

Call to Order:

The meeting was called to order at 7:20 p.m. by Chairman McLaughlin who read the following statement: “Notice of this meeting was sent in writing to the South Jersey Times on November 24, 2014 as required by the Open Public Meetings Act. 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. Fritz, Ms. Hui, Mr. Manfredi, Mr. Salvadori, Mr. Kozak, Mr. McLaughlin. Absent – Mr. Price, (excused), Mr. Sander, (excused), Mr. Sebastian, (excused). Also present – Mr. DeBrosse, Solicitor, Ms. Pellegrini, Planner.

Public Hearing:

1. #14-06 – Harold Paul Kanady – Use Variance (continued from 11/18/14)

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

Member’s packets contained: 1. Report dated September 10, 2014 prepared by Pam Pellegrini. 2. A copy of the applicant’s certified survey. 3. A copy of the applicant’s use variance application including photographs of the property. 4. Various letters, paperwork and photographs submitted by Bunni Bouchard, the applicant’s neighbor.

The applicant is seeking a use variance in order to be allowed to utilize an existing garage to perform vehicle repairs on his own trucks which he uses for his business H. Paul Kanady Trucking. The applicant was granted a Certificate of Nonconformity on May 7, 2013 permitting limited truck repair of his own trucks on Lot 13. The property is located at 1887 York Avenue, also known as Block 15403, Lot 12.

Mr. McLaughlin asked if the application could be deemed complete. Mrs. Farrell replied that application #14-06 can be deemed complete. Motion by Mr. Salvadori, seconded by Mr. Fritz to deem application #14-06 complete. Voice vote; all ayes, motion passed.

Mr. Makowski introduced himself as the applicant’s attorney. He stated they are before the Board to allow the storage and repair of Mr. Kanady’s trucks inside the existing garage. By allowing the truck repair inside it would greatly reduce the noise currently experienced by the neighbors due to the trucks being repaired outside which Mr. Kanady has permission to do. He is not expanding his business in any way he just wants to be able to repair the trucks he repairs outside inside the garage.

Public Hearing: (continued)

1. #14-06 – Harold Paul Kanady (continued)

Mr. Makowski read from the resolution that granted Mr. Kanady his Certificate of Nonconformity. He stated that they want to abide by the resolution which allows Mr. Kanady to repair his own trucks on his property; they are asking to be allowed to do those repairs inside the garage. Mr. Kanady did receive a permit to construct the garage in 1999 for the storage of his motorhome. Mr. Makowski stated that Mr. Kanady has physical limitations due to his size and that having to work outside all year around creates a hardship for him. In addition there are certain repairs that take longer and require the trucks to be out of the elements. He stated that it is really a common sense decision to allow Mr. Kanady to use a garage that already exist to do repairs he is allowed to do outside. There will be no expansion of what is currently permitted on the property and Mr. Kanady understands that he must abide by the Township's ordinances with regard to noise. He does have to adhere to the environmental standards set forth by the State as his business is closely monitored by the State with regard to the maintenance and performance of his trucks. He does not run his commercial business from the property but only repairs the vehicles used for his trucking business.

With regard to the location of the garage and the approval to do repairs on his trucks, Mr. Makowski stated that the garage is located on Lot 12; however Mr. Kanady has always believed the property to be one property and when discussing the property he has always referred to it as one property. Mrs. Farrell commented that the prior resolution for the Certificate of Nonconformity does reference Lot 12 and also 1887 York Avenue; which is technically Lot 13. The resolution is incorrect and should have indicated the Certificate of Nonconformity was for Lot 13. Mr. Marmero was made aware of that issue. Mr. Makowski replied that he is going by what is in the resolution and that Mr. Kanady has always believed that 1887 York Avenue encompassed both lots.

Mr. Kanady was sworn in by Mr. DeBrosse. Mr. DeBrosse asked Mr. Kanady if agreed and affirmed the statements made by Mr. Makowski. Mr. Kanady stated his agreement to the statements made by Mr. Makowski. Mrs. Farrell stated that the tax records show Lot 13 to have an address of 1887 York Avenue and Lot 12 only indicates York Avenue. Mr. Kanady commented he believed the lots were combined long ago. Mr. Makowski asked if they could agree the issue was irrelevant because the resolution indicates Lot 12. Mr. DeBrosse inquired as to the Block and Lot number used on the application for the Certificate of Nonconformity. Mrs. Farrell replied that the court records reference 1887 York Avenue which is Lot 13; the application for the Certificate also stated 1887 York Avenue but referenced Lot 12. That issue was discovered after the hearing and brought to Mr. Marmero's attention but it was never corrected.

Public Hearing: (continued)

1. #14-06 – Harold Paul Kanady (continued)

Mrs. Farrell also commented that Mr. Kanady received a permit to construct the garage on a vacant lot as it is not an accessory to any other structure on Lot 12. Mr. Makowski stated that they can agree the resolution indicates Lot 12 when dealing with the Certificate which also speaks to the issue of the garage and Mr. Kanady's use of the garage. Mr. Makowski asked if he could have a brief recess to consult with his co-counsel.

The Board took a brief recess and returned to the hearing at 7:40 p.m.

Mr. Makowski reiterated that they were before the Board asking to utilize the existing garage to repair Mr. Kanady's trucks which he is permitted to repair outside on the property. They believe the use of the garage will be an improvement for the neighbors with regard to the noise as well as be better for Mr. Kanady to work on or to supervise the work on the trucks during inclement weather. There has been a question as to what can actually be seen on Mr. Kanady's property from the street and the neighbor's properties. Mr. Makowski stated that Mr. Kanady has planted trees as a screening to the neighbor's properties; however he has found that a step ladder has been used by a neighbor to look over the fencing to see what he is doing on his property. Mr. Makowski submitted photographs which depicted the view from York Avenue of Mr. Kanady's property. The photographs were marked as Exhibit A-

Mr. McLaughlin asked why some of the neighbors are so upset with Mr. Kanady. Mr. Kanady replied that it is because of a family feud; he stated that none of the other neighbors were present to complain except for family members and one neighbor who is good friends with the Johnsons. Mr. McLaughlin commented on seeing a photograph from the prior hearing of Mr. Johnson working alongside Mr. Kanady on the property many years ago. Mr. Kanady stated that Mr. Johnson used to help him out and he would help Mr. Johnson. This all started because Mr. Johnson wanted to dictate to Mr. Kanady what he should and shouldn't be doing. Over the years Mr. Johnson has called to report Mr. Kanady to the State, the EPA, and the Township. Mr. Kanady commented that they will do whatever they can to give him a hard time. He stated they all got along well at one time and that it should still be that way. He also claimed to have text messages from Ms. Bouchard concerning a fence she wanted to connect to his fence and then accused him of trying to kill her dog because he removed his portion of the fence.

Ms. Hui asked if repairs to the trucks will still take place outside if the use variance is granted. Mr. Kanady stated that some repairs will have to be done outside the garage but using the garage would eliminate a lot of the outside repair. Mr. McLaughlin asked how many trucks Mr. Kanady owns.

Public Hearing: (continued)

1. #14-06 – Harold Paul Kanady (continued)

Mr. Kanady stated he owns approximately twenty-three or twenty-four trucks and that there is always maintenance or repairs to be done since they are older trucks. Every day there is one or two trucks that need some kind of repair. Mr. Kozak asked the size of the garage. Mr. Kanady stated the garage is 40x50x17. Ms. Hui asked how many trucks can fit in the garage to be repaired at one time. Mr. Kanady testified that he can fit and repair three trucks in the garage and three or four outside. Mr. McLaughlin asked if Mr. Kanady was repairing that many trucks on a daily basis. Mr. Kanady replied he was not repairing that many trucks every day. Ms. Pellegrini asked how many vehicles are currently on the property. Mr. Kanady testified that there are approximately twelve to fifteen vehicles on the property but that number also includes his and his wife's personal vehicles.

Ms. Pellegrini addressed the survey submitted by the applicant with regard to the setbacks for the garage. She stated the one corner looks to be a little closer than the one indicating it is fifty-two feet from the side property line but she estimates that it does meet the fifty foot requirement. The survey does show that the northern most stone driveway encroaches onto Lot 11 which is not owned by Mr. Kanady and the use of that driveway is not screened from the owner; however there is a tree row deeper into the property that would screen the activity. Ms. Pellegrini asked if any repair work is being done in the garage. Mr. Kanady replied that he is not allowed to do repair work in the garage. The twelve vehicles currently on the property are stored outside. Ms. Pellegrini stated that she did visit the property but did not go onto the property; she could see through the tree screening at the bottom of the trees since the trees are so tall. Mr. Kanady stated that he planted the trees about twenty years ago to screen his property from the neighbors. He stated that he recently received a permit to install a solid fence along the property line. Ms. Pellegrini stated that the fencing must meet the setbacks. Mr. Kanady stated he is aware and that the fence will be placed in between the rows of trees.

Ms. Pellegrini asked Mr. Kanady if his business has intensified in the last three years or so giving the neighbors a reason to complain. Mr. Kanady stated that nothing has changed; things are the same. Mr. Fritz asked Ms. Pellegrini if the garage and parking area comply with the ordinance requirements. Ms. Pellegrini replied that they do; however the garage should have received a use variance since it was constructed on a vacant lot. Mr. Fritz asked if the clerical error with regard to the resolution and the lot numbers will be corrected if the use variance is approved. Mr. DeBrosse replied that issue would be the subject of another discussion. Mr. Kozak commented that if the use is approved it should be conditioned upon the applicant combining the lots.

Public Hearing: (continued)

1. #14-06 – Harold Paul Kanady (continued)

Mr. DeBrosse replied that the intensity of use has not been evaluated in terms of one of the lots as opposed to the other. The Board granted the Certificate of Nonconformity for one lot and to allow the use on that lot only, if you require the lots to be combined it may allow the expansion of the use onto the other lot. Mr. Makowski stated that the prior testimony viewed the entire property as one; the garage was discussed at the previous hearing and talked about as part of the application. Mr. Kanady has always considered the property as a whole. Mr. Kanady stated that there is a document at the County stating the lots were combined in 1996. Ms. Pellegrini replied that if the lots were combined the survey would not show them as two separate lots.

Mr. Fritz asked if the Board could restrict Mr. Kanady's outside repair if the use is granted. Ms. Pellegrini commented that Mr. Makowski's statements suggested the granting of the use variance would be a swap from outdoor repair to indoor repair that would be a benefit to the neighbors with regard to the elimination of the noise. Mr. Kanady stated that he would still have to do outside repairs. Mr. Makowski stated that it is not Mr. Kanady's intention to increase the intensity of what is already being done. If he can put two or three trucks inside he can still have a couple outside which he is allowed to have. Ms. Pellegrini commented that by allowing truck repair inside and outside it is an expansion of his business. Mr. Kanady testified that he is not asking to expand he is asking to repair the trucks he is allowed to repair outside inside as well. Mr. Makowski commented that Mr. Kanady could put up a tent and do repairs under the tent but it makes more sense to allow him to use the existing garage. He does not want to expand what he already is allowed to have on the property. Ms. Pellegrini commented that the Board specifically stated at the hearing for the Certificate of Nonconformity that Mr. Kanady could not use the garage for repairs because they did not want him expanding his business to the other lot. Mr. Makowski replied that the Board never once mentioned they did not want any expansion to the other lot; they did say he could not use the garage unless he obtained a use variance. Mr. Fritz commented that it was perceived the property was one property. Ms. Pellegrini stated that the application states the use variance is to allow repairs to the trucks inside the garage to eliminate any disruption or disturbance to the neighbors. Mr. Makowski stated that Mr. Kanady has been working on his trucks at this property for over thirty years. Mr. DeBrosse suggested putting a limitation on the number of vehicles being repaired at one time to cap the intensity since the major concern seems to be that Mr. Kanady will bring more vehicles to the site for repair at one time if he is allowed to use the garage. Mr. Makowski agreed that the Board could stipulate how many trucks can be outside in addition to the three maximum he can have inside. Mr. Kozak asked who was going to enforce the numbers.

Public Hearing: (continued)

1. #14-06 – Harold Paul Kanady (continued)

Motion passed to open the hearing to the public.

1. Risti Talbot, 1720 Glassboro Road, was sworn in by Mr. DeBrosse. Ms. Talbot stated that she is not a relative of Mr. Kanady. She stated that she filed a complaint about Mr. Kanady's business back in 1990 in Mr. Weikel's office and nothing was ever done. She also commented that if the bed of one of Mr. Kanady's dump trucks has to be raised to do repairs the garage is not big enough for him to do that so that he does still have to do repairs outside. Ms. Talbot explained that she used to live on Lot 17 some years ago and Mr. Kanady would run his car engines and her laundry would smell like smoke from the fumes. He made a lot of noise with doing repairs and he would power wash the vehicles on Sundays. She now lives on Lot 18 which fronts on Route 322 but she can still smell the truck fumes and hear the noise. Mr. McLaughlin asked if the Board does not allow Mr. Kanady to use the garage for inside repair how that will help her complaint about the noise and the fumes. She replied that it would not matter either way because no one will be there all the time to monitor if he is using the garage or not; nothing ever gets done to him. Mr. Makowski asked Ms. Talbot if she can hear the trucks and cars constantly going down Route 322. She stated that she can but it's not as loud as the constant banging coming from Mr. Kanady's property. Mr. Makowski asked how long ago she moved from York Avenue to Route 322. Ms. Talbot replied it was 2008. She sold her property on York Avenue. Mr. Makowski asked if the people who live in her old home on York Avenue were present this evening to complain since they live closer to Mr. Kanady. Ms. Talbot stated that they are never there since they haven't sold their other house yet so they aren't there to hear the noise.

2. Bunni Bouchard, 234 55th Street, Sea Isle City, was sworn in by Mr. DeBrosse. Ms. Bouchard stated that she and her daughter own Lot 14; her daughter currently resides at the home; however she did live on the property for nine months this past year. She commented that she has been up on a ladder looking over to Mr. Kanady's property which is how she obtained the photographs proving that he is using the garage for truck repair and because no one else will do anything about it. She still didn't understand how the Board gave him the Certificate of Nonconformity since Mr. Kanady has never followed any rules and he never will. The State has given him snow plowing contracts and they didn't even make sure he filed his annual reports. She didn't understand how he is able to get away with so much. She stated that he constantly uses the driveway that has been found to be encroaching onto someone else's property and that trucks are constantly coming and going. She and Mr. Kanady have battled about his business getting bigger and bigger and out of control. He has been using the garage for a very long time for whatever he wants to use it for.

Public Hearing: (continued)

1. #14-06 – Harold Paul Kanady (continued)

Ms. Bouchard also commented that Mr. Kanady's taxes weren't paid when he received his approval for the Certificate of Nonconformity. Mrs. Farrell replied that it was an oversight on her part; however it was brought to Mr. Marmero's attention before the resolution was memorialized. Mr. Kanady was informed that if he did not pay the taxes his resolution would not be memorialized; he did pay the taxes before the resolution was memorialized. Ms. Bouchard stated that everything gets twisted for him, to benefit him. Mrs. Farrell replied that she did apologize for the oversight and that it was her responsibility to make sure Mr. Kanady's taxes were paid prior to his hearing. Ms. Bouchard stated that he should have known that but again he ignores the rules. Ms. Bouchard stated that she recently asked Mr. Kanady to combine his fence with her fence but he intentionally removed his section of fence and if her daughter did not notice it, Ms. Bouchard's dog would have been able to run right out onto Route 322. Ms. Bouchard inquired as to the survey not showing the markers on the property. She asked how the survey can be accurate. Ms. Pellegrini stated that the survey does indicate that rebar will be set where there are no markers. Mr. McLaughlin asked Ms. Bouchard if she could summarize her objections to allowing Mr. Kanady to use the garage for inside truck repair. She stated that it's a joke making it sound like he is doing the neighbors a favor. The only reason the other neighbors aren't here complaining is because he plows their driveways and does favors for them. Mr. Makowski objected to Ms. Bouchard's comments since it was based on hearsay. Mr. DeBrosse stated that the Board can evaluate the probative value of the statements. Ms. Bouchard stated that the use of the garage is a convenience for him and they are tired of Mr. Kanady being able to do whatever he wants. His use of the garage will not help them at all; he lied about not using the garage for repairs and she has shown the proof. She stated that she wanted Mr. McLaughlin to really read and look at all the materials she submitted and to his job the right way because he changed what was being voted on at the last hearing for the Certificate and that it should have never been granted. Mr. McLaughlin replied that that decision was made and is not the issue before the Board this evening. Ms. Bouchard stated that it is part of the issue and commented that she hoped the people who voted for the Certificate would give them a break and not allow him to use the garage because it will not do anything to help them. Mr. Makowski asked if Ms. Bouchard's daughter resides at 1893 York Avenue and if she is present. Ms. Bouchard replied that her daughter does live there full time and she is not present this evening. He asked her if the use of the garage would improve the noisiest work from being heard. Ms. Bouchard replied that the noisiest work is the "bam, bam, bam" for hours starting at 6:45 in the morning and that he will continue to make that noise outside and that his use of the garage will not benefit her.

Public Hearing: (continued)

1. #14-06 – Harold Paul Kanady (continued)

3. William Johnson, 1888 York Avenue, was sworn in by Mr. DeBrosse. Mr. Johnson stated that he has known Mr. Kanady for a very long time and his wife is a relative to Mr. Kanady. He stated that Mr. Kanady's business had grown over the years and he has asked him to clean up the property on Route 322 and this one on York Avenue. The trucks are constantly in and out, they don't go fast, but they are constant and the fumes from the trucks get into his house. There is just too much going on for a residential neighborhood. He commented that he is aware that Mr. Kanady is friends with Mr. Weikel and that things get overlooked. He does plow the other neighbor's driveways so they aren't going to come out to complain. He also does not believe Mr. Kanady can repair some of the trucks in the garage because the beds do have to be raised and there isn't enough room in the garage to do that. Mr. Makowski asked Mr. Johnson if he can see onto Mr. Kanady's property from his house. Mr. Johnson replied that he cannot see but he can hear and he can smell. Mr. Makowski asked Mr. Johnson if he does work in his garage. Mr. Johnson stated that he does not do work and that he has a pole barn that stores his motorhome. Mr. Makowski commented that Mr. Collins and Ms. Erhart's properties are closer to Mr. Kanady's property than Mr. Johnson's yet they are not present to complain. He asked Mr. Johnson if it was reasonable to say that Mr. Kanady could repair a third of his trucks in the garage and that it would be less noisy. Mr. Johnson replied that Mr. Kanady works in the garage now and there is no difference in the noise. Nothing will change except he will be permitted to use the garage. Mr. Makowski asked Mr. Johnson how he can know Mr. Kanady is using the garage if he cannot see onto Mr. Kanady's property. Mr. Johnson stated that he can hear and that he doesn't care what it looks like over there because he can't see it, but he can hear it and smell it. He also did not think the Certificate of Nonconformity should have been granted and that regardless of the approval there will still be noise.

Ms. Bouchard commented that Mr. Kanady runs his snow plows from York Avenue as well. Mr. McLaughlin stated that the Board cannot address that issue this evening and that the application at hand is for the use of the garage. Ms. Bouchard replied that Mr. Kanady is not complying with the rules of his Certificate which is the point they are trying to make.

Motion passed to close the hearing to the public.

Ms. Pellegrini pointed out to the Board that Mr. Kanady's testimony at the hearing for his Certificate of Nonconformity was that there was only going to be two or three trucks at the site at one time for repair. She understands the Board is not enforcement but wanted to remind them of Mr. Kanady's testimony. Mr. Weikel's letter also notes the property contains more trucks than what was approved by the Board when granting the Certificate.

Public Hearing: (continued)

1. #14-06 – Harold Paul Kanady (continued)

Mr. Weikel's letter also states that he was under the impression it was Mr. Kanady's intention to eventually move his truck repairs to his site on Route 322 once he received approvals for that site. Mr. Makowski replied that the Route 322 site contains a completely different business than the truck repair for which Mr. Kanady was granted the Certificate. Mrs. Farrell stated that several years ago Mr. Kanady did apply to the Planning Board for a subdivision and site plan to construct a pole barn for his trucking business on the property on Route 322 but he never followed through. Mr. Makowski stated that the subdivision was denied because the Mayor stated he would not approve the flag lot even though other flag lots have been approved.

Ms. Pellegrini asked if Mr. Kanady stores the snow plow trucks on the York Avenue property. Mr. Kanady replied that he stores them on another property; he does bring them to the York Avenue property for repair but he does not run them for the business from that location. He will plow York Avenue but he does not run the trucks out of there. Ms. Pellegrini inquired as to the twelve vehicles currently stored on the property. Mr. Kanady stated that they are his pick-up trucks and his suburban and his wife has pick-up trucks and she also has a suburban. Several are the dump trucks there for repair and used for his business. He stated that there are approximately eight vehicles stored on his property that are registered to him and not used for his business but are personal vehicles.

Mr. Salvadori asked if the dump trucks are in the garage can the bed be raised for repairs. Mr. Kanady replied that it can be raised three quarters of the way to do brake repairs and such but it cannot be raised all the way up inside the garage. Mr. Makowski stated that they are willing to agree to a stipulation that the intensity of what was approved will not increase if Mr. Kanady is granted the use variance. Mr. Kozak commented that a yes or no without any stipulations should be the motion because anything else is unenforceable. Mr. DeBrosse stated that the Board cannot stipulate that Mr. Kanady cannot do outside repair if they grant the use variance because that restricts his Certificate of Nonconformity. He asked if there were any conditions Ms. Pellegrini wanted to be included in the motion. She stated that the use if granted should be conditioned upon the applicant following up with site plan. Mr. Makowski asked why a site plan is necessary for an existing garage. Mr. DeBrosse replied that a site plan could be required for the change of use. Ms. Pellegrini commented that certain issues such as parking and the accesses can be addressed with a site plan. Mrs. Farrell asked if a site plan waiver would be in order if the use is granted as it does address those issues as well and because the site is not being used for a commercial business.

Public Hearing: (continued)

1. #14-06 – Harold Paul Kanady

Mr. Salvadori asked Mr. Kanady if he would be willing to agree not to do outside repairs if the use variance is granted. Mr. Kanady replied that he could not agree to that condition. Mrs. Farrell stated that the Board should address the issue of the encroachment of the driveway if the use is going to be granted.

Mr. DeBrosse asked Mr. Kanady if he was amenable to obtaining a site plan waiver if the use is granted. Mr. Kanady stated that he would agree to the site plan waiver. Motion by Mr. Fritz, seconded by Mr. Manfredi to grant the use variance to allow Mr. Kanady to use his existing garage for truck repair with the condition that he submit a site plan waiver application. Roll call vote: Ayes – Mr. Fritz, Mr, Manfredi. Nays – Mr. Carney, Ms. Hui, Mr. Salvadori, Mr. Kozak, Mr. McLaughlin. Abstentions – Zero. 2 ayes, five nays, motion failed, the application is denied.

Ms. Bouchard asked how they can insure Mr. Kanady will not use the garage. Mrs. Farrell stated that is an enforcement issue and that she will inform Mr. Weikel and Mr. Fiore that Mr. Kanady's application was denied.

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. Mrs. Farrell reminded the Board that the next meeting was scheduled for December 16, 2014 at 7:00 p.m. They will set the reorganization meeting on that night.

Adjournment:

The meeting was adjourned at 9:20 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