years and has resulted in his being before the Board now. Mr. Marmero replied that that is a legal argument for another venue that can be argued under detrimental reliance, but the issue before the Board is to determine when it became non-conforming and what the business was at that time.

Mrs. Farrell stated that the testimony was that Mr. Kanady was repairing trucks on the site, not running the trucking business from the property like he is doing now. Mr. McLaughlin stated that Mr. Kanady is running his trucking business from another location now and has testified that he is only doing repair work on the trucks at this property. Mrs. Farrell stated that he was running the trucking business from the property until he purchased the property on the Glassboro Road. Mr. Salvadori commented that he thought more discussion was needed to take place before the Board made a decision. Mr. Salvadori made a motion to open the matter to the public, seconded by Ms. Hui.

Certificate of Non-Conformity: (continued)

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

Mr. McLaughlin called for a voice vote; however Mr. Kozak indicated he was against opening the matter up again. He stated he thought there was enough information on the table for the Board to vote. Mr. McLaughlin indicated a roll call vote would be done on Mr. Salvadori's motion. Ayes – Mr. Salvadori, Ms. Hui. Nays – Mr. Fitzgerald, Mr. Fritz, Mr. Manfredi, Mr. Kozak, Mr. McLaughlin. Abstentions – Zero. 2 ayes, 5 nays, motion to reopen the matter for additional testimony was defeated.

Mrs. Farrell commented that Mr. Kanady testified that he is just repairing his trucks on the property; she stated that the Board could put conditions on the use such as hours of operation, the number of trucks on the property at one time, washing the trucks on site, letting the trucks idle, etc. Mr. Fritz asked if the restrictions could be put on the use of the building. Mr. Kozak asked who would enforce the conditions Mrs. Farrell listed. Mrs. Farrell commented that the neighbors and the public who have been complaining will know what restrictions are put on Mr. Kanady and they will mostly assuredly let the Township know if he is in violation. And Mr. Kanady should know that he has to follow the conditions placed on him so that he doesn't end up in this situation again. Mrs. Farrell asked if the Board would be allowed to consider the use of the building now. Mr. Marmero stated that the applicant will not be permitted to use the existing building for the repair business unless he comes back for a use variance to use the building to repair his trucks. Mr. McLaughlin asked about the testimony that Mr. Kanady isn't using the building as a public service repair shop; he is using it for his trucks that are used for his business. Mr. Marmero replied that Mr. Kanady would still need a use variance to use the building since the permit issued indicated the building was to be used for personal storage.

Mr. Fritz asked how to distinguish between personal use and personal vehicles from the vehicles he uses for his trucking company. Mr. Marmero stated that typically if it's a vehicle you use for work you can park it at your residence unless the town has some kind of ordinance against it. Some towns have certain weight limits, some have time restrictions; it depends on the local ordinance. Mr. Kozak inquired as to the weight limits and if the Board gave Mr. Kanady the certificate and the trucks were over the weight limit for the road. He asked if the local police would have jurisdiction to stop the trucks from using the street. Mr. Marmero replied that if the street has a weight limit then the police and the Zoning Officer would have the right to stop the trucks from using that street if they are over the weight limit.

Certificate of Non-Conformity: (continued)

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

Mrs. Farrell asked if the Board was going to allow Mr. Kanady to keep the old cars and other stuff he has on his property and if they were going to make him move the trucks to his other property after they are repaired.

The Board took a brief recess.

Mr. McLaughlin asked the Board if they wanted to have any further discussion or if there was a motion. There was no response from the Board so Mr. McLaughlin stated he would make the motion to grant Mr. Kanady the Certificate of Non-Conformity for the use of what existed up to 1979. He wasn't sure what else he could put into the motion. Mr. Marmero commented that he could not help him with the motion that it was the Board's decision to determine what was being done on the property back in 1979 and what they were going to allow. He stated the Board will have to make a decision based on the testimony given. Mr. McLaughlin stated that he has listened to the testimony and that he went out to the site to see what was being done. He commented that Mr. Kanady was working on his vehicles and he felt the business was fairly similar to what it was back in 1979. Mr. Manfredi seconded Mr. McLaughlin's motion. Mr. Marmero wanted to clarify Mr. McLaughlin's motion and asked if he wanted to limit the use to what it is today, meaning the repairing of the trucks. Mr. McLaughlin agreed with that statement and indicated there wasn't to be any more expansion on the site. Mrs. Farrell commented that what Mr. Kanady is doing today on the property is a lot more than what he was doing back in 1979. Mr. Manfredi replied that according to Mr. Kanady's testimony he no longer runs the trucks from the site, the men don't operate out of there, he doesn't wash the trucks there anymore; he has cut back on what he was doing on that property. Mrs. Farrell stated that the Board has to put those conditions on the motion with regard to not allowing him to return to doing those things on the property. Mr. McLaughlin agreed that conditions should be placed in the motion. The Board conditioned the motion on the following: Mr. Kanady cannot run the trucks for his business from this property, he cannot wash the trucks on the property, he can only work on his own vehicles, he must adhere to the noise ordinance with regard to the hours of operation as well as all other ordinances that pertain to local businesses, no storage of materials meaning construction materials like stone, sand, etc. He does have parts trucks and other vehicles which will be allowed to remain. Mr. McLaughlin stated that he did visit the site and it is landscaped so that you cannot see his business from the street. No environmental hazards are permitted on the site and he cannot do any work out of the building until he comes back for a use variance.

Certificate of Non-Conformity: (continued)

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

Mrs. Farrell commented that Mr. Kanady does have other commercial properties and can move some of the stuff off of this property to clean it up a little. Mr. Mamero summarized the motion and the conditions. Roll call vote: Ayes – Mr. McLaughlin, Mr. Manfredi, Mr. Fritz, Mr. Salvadori. Nays – Mr. Fitzgerald, Ms. Hui, Mr. Kozak. Abstentions – Zero. 4 ayes, 3 nays, motion passed.

The Board took a brief recess.

Extension of Time:

1. #12-05 – Salvatore Rizzo – Use Variance

Member's packets included a letter prepared by Mr. Rizzo requesting an extension time on the use variance he was granted for the mobile home/storage unit he has on the property. Mr. Marmero advised the Board that a use variance is good for one year and the Board is entitled to grant Mr. Rizzo a one year extension. In addition the permit extension act is still in effect so Mr. Rizzo is covered but the Board can grant the extension as well. Motion by Mr. Salvadori, seconded by Mr. Fritz to grant the applicant a one year extension. Roll call vote: Ayes – Mr. Salvadori, Mr. Fritz, Mr. Fitzgerald, Mr. Manfredi, Ms. Hui, Mr. McLaughlin. Nays – Mr. Kozak. Abstentions – Zero. 6 ayes, 1 nay, 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.

Reports:

1. Letter dated 4/15/13 – 2012 Annual Report prepared by Mr. Marmero.

Mr. Marmero reviewed the report for the Board. He stated that he prepares the report with recommendations to the governing body based on variances that were granted throughout the previous year.

Reports: (continued)

1. Annual Report (continued)

The first recommendation concerned the number of use variances for electronic copy signs. Mrs. Farrell indicated that Council and the Planning Board have been working on an ordinance with regard to signs. There was also a recommendation with regard to the livestock ordinance and the fee ordinance. Mrs. Farrell commented that the fee ordinance has been done. Mr. Kozak stated he thought the livestock ordinance should stay the same with regard to the setbacks because each case varies from property to property. The Board agreed that they would like to decide on those variance requests on a case by case basis. Mr. Marmero agreed he would revise his report before sending it to Council.

Motion by Mr. Fitzgerald, seconded by Mr. Fritz to allow Mr. Marmero to prepare a resolution and forward the Annual Report to the governing body. Voice vote; all ayes, motion passed.

Approval of Minutes:

1. 4/16/13 regular meeting.

Motion by Mr. Fritz, seconded by Mr. Fitzgerald to approve the minutes from the April 16, 2013 regular meeting. Voice vote; all ayes, motion passed.

Adjournment:

The meeting was adjourned at 8:05 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