

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 8, 2016. 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 hearing was sent in writing to the South Jersey Times on November 1, 2016”.

The Board saluted the flag.

Roll call: Present – Mr. Carney, Mr. Fritz, Mr. Kozak, Mr. Manfredi, Mr. Salvadori, Mr. Mercado, Ms. Fox, Mr. McLaughlin. Absent – Ms. Hui, (excused), Mr. Heffner, (excused). Also present – Mr. Marmero, Solicitor, Ms. Pellegrini, Planner, Mr. Sander, Engineer.

Memorialization of Resolutions:

1. #16-51 – App. #16-31 – Ken Gillespie – Lot Area & Side Yard Buffer Variance Approved

Motion by Mr. Fritz, seconded by Mr. Carney to adopt resolution #16-51. Roll call vote: Ayes – Mr. Fritz, Mr. Carney, Mr. Kozak, Mr. Manfredi, Mr. Salvadori, Mr. Mercado. Nays – Zero. Abstentions – Zero.

2. #16-52 – App. #16-32 – Eric Dare – Lot Area & Side Yard Buffer Variance Approved

Motion by Mr. Carney, seconded by Mr. Fritz to adopt resolution #16-52. Roll call vote: Ayes – Mr. Carney, Mr. Fritz, Mr. Kozak, Mr. Manfredi, Mr. Salvadori, Mr. Mercado. Nays – Zero. Abstentions – Zero.

3. #16-53 – App. #09-02 – Fazzio/Giloley – Waiver Request Denied

Motion by Mr. Kozak, seconded by Mr. Carney to adopt resolution #16-53. Roll call vote: Ayes – Mr. Kozak, Mr. Carney, Mr. Salvadori. Nays – Zero. Abstentions – Zero.

Discussion for Board Action:

1. #465-SP – Redgil, LLC – Drainage

Present – Bob Mintz, applicant’s attorney, Paul Witthohn, applicant’s engineer.

Member’s packets contained: 1. Report dated November 7, 2016 prepared by Martin Sander. 2. Report dated November 15, 2016 prepared by Pam Pellegrini.

Discussion (continued)

1. #465-SP – Redgill, LLC (continued)

Mr. Mintz introduced himself as the applicant's attorney. Mr. Witthohn was sworn in by Mr. Marmero. Mr. Witthohn stated that one of the conditions of approval was to obtain permission from the NJDOT to accept a direct pipe connection to their downstream system. The applicant applied to the NJDOT and they requested additional information and items that made the proposed connection not feasible. Due to that issue the applicant has done a redesign which keeps the stormwater on the site up to and including the hundred year storm. The redesign was submitted to the Board's engineer and they are before the Board to explain the changes. Mr. Sander stated that the applicant is proposing to infiltrate all the stormwater runoff up to and including the hundred year storm. If there is runoff in excess of the hundred year storm they will discharge it overland onto the applicant's property which is adjacent to the site. In order to achieve this they have to go deeper with their soil replacement and they will have a lot of extra soil on hand so they are going to raise the site approximately one foot uniformly across the site. Mr. Sander stated he has not seen the revised plans but the applicant will have to submit those revisions along with addressing the comments in the professional's letters. He stated that he is okay with the changes but he did not want to approve of the changes without the applicant explaining it to the Board.

Ms. Pellegrini stated that her letter is just dealing with some compliance issues. The buffer width adjacent to the rear of the Prosser Avenue lots has been revised; the plan must be revised to show a twenty-five foot buffer width on the east side of Lot 53. There are some other clean up items that must be changed on the plans. Mr. Marmero stated that due to the proposed revisions, NJDOT approval is no longer required and the Board can make a motion to approve the applicant's proposal with respect to the changes in the drainage if they so choose based on Mr. Sander's report and recommendation and to modify their condition of approval. Motion by Mr. Salvadori, seconded by Mr. Mercado to approve the changes to the drainage and modify the condition of approval with regard to NJDOT. Roll call vote: Ayes – Mr. Salvadori, Mr. Mercado, Mr. Fritz, Mr. Kozak, Mr. Manfredi, Mr. McLaughlin. Nays –Zero. Abstentions – Zero.

The Board took a brief recess.

Public Hearing:

1. #16-26 – Harold Paul Kanady – Use Variance

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

Member's packets contained: 1. A copy of the applicant's use variance application, certified survey, and photographs of the property. 2. Letter dated July 27, 2016 prepared by Rosemary Flaherty, Zoning Officer. 3. Report dated July 26, 2016 prepared by Pam Pellegrini.

Public Hearing: (continued)

1. #16-26 – Harold Paul Kanady (continued)

The applicant is requesting a use variance in order to be allowed to utilize his property for the storage and parking of commercial vehicles and equipment as well as the storage of some bulk material such as stone and gravel. There is an existing residential home on the site as well. The property is located at 1711 Glassboro Road, also known as Block 15202, Lot 10 in the Business Park and Commercial Zoning Districts.

Mr. Makowski introduced himself as the applicant's attorney. He stated that they are requesting a use variance to allow the dual use of the property at 1711 Glassboro Road as well as the storage and parking of commercial vehicles, equipment, and bulk materials. He stated that the property is located in a Commercial and Business Park Zones. The way the property is being utilized is not in conflict with the zoning for the area. Mr. McLaughlin asked if the application can be deemed complete. Mrs. Farrell replied that the application can be deemed complete. Motion by Mr. Salvadori, seconded by Mr. Fritz to deem application #16-26 complete. Voice vote; all ayes, motion passed.

Ms. Pellegrini reviewed her report for the Board. The Commercial Zone does not allow more than one principal permitted use except that a single dwelling unit may be permitted on a non-residential lot provided that there is adequate parking for both uses. Vehicle storage yards are a conditional use in the Commercial or Business Parks Zones and are subject to specific requirements. There should be a minimum of 2500 square feet per vehicle. The application does not address this requirement so additional information is required. An opaque fence a minimum of eight feet in height must enclose the storage area. The application does not address this requirement. When the use abuts a residential zone the fence must be set back twenty-five feet from the property line. This property does not abut a residential zone; however there is an existing residential use next door. No maintenance or servicing of the trucks is permitted on the site; the application does not address this issue. Site plan approval will be a condition of any use variance approval. With regard to the standards for the R-2 Zone for the residential use, all the bulk requirements are met with the exception of the percentage of lot coverage which is unknown at this time. Lot area and lot frontage comply with the standards for the BP Zone but the application does not address the other standards.

The use does not conform to one or more of the conditional use standards and the applicant must demonstrate special reasons why the proposed use carries out the purpose of zoning as well as stating the positive and negative criteria required under the use variance standards. The Board must determine the impact upon the adjacent properties and whether or not the proposed use will constitute a substantial detriment to the public good.

Public Hearing: (continued)

1. #16-26 – Harold Paul Kanady (continued)

The applicant must provide testimony with regard to access, circulation, the extent of the vehicle storage, the fencing and/or buffering. Testimony should also be provided regarding the number of vehicles to be stored/parked along with the types of vehicles and bulk materials to be stored. There should also be testimony given as to any wetlands or wetlands buffer on the property. Mr. Kanady was sworn in by Mr. Marmero. He testified that there are currently twenty-five to thirty vehicles parked on the property. There are five piles of stone and gravel. The residential use is separated from the commercial use with a row of trees. He has never had any complaints from the tenant in the residential dwelling. No repair work is done to the vehicles on the site with the exception of checking the lights and fluids. Mr. Kanady testified that he is not aware of any wetlands on the property. He also testified that he has been using the property this way since he purchased it about ten years ago. The previous owners used the property for storage of materials from their beauty salon and restaurant businesses. Prior to that the property was used as a junkyard.

Mr. Kanady testified that he is not planning to expand the use or increase the number of vehicles. He stated that he believes the property is large enough, six acres, to accommodate both uses. Mr. Kozak asked if the trucks are used every day. Mr. Kanady replied that maybe half of the trucks are used daily but different trucks are used at different times. His workers go to the site and pick up the trucks to take to the job sites. Ms. Pellegrini commented that she and the Zoning Officer feel as though the use is more of a commercial business activity than a vehicle storage yard. Mr. Kanady is essentially running a business from the property. Mr. Kozak commented on the bulk materials. Mr. Kanady stated that he only uses the stone and gravel on his properties to maintain the parking areas; he does not haul the bulk material and it is not for sale.

Mr. Marmero stated that if Mr. Kanady is applying for the property to be a vehicle storage yard he needs 2500 square feet for each vehicle. He has testified he has twenty-five to thirty vehicles, what is the square footage of the commercial area? Mr. Kanady stated that the trucks are located in the Business Park Zone on the property and the lot runs all the way back to the woods. Ms. Pellegrini stated that based on the survey and the area shown for the parking it is approximately 180' x 300' which would allow for approximately twenty-one vehicles. Mr. Marmero asked Mr. Kanady if he is willing to limit the number of vehicles to twenty-one or will he seek the D3 variance to exceed that number. Ms. Pellegrini commented that she isn't sure if that total area includes the ingress and egress and the circulation area on the site so that the number of vehicles per square footage may be different. She also commented that they do not know if and where a wetlands buffer is located on the property. Mr. Marmero replied that the D3 variance will be required for the storage of the twenty-five to thirty vehicles.

Public Hearing: (continued)

1. #16-26 – Harold Paul Kanady (continued)

With regard to the requirement for the opaque fence around the entire storage yard, Mr. Kanady stated he is using the row of trees behind the residential home as a buffer, which is another D3 variance. Ms. Pellegrini asked the height of the existing fence along the property line to the residential use. Mr. Kanady replied that the fence is eight foot high. Mr. Marmero stated that the fence is not setback the twenty-five feet that is required so another D3 variance is required. Mr. Makowski asked if Mr. Kanady's property abuts a residential zone. He commented that he believes the adjacent property is zoned commercial. Ms. Pellegrini replied that the same applies to existing residences. Mr. Makowski stated that even though the adjacent property is in a commercial zone and the ordinance applies to property abutting a residential zone, the Board is still going to impose the twenty-five foot setback requirement. Mr. Fritz replied that they are because it he would want that if it was next to him.

Mr. Marmero stated the residential use on Mr. Kanady's property is also a conditional use in the zone. All the bulk requirements are met with the exception of the percentage of lot coverage which is a maximum of twenty percent. The applicant has not provided the percentage of lot coverage for either use. Ms. Pellegrini commented that it appears they can meet the sixty-five percent for the Business Park portion but she is not certain about the residential portion. Mr. Marmero stated that it is also unknown if the bulk standards are met for the Business Park portion. Mrs. Farrell commented that the bulk variances can be addressed at site plan since the Board is only dealing with the use variance this evening. Typically bulk variances are dealt with at site plan where all the details of the site will provided. Mr. Kanady did not have the site plan engineered yet since it is expensive and he did not want to put out that expense if the use is not granted. Ms. Pellegrini replied that the bulk variances can be deferred to site plan. Mr. Marmero stated that Mr. Kanady can just seek the dual use approval this evening if he chooses to do so.

Mrs. Farrell also inquired as to the rest of the property in the rear of the site beyond where the current storage yard is indicated on the survey. She asked if Mr. Kanady is limited to the area shown or can he use some more of the property in order to meet the square footage conditions. Mr. Kozak added that if the property is not in the wetlands and there isn't any buffer, Mr. Kanady could expand the storage yard enough so that he doesn't need the D3 variance. Ms. Pellegrini commented that he would have to show there isn't wetlands or a wetlands buffer on the property first and he hasn't done that. The Board will have to determine this evening if they are going to grant the D3 variance or if they are going to hold him to the 2500 square feet per vehicle.

Mr. Marmero stated that he has reviewed all of the D3 variances required and the applicant should address the positive and negative criteria. Mr. Kanady stated he wasn't sure what other information he needed to provide. Mr. Marmero reviewed what the positive and negative criteria should contain with regard to testimony that is required of the applicant.

Public Hearing: (continued)

1. #16-26 – Harold Paul Kanady (continued)

Mr. Makowski stated that Mr. Kanady did testify that the property was a junkyard at one time and also was used for storage of business materials as well as being used as a residential use. He stated most of the commercial uses in the area all have residential component. Mr. Kanady has been using the property this way since he purchased it and he believed he was permitted to use it since it was being used residentially and commercially by the previous owners. Mr. Kanady stated he was granted a use variance for his other property down the street with essentially the same dual use. There was further discussion on the issue of whether Mr. Kanady is operating a business from the site rather than it just being a vehicle storage yard.

Motion passed to open the hearing to the public.

Mr. Richard Wells stated that he is an attorney representing five members of the public. Ms. Gullo and Ms. Bouchard were sworn in by Mr. Marmero. The other clients are Mr. and Mrs. William Johnson and Ms. Risti Talbott. Mr. Wells stated the main reason his clients are objecting to the application is due to the disturbance of a heavy industrial operation at this property. It relates to the noise, the environmental concerns, and the visual impact from this site. Because of these concerns he believes it is a substantial detriment to the surrounding area and it is not consistent with the Township's zoning plan.

Ms. Gullo stated that her lot is a flag lot so the front of her house is in direct site to the back of Mr. Kanady's property. She stated that every day she is woken up by the trucks starting usually around five o'clock in the morning. She also indicated that she is concerned about the impacts of the operation to her well which located within fifty feet of Mr. Kanady's property line. Mr. Wells submitted an aerial map and a picture taken from the rear of Ms. Gullo's property which was marked as Exhibit O-1. The orange dot on the aerial map indicates where Ms. Gullo's well is located in relation to Mr. Kanady's property. She has concerns that he storing chemicals and other hazardous materials. She repeated her comments about being woken up in the morning between five and six o'clock and hearing the trucks pull out the driveway and go down Route 322. The second picture depicts what she see from her property but it changes and most of the time looks worse than what the picture shows. She did not believe there was any storage of any kind at the property prior to Mr. Kanady purchasing it. Mr. Kanady's operation has been going on there for years but most recently it's on a more regular basis. She did speak to Ms. Flaherty about the noise at the property early in the morning from a backhoe and Ms. Flaherty said she would take care of it. That was the only complaint she ever filed other than being at the hearings. Her main concern is the environmental issues and the noise. She stated that the proposed use is not consistent with the uses in the area. Mr. Kozak pointed out the property in front of Ms. Gullo's and asked about the cars and trucks and other junk on that property.

Public Hearing: (continued)

1. #16-26 – Harold Paul Kanady (continued)

Ms. Gullo replied that those neighbors moved in a few years ago and they are starting to accumulate a lot of stuff. Mr. Kozak commented that there are cars, trucks, and junk. Ms. Gullo stated that there is also a tractor trailer container that they parked there which blocks most of her view from her front door. Mr. Kozak asked the distance from Route 322 to her house. Ms. Gullo replied that it's approximately six to seven hundred feet. He asked if she can hear the trucks on Glassboro Road. She stated that she can hear them. He commented that she must hear all the trucks that go down Route 322 then not just Paul's but any other trucks. She does hear Paul's trucks when they start in the morning and the shifting of gears going down the highway.

Mr. Wells stated that obviously the residents have the same concerns related to the noise. Mr. Wells asked Ms. Bouchard how long she has lived at her property at 1893 York Avenue. Ms. Bouchard replied that she has lived there off and on for about six years. Her property is located across the street from Mr. Kanady's property on Route 322. She agreed with Ms. Gullo's testimony about the trucks leaving the site between five and six o'clock in the morning and that they wake her up. She stated that she doesn't live here all the time but when she is here the trucks wake her up every day during the week. Mr. Wells asked her if she can see the vehicles and materials on Mr. Kanady's property. Ms. Bouchard replied that she cannot see the vehicles or materials on the property, she can only see the house and the driveway. She stated her dad should be sworn in because he has knowledge of the previous use of Mr. Kanady's property. She commented on Mr. Kanady's other properties and the fact that the judge and the Township keep letting him go until something gets approved. She stated that she has filed many complaints dealing with Mr. Kanady's York Avenue property because he doesn't do what he is supposed to do. They have to try to stop him from getting any more approvals because he doesn't follow any of the rules and no one is making him follow the rules. She wanted to know which property the snow plowing operation is run from. She also stated that the operation at Mr. Kanady's property is not consistent with the rest of the neighborhood. Mr. McLaughlin commented that the thought Ms. Bouchard did not live at her York Avenue property but that her daughter lived there. She replied that she does spend most of her time at her shore house but she does have an apartment at the house and she stays there at least once a week. Mr. Salvadori asked Ms. Bouchard about her comment regarding the snow plowing. She replied that Mr. Kanady has snow plowing contracts and she wanted to know which property he intends to use for that operation.

Mr. Johnson, 1888 York Avenue, was sworn in by Mr. Marmero. He stated that he owns the 1717 Glassboro Road which is next to Mr. Kanady's property. His family owned the property that Mr. Kanady owns now and they did have a junkyard there for a few years. They also built the house on 1717 Glassboro Road. The junkyard has not been there since 1955 when the property was sold.

Public Hearing: (continued)

1. #16-26 – Harold Paul Kanady (continued)

A few owners later there was a storage unit in the rear of the property where the owner stored a car. He commented that he does not hear the noise but he can hear the trucks going out of the driveway. His concern is also his well at the 1717 Glassboro Road property because Mr. Kanady will park trucks next to his well and he has a picture of a salt spreader parked within twenty-five feet of his well.

Mr. Wells stated that the applicant is before the Board for a number of D3 variances which are an exception to the rule to be permitted to do something which is only permitted when certain conditions are met. What we heard this evening is that certain conditions are not satisfied. The applicant must prove positive and negative criteria which there is a very high standard to prove those and for use variances it's the highest standard. The applicant is required to show special reasons why the use variance should be granted such as if the property is particularly suited for the proposed use or if there is some undue hardship. Mr. Wells stated that there hasn't been any testimony regarding the positive criteria other than the property has been used this way and he wants to continue to use it which is not one of the purposes under the municipal land use law. He stated the area is not industrial and not commercial it is primarily residential. With respect to the negative criteria the use cannot cause a substantial detriment to the surrounding neighborhood and it cannot impair the intent and purpose of the Township zoning plan. The Board's Planner report states it is not consistent with the Township's zoning plan and the residents have testified that it is extremely inconsistent and detrimental to the surrounding neighborhood. We have not heard testimony from the applicant about where the trucks are washed or if there is any fuel stored on the site. The Board has heard testimony that there are private wells fifty feet away from where the trucks are being stored as well as testimony about noise early in the morning, and testimony that in spite of going to the Township to complain the resident's concerns have not been satisfied. He did not feel it was appropriate for the Board to grant the use variance just to place conditions or restrictions on the applicant because the residents have stated that the conditions don't work. He stated that the applicant has failed to satisfy the positive and negative criteria and that reasonable conditions are not applicable to this application.

Mr. Kozak asked if any of the neighbors have had their wells tested. Mr. Wells stated that it's not the burden of the residents to have to do that. Ms. Gullo stated that she does not drink her water she only buys bottled water. She doesn't want to have to test her well on a monthly basis. Mr. Kozak commented that the answer is no that no one has tested their well and found an issue. Mr. Wells stated no one has had their well tested. Ms. Bouchard asked if one of the tenants that live on the property is Mr. Kanady's employee. She also wants to know where the office is located for the business.

Public Hearing: (continued)

1. #16-26 – Harold Paul Kanady (continued)

Motion passed to close the hearing to the public.

Mr. McLaughlin inquired as to the snow plowing business. Mr. Kanady stated that there are snow plow blades stored at the property. He runs the snow plows mostly from his other location. He has a contract with the State of New Jersey to plow and salt Route 322. He does not keep any chemicals on the property. With regard to the salt spreader Mr. Johnson spoke of, it was one Mr. Kanady purchased and never used because he did not like it so he parked it and sold it. The vehicles are not washed on the property; he has receipts from the place where they are washed. He does not have an office on that property, his office is located at 1887 York Avenue.

The Board reviewed several comments contained in the Zoning Officer's letter. With regard to the hours of operation the Zoning Officer's letter states that no trucking activities are permitted between the hours of 8:00 p.m. and 6:00 a.m. Monday through Saturday and not at all on Sunday. She also recommended a full site plan with a parking schedule and stated that the residential use should be separated from the commercial use with a full buffer. She also wanted to see copies of the registrations and insurance documentation for all the vehicles. Mr. McLaughlin asked Mr. Kanady if he has done any soil testing on the site. Mr. Kanady replied that he has not done so lately but the EPA has been out there to test the soil two years ago and everything was approved. They told Mr. Kanady to keep sand on the site in case there was ever a problem with a spill. Ms. Pellegrini commented that the applicant has not provided the positive and negative criteria. She stated that it might be in his best interest to get a professional planner to address those items.

Mr. Marmero agreed that the applicant did not adequately provide the positive and negative criteria although he did provide some testimony such as there are similar uses in the area. Ms. Pellegrini commented that the applicant should provide proof of the other businesses in the area. She also stated she thinks the Zoning Officer is implying that this property is an extension of his other properties and his business and not a vehicle storage yard and the appropriate application and approvals should be given.

Mr. Kozak asked if the applicant wanted to add to their testimony or decide what they are going to do. Mr. Makowski stated that he does use the property for storage of his trucks. Sometimes the trucks are taken from the site for use on a job site. That is what he has been using it for and he wants to continue to use it that way. The area is still a commercial area in spite of the residential uses; it's located on Route 322 where there is a lot of truck traffic. Mr. Kanady stated that South State is located one mile down the road. They do their paving at night so their trucks run up and down that road all night and during the day; and they are noisy, they rattle and make noise when they go down the road. He stated that people have to work and they have different hours they have to be at work.

1. #16-26 – Harold Paul Kanady (continued)

Mr. Makowski stated that the property in front of Ms. Gullo has cars and a storage trailer which is vehicle storage as well. Mr. Kanady stated that there are other properties with junk and trash in their yards next to Ms. Gullo that are not shown in photograph. Mr. Makowski stated that it is a commercial zone with similar uses and other properties with vehicle storage. Mr. Kanady commented that a few houses down they opened up a landscaping business that also has a residential use.

Mrs. Farrell asked if the applicant feels he submitted enough information for the Board to make a decision and he wishes to proceed or would he rather postpone and get additional information and maybe take the suggestion of getting a profession planner to help address the positive and negative criteria. Mr. Makowski stated that Mr. Kanady would like to take advantage of that opportunity and get the additional information for the Board. Mr. Marmero stated the applicant is asking to table the application and any time requirements will be waived. Mrs. Farrell indicated there is only one meeting left in December so the next available meeting will be in January. It was decided that the applicant will be rescheduled on the meeting of January 17, 2017. Motion by Mr. Salvadori, seconded by Mr. Fritz to table the hearing and reschedule it to the January 17, 2017 regular meeting. No new notice will be sent and the hearing will be at 7:00 p.m. on January 17, 2017. Roll call vote: Ayes – Mr. Salvadori, Mr. Fritz, Mr. Carney, Mr. Kozak, Mr. Manfredi, Mr. Mercado, 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.

Approval of Minutes:

1. 11/1/16 regular meeting.

Motion by Mr. Carney, seconded by Mr. Manfredi to approve the minutes from the November 1, 2016 regular meeting. Voice vote; all ayes, motion passed.

Adjournment:

The meeting was adjourned at 8:50 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.