

**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 12, 2015. 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. Kozak, Mr. Manfredi, Mr. Salvadori, Mr. Mercado, Ms. Capate, Mr. McLaughlin. Absent – Ms. Pellegrini, (excused), Mr. Sander, (excused), Mr. Heffner, (excused). Also present – Mr. Marmero, Solicitor.

**Memorialization of Resolutions:**

1. #15-19 – App. #15-04 – Louis Burgese – Use Variance Approved

Motion by Mr. Carney, seconded by Mr. Fritz to adopt resolution #15-19. Roll call vote: Ayes – Mr. Carney, Mr. Fritz, Ms. Hui, Mr. Kozak, Mr. Manfredi, Mr. Mercado, Mr. McLaughlin. Nays – Zero. Abstentions – Zero.

**Certificate of Nonconformity:**

1. #15-05 – Harold Paul Kanady

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

Member's packets contained: 1. A copy of the applicant's application. 2. A written description of the previous use and current use of the property. 3. Letter dated October 2012 prepared by Mr. Weikel. 4. A note from the previous owner's daughter, Pat Woolston, dated August 8, 2003 and copy of previous owners business card. 5. Photographs of the property and a survey.

The applicant is seeking a Certificate of Nonconformity for his property located 1821 Glassboro Road, also known as Block 15201, Lot 8 in the Commercial Zoning District. The applicant wishes to continue to store his commercial vehicles and materials on the property which he is claiming is a continuation of a commercial use where the previous owner stored commercial vehicles and materials for a previous business. The property also contains a residential dwelling which has been in existence for almost fifty years.

**Certificate of Nonconformity: (continued)**

1. #15-05 – Harold Paul Kanady (continued)

Mr. Marmero reminded the Board of the standard they are looking for with regard to the applicant's request for a Certificate of Nonconformity. He stated that essentially a Certificate of Nonconformity is a grandfathering of a nonconforming use. The applicant must prove two things; that the use was a legal use at some point and that the ordinance that created the nonconformity came into effect after his use was in place. He must also show that the use was never extinguished or abandoned in any way.

Mr. Makowski introduced himself as the applicant's attorney. He referenced the exhibits and letter prepared by Mr. Kanady and included in the member's packets. Mr. Makowski stated that Mr. Kanady is using the property for his business just as the previous owner used it for the previous business known as both Glassboro Concrete Company and South Jersey Concrete Company. Mr. Kanady claims that the previous owner stored materials and trucks for his business on the property just as he is doing since he purchased it in 2003. There is also a residential home on the property which was owned and occupied by the previous owner, Mr. De Gaetano. After purchasing the property, Mr. Kanady renovated the residential home and cleaned up the property. Mr. Kanady stores trucks that he owns for his business at the property as well as other equipment and materials.

Mr. Kanady testified that he rented the property from Mr. De Gaetano before he purchased it from him. He stated that Mr. De Gaetano used the property for his residence as well as his business and he provided a note from Mr. De Gaetano's daughter stating that her father operated a business from that property. He also provided an envelope addressed to Glassboro Concrete Company from back in the 1950's. Mr. De Gaetano stored materials and dump trucks on the property as part of his business; Mr. Kanady testified that he stores materials, equipment, and dump trucks as well for his business. With regard to the residential home it is still being used as a residence.

Mr. Marmero stated that one of the proofs Mr. Kanady must provide is that the use was a legal use at the time. He asked if Mr. De Gaetano's use or Mr. Kanady's use was ever approved by the Planning or Zoning Board. Mr. Makowski replied that he did not know if Mr. De Gaetano received any approvals for his business. Mr. Kanady stated that Mr. De Gaetano built the house before there was any zoning. Mr. Marmero stated that there is an active court order that deals with this property from 2012. Mr. Kanady was supposed to meet with Mr. Weikel regarding the property and then he was given sixty days to submit an application to have the use approved. Mr. Kanady stated that there was a meeting with Mr. Weikel and it was agreed that he would take care of one property at a time.

**Certificate of Nonconformity: (continued)**

1. #15-05 – Harold Paul Kanady (continued)

Mr. Marmero stated that Mr. Kanady did submit for 1887 York Avenue. Mr. Makowski replied that at the meeting the parties agreed that to fulfill the spirit and intent of that court order, Mr. Kanady would bring in one application at a time. This being the second application he is bringing forward to the Board for the property at 1821 Glassboro Road. Mr. Makowski stated that the application for 1887 took some time and that this is the second application and there will be one more after this one for 1711 Glassboro Road.

Mr. Marmero stated that the court order reads that Mr. Kanady had sixty days and if he did not comply with the requirements the current use on the properties shall immediately cease upon expiration of the sixty day period. He stated that the use of the property is extinguished since it has been longer than sixty days and that the Board does not have jurisdiction to grant a Certificate of Nonconformity.

Mr. Makowski replied that at that meeting with Mr. Weikel there was a gentlemen's agreement between himself and Mr. Fiore and that he trusted Mr. Fiore would concur that he agreed that Mr. Kanady would submit applications for each property one at a time. Based on that agreement he felt Mr. Kanady was within his right to come before the Board at this time to ask for a Certificate of Nonconformity. Mr. Marmero asked if there were any citations issued for the property. Mr. Makowski stated that there was one issued for a change of use that is pending. There was only one other citation issued back in 2008 which was dismissed. Mr. Marmero commented that the residential home and vehicle storage yards are both permitted in the zone as conditional uses if the uses meet certain conditions one of which is receiving site plan approval. He asked if there was a site plan approval for the property. Mr. Makowski replied there was not.

Ms. Capate asked when Mr. Kanady purchased the property. Mr. Kanady replied it was 2003 but that he was renting the property from Mr. De Gaetano for approximately five years before he purchased it. Mr. Marmero asked if the prior owner was using the property as a vehicle storage yard when Mr. Kanady purchased it. Mr. Kanady replied that Mr. De Gaetano used the property as a vehicle storage yard. Ms. Hui reviewed the timeline with Mr. Kanady with regard to when the property was first established by Mr. De Gaetano back in the 1940's with the Glassboro Concrete Company and then later building his residence on the property. He owned and operated the business prior to any zoning in the Township and continued to operate his business until Mr. Kanady started renting the property for storage of his trucks in the late 1990's and then Mr. Kanady purchased the property in 2003 after Mr. De Gaetano passed away. And he still currently stores his trucks and equipment on the property. In 2012 the court order was established where Mr. Kanady had to get approvals for his three properties within sixty days. Ms. Hui asked if any of the neighbors have complained about his business. Mr. Kanady stated he hasn't had any complaints.

**Certificate of Nonconformity: (continued)**

1. #15-05 – Harold Paul Kanady (continued)

Mr. Mercado asked if Mr. Kanady lived in the home on the property at 1821 Glassboro Road. Mr. Kanady replied he does not live at the address and the home is currently rented to someone. Mr. McLaughlin asked if he has been renting the house since he's owned the property. Mr. Kanady stated that he started renting it after he did the renovations and cleaned up the property. Mr. Manfredi asked why this hearing isn't a public hearing like for the last hearing for the Certificate of Nonconformity. Mr. Marmero replied that Mr. Kanady isn't seeking any relief and that the current uses are permitted but he did not get any approvals for the uses. One of the conditions he has to meet is a site plan approval; however if the Board grants him the Certificate of Nonconformity he does not have to provide that, he can continue to use the property as he has been.

Mr. Kozak stated that the court order allowed him sixty days back in 2012 to complete his applications and get approvals for his properties. If there was a gentlemen's agreement then Mr. Makowski should have a letter from Mr. Fiore indicating the terms of the gentlemen's agreement but as far as the Board knows right now Mr. Kanady is in violation of the court order. Mr. Marmero agreed that he believes the use is extinguished based on what the court order says and that he is unaware of a gentlemen's agreement between Mr. Makowski and Mr. Fiore. Mr. Kozak commented that Mr. Fiore is still the Township attorney and that it was the applicant's responsibility to bring something to the Board in writing concerning the agreement. Mr. Makowski disagreed stating that if there wasn't some agreement Mr. Fiore would have brought the matter back to the court after the sixty days expired back in 2012 and had an order executed for Mr. Kanady to cease his use of the property. But he didn't because they agreed to allow Mr. Kanady to bring one application at a time for approvals. The first application was for 1887 York Avenue which was brought to the Board and took some time and now he is bringing in the application for the second property. Mr. Marmero commented that the court order does not say the Township has to enforce the cease and desist of the use; it just states that if Mr. Kanady does not comply the current use immediately ceases. Mr. Makowski replied that he disagreed with Mr. Marmero's interpretation of the court order and stated that Mr. Kanady has been permitted to continue to operate at the property due to the agreement made between him and Mr. Fiore. At the time they recognized that Mr. Kanady could not possibly submit applications and get approvals for all three properties within sixty days.

Mr. Fritz asked if the Board could require the applicant to provide a letter from the Township Solicitor with regard to the gentlemen's agreement and the terms of that agreement. Mr. Marmero replied that the Board can require the applicant to provide any further information they need to make a determination on the matter.

**Certificate of Nonconformity: (continued)**

1. #15-05 – Harold Paul Kanady (continued)

Mr. Kanady commented that the conversation concerning him bringing one application at a time should be in the minutes from the meeting. Mr. McLaughlin stated that the Board wasn't aware of the court order at that time. Mr. Marmero replied that at that time the Board was only aware of the court order concerning 1887 York Avenue but the other properties would have been handled by the Planning Board or the Zoning Board depending on how Mr. Kanady wanted to utilize those properties. He reiterated that it is his opinion that it is too late for the Board to grant the Certificate of Nonconformity because the use is extinguished. He thought it would behoove the applicant to produce something concerning the gentlemen's agreement for the Board if they wish to proceed.

Mr. McLaughlin asked if a continuance would be in order. Mr. Marmero replied that it is up to the Board and the applicant if that's how they want to proceed. Ms. Capate asked if there was a reason to rush the issue. Mr. Makowski replied that there is a change of use complaint which has been postponed at the Municipal Court in order for the Board to make a determination. Mr. McLaughlin asked how soon the applicant could be brought back in if the Board voted to continue the matter in order for Mr. Makowski to submit something in writing concerning the gentlemen's agreement. Mrs. Farrell stated that the next meeting is scheduled for June 2<sup>nd</sup>; however she wanted the Board to consider if there was any additional information they would want from the applicant besides the letter from Mr. Fiore so that he can bring everything to the next hearing. Mr. Kozak replied that he didn't think it was necessary to go to the next step when the applicant may not get past the first step. He didn't think the Board should take additional time to hash out any other issues until the applicant got past the issue of the gentlemen's agreement.

Mr. Fritz asked what company was currently operating at the site. Mr. Kanady testified that the company is known as H. P. Kanady Land Works. Mr. Marmero stated that the Board should include in the motion for a continuance any information they may need in order to make a decision at the June 2<sup>nd</sup> meeting. Mr. Kanady commented that he will not be available on June 2<sup>nd</sup> as he will be away. Mrs. Farrell stated that since there is only one meeting scheduled in June the Board could change the meeting date from June 2<sup>nd</sup> to June 16<sup>th</sup> if the applicant and his attorney are available for that date. Mr. Makowski and Mr. Kanady were in agreement with the June 16<sup>th</sup> date. Motion by Mr. Fritz, seconded by Ms. Hui to continue the hearing to the June 16<sup>th</sup> meeting contingent upon the applicant and his attorney providing written documentation as to the terms of the gentlemen's agreement. Roll call vote: Ayes – Mr. Fritz, Ms. Hui, Mr. Carney, Mr. Kozak, Mr. Manfredi, Mr. Salvadori, Mr. McLaughlin. Nays – Zero. Abstentions – Zero.

**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. Mr. Kozak informed the Board that the issue of residents having chickens in areas where they are not permitted such as in developments has been raised again by some residents. The ordinance requires three acres minimum in order to raise chickens. The issue of using the manure to fertilize their backyard vegetable gardens could also cause health and safety issues as there are very specific guidelines that must be followed based on State regulations. There was some discussion on this issue by the Board.

2. Mr. Carney inquired as to the status of the EDARELL 710 application. Mrs. Farrell stated that the applicant is still working with the County on some issues and the Construction Official is keeping on top of the situation.

**Approval of Minutes:**

1. 5/05/15 regular meeting.

Motion by Mr. Fritz, seconded by Mr. Carney to approve the minutes from the May 5, 2015 regular meeting. Voice vote; all ayes, motion passed.

**Adjournment:**

The meeting was adjourned at 7:45 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