

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 May 28, 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. Mercado, Ms. Capate, Mr. McLaughlin. Absent – Mr. Salvadori, (excused), Ms. Pellegrini, (excused), Mr. Sander, (excused). Also present – Mr. Marmero, Solicitor, Mr. Heffner, Council Liaison.

Public Hearing:

1. #15-07 – Paul DeLaurentis – Side & Rear Yard Variances

Present – Paul DeLaurentis, applicant.

Member's packets contained: 1. A copy of the applicant's variance application including photographs and a letter requesting a waiver of the certified survey. 2. Letter prepared by Kathryn Cornforth (ARH) concerning a lot grading plan.

The applicant is requesting a side yard variance of fourteen feet and a rear yard variance of sixty-two and one half feet in order to be allowed to construct a garage on his property. The property is located at 848 Lois Drive, also known as Block 13505, Lot 17, in the Flozella Gardens Development.

Mr. DeLaurentis was sworn in by Mr. Marmero. He testified that he would like to construct a garage in his backyard to be used for additional car storage and household item storage. Mr. McLaughlin asked if there were any drainage problems on his property. Mr. DeLaurentis replied that he does not have any drainage problems in his backyard. There are drainage issues at the front of the property which have been that way since the development was built. Mr. McLaughlin asked if the application could be deemed complete. Mrs. Farrell replied that Mr. DeLaurentis was requesting a waiver from providing a certified survey. Mr. Fritz stated that the partial survey of just the lot is sufficient for this application. There was some discussion concerning the conflict on whether or not a grading plan will be required and the fact that Mr. DeLaurentis may have to provide a survey if a grading plan is required by the Township Engineer. Mr. Marmero stated that any approval could be conditioned upon further review by the Township Engineer as to the grading plan. Motion by Mr. Fritz, seconded by Mr. Manfredi to grant the waiver and deem application #15-07 complete. Voice vote; all ayes, motion passed.

Public Hearing:

1. #15-07 – Paul DeLaurentis (continued)

Mr. Kozak commented that Mr. Weikel's paperwork did not address the issue of lot coverage with regard to the proposed garage and the existing home, attached garage, and shed. Mr. Marmero replied that there really isn't any way to calculate the amount of impervious coverage. Mr. DeLaurentis stated that the existing shed is 10' x 8'. Mr. Kozak commented that with everything on the property he thought the lot coverage should have been addressed. Mr. Marmero replied that any approval by the Board could be conditioned on the amount of impervious coverage being addressed before he receives his zoning permit. Mrs. Farrell stated that Mr. Weikel usually does look at the lot coverage and if he felt there was an issue he would have indicated it on his paperwork. Mr. Kozak stated that Mr. Weikel's paperwork also indicates the lot grading plan was waived but that is in conflict with the letter from ARH so he wondered how closely Mr. Weikel looked at the other issues.

Mr. DeLaurentis testified as to Mr. Kozak's comments concerning the conflict of Mr. Weikel's comment about the lot grading plan and the ARH letter. He stated that after he received the ARH letter requiring the lot grading plan he reduced the size of the proposed garage to under five hundred square feet so that a lot grading plan would not be required. Mrs. Farrell stated that since there is a known drainage problem in that development the applicant may still be required to provide a grading plan. Mr. McLaughlin stated that those issues can be conditions of any approval and that it would be up to the Township Engineer to make a determination on lot grading. Mr. Kozak replied that as long as someone follows up on the issues so there isn't a future problem.

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. Mercado to grant the side yard and rear yard variances conditioned upon the Township Engineer's determination on whether or not a grading plan is necessary as well the impervious coverage complying with the ordinance requirements, the garage being used for personal use only and not any commercial use. Roll call vote: Ayes – Mr. Fritz, Mr. Mercado, Mr. Carney, Ms. Hui, Mr. Kozak, Mr. Manfredi, Mr. McLaughlin. Nays – Zero. Abstentions – Zero.

Certificate of Nonconformity:

1. #15-05 – Harold Paul Kanady (continued from May 19, 2015)

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

Certificate of Nonconformity: (continued)

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

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 the use of his property located at 1821 Glassboro Road, also known as Block 15201, Lot 8. This matter is being continued from the May 19, 2015 Zoning Board meeting.

Mr. Kanady was reminded that he is still under oath. Mr. Marmero stated that the first issue the Board should address is the jurisdictional issue of the Board that was raised at the previous meeting. At that time the Board asked for information concerning the court order and the gentlemen's agreement between the Township Solicitor, Mr. Fiore, and Mr. Makowski and Mr. Kanady. Mr. Marmero stated that he did receive a letter from Mr. Fiore late in the day today in response to Mr. Makowski's reference to the gentlemen's agreement. He read the complete letter into the record which basically said that there was a gentlemen's agreement between the parties that was agreed to after the court order was issued. Since it was apparent that Mr. Kanady could not possibly resolve the issues for all three properties within sixty days they did enter into a gentlemen's agreement. Mr. Kanady was to proceed with the first application to the Board for 1887 York Avenue by February of 2013 and after the issues for that property were resolved he would submit an application for one of the two Glassboro Road properties. Mr. Fiore went on to say that he could not conceivably imagine it would take three years before the second application would be submitted and that essentially the gentlemen's agreement did not extend for that long and that Mr. Kanady was in violation of the court order.

Mr. Makowski responded by saying it has only been two and a half years as the court order was issued in November 2012. He stated this is the first time he is hearing from Mr. Fiore that it was taking too long for Mr. Kanady to resolve the three properties since they have discussed the matter many times in Municipal Court and he never mentioned anything about the time. He stated Mr. Fiore could have sent a letter indicating the time was an issue; however the last letter he received was from January 2013. Mr. Makowski then sent a letter to Mr. Fiore in July 2013 indicating that Mr. Kanady had received his Certificate of Nonconformity for 1887 York Avenue and that the forty day appeal period had just expired that Monday. He informed Mr. Fiore that Mr. Kanady was in the process of applying for a use variance for the same property in order to be allowed to use the existing pole barn to repair his trucks. Once that application was completed Mr. Kanady would follow through with an application for one of the commercial Glassboro Road properties.

Certificate of Nonconformity: (continued)

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

Mr. Makowski stated that he never received a response from Mr. Fiore contrary to or objecting to his letter until today with his letter to the Board. He stated that the process for each application does take time and has taken time. It was agreed that once the York Avenue property was completed Mr. Kanady would submit for one of the other properties; technically the York Avenue property has not been resolved as there is an appeal pending concerning the use variance. He stated Mr. Kanady moved forward anyway with this application for 1821 Glassboro Road and that time and money have been spent on the application. The issue does need to be decided and he would like to move forward. Mr. Kanady has in good faith tried to move forward with the applications as best he can with regard to the timing and the cost. Prior to the June 10, 2015 letter from Mr. Fiore there has never been any indication that it was taking too long.

Mr. Marmero stated that at the last meeting the Board asked for further information from the Township Solicitor which they have received. He asked the Board if they had any legal questions for him with regard to the letter from Mr. Fiore. Ms. Capate asked for clarification on the applications for the York Avenue property. Mr. Marmero explained that Mr. Kanady was granted a Certificate of Nonconformity for 1887 York Avenue in May 2013. He then applied for a use variance in order to be able to use the existing pole barn to repair his vehicles. The Board denied the use variance last year and that decision is currently being appealed in Superior Court. This is the first application for one of the two Glassboro Road properties and when this one is complete he will submit for the second one.

Mrs. Farrell asked Mr. Marmero if he still held the same opinion he gave at the last meeting on this matter meaning that the applicant is in violation of the court order and the Board does not have jurisdiction. Mr. Marmero replied that he does believe Mr. Kanady is in violation of the court order despite the gentlemen's agreement and that the use is extinguished based on that court order. However the applicant still has the right to come before the Board to ask for a variance or site plan or some form of relief, but it is his opinion the Board does not have jurisdiction for a Certificate of Nonconformity because the use is extinguished.

Mr. Makowski stated he disagreed with Mr. Marmero's interpretation. The court order states that if Mr. Kanady did not comply within the sixty days or with the terms of the order, the Township is permitted to enforce the conditions of the court order either in Superior Court or Municipal Court. That did not happen and there is nothing in the court order that says Mr. Kanady is precluded from seeking a Certificate of Nonconformity.

Certificate of Nonconformity: (continued)

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

Mr. McLaughlin commented that the use was extinguished. Mr. Makowski replied that the use has not been extinguished; Mr. Kanady has continued the same use of the property and the Township did not stop him from continuing that use because there was a gentlemen's agreement. They could have stopped him and taken him to Municipal Court but perhaps they didn't want to do that because the judge may have looked at it as the use being continued for many years. Mr. Kozak commented that maybe it would be looked at as a lack of enforcement by the Township. He stated that it comes down to the Board listening to their attorney's interpretation or Mr. Makowski's interpretation. He commented again on the lack of enforcement by the Township. Mr. Makowski stated that at the last Municipal Court hearing, the Township agreed to postpone that matter until Mr. Kanady could move forward with the nonconforming use application. He asked why the Township would do that if Mr. Kanady was in violation of the court order.

Mr. Marmero stated that Mr. Kanady should move forward with a variance application; he can send notice to the neighbors and come before the Board to ask for the necessary variances. Mr. Makowski replied that there isn't anything precluding Mr. Kanady from asking for a Certificate of Nonconformity. Mr. Marmero replied that they disagree on that issue.

Mr. Makowski stated that by virtue of Mr. Fiore's letter apparently there was a gentlemen's agreement. No notice was ever given that the agreement was terminated before the June 10, 2015 letter and Mr. Kanady has a right to rely on that agreement. Mr. McLaughlin stated that the Board has the court order and Mr. Marmero's interpretation that the use has been extinguished. Mr. Makowski stated again that there has not been any letter or anything from the Township stopping Mr. Kanady from using the property the way it's been being used. No one went to the courts and insisted Mr. Kanady be stopped because he was in violation of the court order. He continued the use and relied on the gentlemen's agreement. He spent time and money to make this application to the Board and now the Township is saying he's in violation of the court order and they are terminating the gentlemen's agreement as of June 10, 2015.

Mr. Fritz inquired as to the court order and the role of the Board concerning that document. Mr. Marmero stated that the court order does not require any action by the Board. It requires Mr. Kanady to apply to the appropriate Board to bring all three properties into compliance. The two uses on the 1821 Glassboro Road property are conditionally permitted uses and the applicant has a right to apply for any variances required for those uses. There is a disagreement as to whether he has the right to apply for the Certificate of Nonconformity and whether or not the Board has the jurisdiction. Mr. Fritz commented that the application should really be for a use variance and not a Certificate of Nonconformity. Mr. Marmero replied it is his opinion. Mr. Makowski disagreed and there was further discussion on the interpretation that was stated earlier.

Certificate of Nonconformity:

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

Mr. Manfredi asked if the uses are permitted on the property. Mr. Marmero stated that they are conditionally permitted uses. There was some confusion as to why Mr. Kanady needed a Certificate of Nonconformity. Mr. Makowski replied that they wanted to make it clear and not have Mr. Weikel try to enforce something that's not a violation.

Mrs. Farrell commented that if the uses are permitted on both Glassboro Road properties then Mr. Kanady should just have to apply for site plan. Mr. Makowski replied that they are applying for the Certificate of Nonconformity because they know the property has been used similarly for many, many years and Mr. Kanady purchased the property and continued the uses.

Mr. McLaughlin stated that the Board has before it the court order, Mr. Marmero's interpretation of the court order, and Mr. Fiore's letter concerning the gentlemen's agreement. He felt the Board had to use those things to make a determination on the matter. Ms. Capate asked Mr. Marmero if the Board could legally vote on the Certificate of Nonconformity. Mr. Marmero stated he did not believe the Board has the jurisdiction based on his interpretation of the court order. Mr. Manfredi stated that Mr. Kanady never vacated the property and it's been the same use. There was continued discussion on the court order and Mr. Kanady's right to rely on the gentlemen's agreement that was never terminated prior to Mr. Fiore's letter of June 10, 2015. Mr. Makowski stated the court could have ordered Mr. Kanady to cease using the properties but they didn't; they said do a consent order, come to an agreement, and let Mr. Kanady move forward in front of the proper Boards, which he is doing based on the gentlemen's agreement and not the sixty days in the court order. The agreement also states that each property would be submitted individually and complete before the next one and technically they have not finished with 1887 York Avenue. The town did not go before the court to stop Mr. Kanady from making this application.

Mr. McLaughlin asked how a motion would be formed. Mr. Marmero replied that he's not sure what the issue is with the property meaning why Mr. Kanady would need variances if both uses are permitted. He will probably need site plan approval or maybe having both uses is the issue. If that's the case then he would say the application should be amended to seek variance approval.

Mr. Makowski stated that he didn't think the Board should preclude Mr. Kanady from seeking the certificate. Mr. Marmero advised the Board that they can make a motion for the Certificate of Nonconformity, they can ask for more information and/or testimony on the nonconforming use, or the applicant can ask that the matter be tabled so he can amend his application. Mr. Fritz asked if the applicant would like to table the matter and amend his application or his motion would be to deny the application for the Certificate of Nonconformity.

Certificate of Nonconformity: (continued)

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

Mr. McLaughlin asked the applicant if he wanted to amend his application. Mr. Makowski stated they would preserve their rights and ask the Board to vote on the Certificate of Nonconformity. He asked the Board, if they choose to vote against the application, to please specify their reason.

Mr. Marmero stated that the applicant is asking for a vote on the application before the Board. The Board can ask for more information or testimony with regard to the nonconformity or they can make a motion to approve the Certificate or not approve the Certificate. As for the reason for a denial it is because he has given his opinion that the Board does not have jurisdiction to certify a use since the use was extinguished by the court order.

Motion by Mr. Manfredi, seconded by Mr. McLaughlin to grant the Certificate of Nonconformity. Roll call vote: Ayes – Mr. Manfredi. Nays – Mr. McLaughlin, Mr. Carney, Mr. Fritz, Ms. Hui, Mr. Kozak, Mr. Mercado. All Board member's that voted nay stated their reason as being based on Mr. Marmero's opinion that they do not have jurisdiction since the use is extinguished by the court order as well as the letter from Mr. Fiore. Abstentions – Zero. 1 aye, 6 nays, motion failed.

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 is scheduled for July 7, 2015; there is a use variance scheduled and she asked that all members try to be present.

Adjournment:

The meeting was adjourned at 8:02 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