

REGULAR MEETING OF THE PLANNING BOARD OF THE BOROUGH OF KENILWORTH HELD ON THURSDAY EVENING, JULY 9, 2020. VICE CHAIRMAN GREGG DAVID PRESIDED.

In compliance with the Open Public Meetings Act (Chapter 231, P.L. 1975), adequate notice of this meeting has been provided by mailing the Annual Schedule of Meetings and by electronic advanced notice of at least 48 hours pursuant to N.J.S.A. 10:4-9.1 as permitted during a declared emergency to the Star Ledger, Union County Local Source, Kenilworth web site, by posting such Annual Meeting Schedule on the bulletin board in Borough Hall reserved for such announcements and by the proper filing of said Notice with the Borough Clerk. Formal action may be taken at this meeting.

**If you wish to attend this virtual meeting, please click on the following link and/or call into the number provided. Clicking on the link provides visual and audio access and will allow you to comment and/or ask questions at the proper time during the meeting. Calling the number will allow you to hear the meeting and also comment and/or ask questions at the proper time.**

**URL Link for Meeting:**

[https://us02web.zoom.us/meeting/register/tZ0sce6gri0iHdJOnBDTPre7FZnec\\_fQduxA](https://us02web.zoom.us/meeting/register/tZ0sce6gri0iHdJOnBDTPre7FZnec_fQduxA)

**1-908-276-9090**

This meeting is a judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the Board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all time.

Pledge of Allegiance was led by Vice Chairman David.

**ROLL CALL**

Mr. David, Mr. Grimaldi, Mr. Mazzeo, Mr. Laudati, Mr. Pantina, Mr. Calello, Mr. Scuderi, Mr. Zacharczyk, and Mr. McMahon. Also present were Planning Board Attorney Mr. Lou Rago and Planner Kevin O'Brien and Victor Vinegra, Engineer.

**Approval of June 11, 2020 Meeting Minutes**

Motion was made by Mr. Mazzeo, seconded by Mr. Scuderi. All in favor.

**Communications:** Thank you note from Councilwoman Ceceri for flowers received.

**Resolution:** Authorizing Board Planner to Conduct a Redevelopment Study  
Introduced by Grimaldi.  
Seconded by Calello.

Mr. O'Brien asked for an amendment to the resolution authorizing him to conduct a Redevelopment Study. He said we had talked about having the study within 3 months of when he was authorized to do so, since this is July, three months would be October, if we could amend that to the October meeting date so that would be in accordance with everything we discussed so far. Mr. David said under Section 2 we are changing September 2020 to October, 2020 and under Section 3 we are changing from September to October, 2020. Mr. O'Brien said that is consistent with our past discussions.

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**Motion was made by Mr. Grimaldi, seconded by Mr. McMahon to authorize the above-referenced amendment.**

**Roll Call: Mr. David voted yes, Mr. Grimaldi voted yes, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello voted yes, Mr. Scuderi voted yes and Mr. McMahon voted yes.**

**Old Business:** Application #2 – Certificate of Non-Conformity  
Carmela Arale  
409 North 15<sup>th</sup> Street  
Block 4, Lot 26

Mr. David said it is his understanding that the applicant has withdrawn her application and he asked Mr. O'Brien and Mr. Rago if they need to take any official...

Mr. Rago asked the Board Secretary if all the Escrow fees were due and she replied she would check with the Administrator. He said under the law when an application is before the Board and they want to withdraw, it is similar to being in front of a judge where the judge has to say OK you can withdraw. In this case he has no problem with the Board voting on a withdrawal, subject to it being determined that all of the fees and escrows have been paid. He does not want to cut them loose until that has been confirmed. If it hasn't been then we could say look you are still on the agenda, we are going to carry you but you have to pay and then we will get you off. He said he would have that condition.

Mr. Grimaldi said that we have testimony that at some point this house was technically being used illegally as a two-family home. They are pulling their application.....Mr. Rago said because they are withdrawing their application doesn't make those issues go away. The fact that someone comes in front of us and it was determined inadvertently that there are some other problems that we don't know about, by withdrawing they just can't bury their head in the sand. It is an issue.....whether you want Kevin or his vast staff to go out and take a look at it? If she has a two family rather than a mother daughter, whatever the difference is, then they have to take care of that. Mr. Laudati said he would like to look into it because we had enough of the neighbors in the area come up to our meeting about this two-family house so he thinks we should at least advise someone to look into it. Mr. Rago said they opened the door so let's confirm the payments are made with the powers that be and if they want that looked at further then more power to them.

Mr. Hehl said his office represented her and we sent a letter of withdrawal, our client was actually in Municipal Court and that matter was adjudicated in Municipal Court and he said Mr. O'Brien was there that day. Mr. O'Brien said the matter was actually carried, the applicant offered to certify that the building had reverted to a one family and there were no renters in it and the Municipal Prosecutor, and your colleague were working on a adjudication of that. Mr. Hehl said we will also confirm on the fees that they are paid.

Mr. David asked Mr. Rago if he recommended that we go forward. Mr. Rago said it would be subject to the fees being paid and on the other issue with Municipal Court which sounds like it is being worked out and if not we will do what needs to be done. Mr. David asked if we should carry the approval of the withdrawal for another month, hoping that we get confirmation that all fees have been paid and maybe the Municipal Court case has been completely adjudicated or do we just go forward and approve with the conditions, and also he does not know who is following up on the conditions.

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Mr. Rago said since we may not meet in August, he said he does not know if it makes a lot of sense to carry this for 2 more months, he would say let's just get it off our plate, he would assume the escrow, whether it is current or not can be found out pretty quickly, someone can probably determine that tomorrow, if not Monday. His suggestion would be to act on it tonight, motion to allow them to withdraw subject to fees being current and that's the end of it. The other aspect is not for us right now.

**Motion made by Grimaldi, seconded by Mr. Pantina to approve the withdrawal of Application #2 Certificate of Non-Conformity, Carmela Arale, 409 North 15<sup>th</sup> Street, Block 4, Lot 26 with the condition that all escrow fees are current.**

**Roll Call: Mr. David voted yes, Mr. Grimaldi voted yes, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello voted yes, Mr. Scuderi voted yes and Mr. McMahon voted yes.**

**New Business: Application #2-20  
RJB Nivas, LLC  
121 South Michigan Avenue  
Block 135, Lot 13**

Mr. Hehl said on the agenda the work session starts at 7:00 and the formal meetings start at 7:30. Mr. Rago said if we advertised for the meeting to start at 7:30 then we will have to wait 14 minutes and start the meeting at that time.

Mr. David said we are trying to straighten out protocol in terms of how the Board runs its meetings in terms of the members. He said we have regular Board Members and then we have Alternates. Frequently when we are doing roll calls, we are asking for people to vote in number higher than 9 Board Members and also, from his days from being Mayor and before that, we used to follow the protocol that if a regular member was not able to attend then Alternate #1 stepped in to fill that position, if 2 regular members were not present then Alternate #1 and Alternate #2 would vote. He does not know if that is a requirement .... He does not think it was followed on all cases. Mr. Rago said the Municipal Land Use requires Alternates to be numbered and in our case we have 4 alternates. The law requires that if a regular member is not there, Alternate #1 stepped in....if Alternate #1 is not there then it goes to Alternate #2 and that was probably to prevent for lack of a better word, cherry picking where if the Chairman knew that Alternate #3 was more simpatico than Alternate #2, he would pick #3. He said as far as voting with a Planning Board there can't be anymore than 9 votes, he has worked with Boards where they maybe have 10, 11 or 12 people and when there is a roll call they call everyone.....let's say there are a dozen, the last two votes don't count but some Boards like to make everyone feel that they are involved so they let them vote knowing it's not going to count. He does not know if that can be practiced because it makes things confusing. When we are wearing our zoning board hats which will be for the second application tonight, no more than 7 can vote. When we are a Planning Board only 9 members should be called whether that is all regular members or a combination of regular members and alternates. He said with re-orgs a lot of Boards think that everybody should vote, he has never taken that position, with the Planning Board normally 9 votes and with the Zoning Board no more than 7 votes but everyone can participate in discussing things, asking questions, trying to persuade the Board one way or the other but when it comes to voting he thinks we should stop it at 9 for Kenilworth. The vast majority of what we do is under Planning Board.

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Mr. David said that is what he recalls but he did not know if that was just a protocol that was followed or if it was actually written in the code so thank you for clarifying that.

Mr. David said we have been pretty fortunate that our group of regular members and alternates generally attend our meetings so we often have 11 or 12 people attending our meetings and in the past we have been allowing everyone to vote and he just wanted to see if that was what we should be doing. Mr. Rago said he has worked with a Board where 12 members show up, everyone is called and it's 6 to 6, you have to then sort out who shouldn't have voted and it gets complicated so keep it at the number. Mr. David said we will have to bring it up with the Chairman when he is back whether we meet in August or September but he thinks we should start following that protocol.

Mr. David asked Mr. O'Brien if with zoning, are we doing active enforcement because as he travels through our community he sees a number of industrial properties that are not being maintained. Mr. O'Brien said zoning enforcement in Kenilworth is done in response to complaints that we receive, we are not on active patrol driving the streets looking for non-conformities. When people call in their complaint it is registered and noted and given numbers, then they go to the Zoning Officer and they are investigated, photographs taken, reports written and if necessary a Notice of Violation is sent and if not the complaint is closed out. Mr. David said if he has complaint's he has to submit them to you?? Mr. O'Brien said submit them to the Building Department, they will be logged and investigated. Mr. Laudati asked what about companies that are out of business, who maintains that property? Mr. O'Brien said if there is a foreclosure or a bankruptcy there is an ultimate owner which typically would be a loan holder or a bank or some other financial corporation and Kenilworth has a marvelous ordinance that requires the banks and financial institutions to maintain the properties and what of the tasks of the Zoning Officer is to do is to update the list of foreclosed, vacant and abandoned properties on a quarterly basis. We investigate them to make sure that they are indeed vacant and if they are vacant if they are being maintained. Mr. O'Brien said to Mr. Laudati if he sees a problem and something is not being maintained we may have been there 3 months ago and we haven't gotten back so please let the building department know.

**New Business: Application #2-20  
RJB Nivas, LLC  
121 South Michigan Avenue  
Block 135, Lot 13**

Mr. Hehl said he wants to briefly give an overview of this application and the situation that this property presents. This is a request to have a property being occupied and a Certificate of Occupancy issued without a garage. It is a unique property on South Michigan Avenue, it is a very narrow lot a little over 33 ft. wide, and it is also on a corner so it has the constraints of a narrow lot and a corner. He said he spoke with Mr. Vinegra about this application. There was a very small garage which the zoom pictures show. The reasons we are mainly seeking, and Samantha will take us through a little bit of history of the property, is for the reasons he has mentioned, it is an extremely narrow lot with off street parking. When the house was purchased by Samantha and her partners and renovated, they applied for demolition permits for the main house, they did not realize, and he discussed this with both Kevin and Victor, that a separate demolition permit was needed for the garage. By not having the garage, first of all it is an issue of safety with the small narrow piece of property and backing out of that garage and onto the side street presents a problem, Mr. Watson will cover that when he goes through the plan. Secondly parking is a premium in that area, you have the corner lot, you have the stop sign at Michigan Avenue and therefore that limits parking on the street. We feel that by not having the garage it gets us the ability to have more on-site

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parking and also for safety issues. He said many of the homes in that area do not have garages and Mr. Watson will touch on that. We feel that the benefits of not having a garage are certainly outweighed by trying to stick a garage on there and Mr. Watson will touch on this too. Any such garage would most likely trigger a number of variances because you have two front yards, set back requirements. It is now renovated and is under contract to be sold, they did a great job renovating it. This was a tiny two bedroom house and they made it into a 3 bedroom home. That is an overview of our request before the Board this evening and if there are no preliminary questions for him, he called upon Samantha Burns.

Ms. Samantha Burns, Kevin O'Brien and Victor Vinegra were sworn in by Mr. Rago.

Mr. Hehl asked Ms. Burns to give a background of the condition of the property, the house and the garage and also what approvals you applied for and what you have now done to the home to improve it.

Ms. Burns said she purchased the property on December 7, 2018 and the condition that it was in when she purchased it was in very poor condition, there were renters in there. The owners were living out of state and it was left to the renters to take care and they had not done too good of a job so everything was in bad shape. We purchased the property and had architects do a full plan, taking the house up a second level and because of the setbacks we had to do a unique design in order to build the house correctly with regards to all the setbacks and the regulations for Kenilworth which wanted to make sure we abided by. The plan was to keep the garage as it was in its current condition but upon closing on the property and starting to do the renovations, knocking down the top story where the roof was and starting to build the framing out we discovered that the garage was leaning more to one side more than it had initially had when we first surveyed the property. The perishing of the wood structure of the garage, the roof and the concrete on the inside of the garage was very dangerous. We told everyone to stay clear of the garage, not to put anything in it or remove anything out of it in case there was going to be an accident so everyone maintained the construction period on the house until such times as we were able to evaluate closely the garage. We built a whole second story with two bedrooms upstairs, two baths upstairs and downstairs we kept the initial layout just by opening up the second bedroom that was downstairs to make the kitchen, living, dining room area which is a very nice open plan. A lot of people have paid us compliments on the design. We put a deck on the back of the property, keeping within the regulations of the set-backs, all the permits were acquired, the building, electrical and the plumbing and also the demolition permits were all acquired. We passed all of our inspections. We currently have the property and the contract since March and the closing date is scheduled for tomorrow but obviously we are waiting to be able to close as a result of the variance being approved of not having a garage because we believe it's dangerous. We have had a lot of comments from the neighbors when we were doing the renovations that they were complaining there were too many cars parked behind them when they were trying to back out of their driveway, they do not have a garage and we were in the way of them because we were parking in the street because there was no room to park on the property and also with the intersection there it is a pretty busy street. When we evaluated this whole inconvenience in its current condition we decided it would be better to demolish the garage which would then enable us to have parking on the property. She said in walking around the neighborhood, before we did that, we noticed that the majority of the properties in and around that area at least within a 1-2 hundred foot radius do not have garages either. They either have no garage at all or maybe a small utility shed on the property, there were quite a few properties without a garage so we demolished the garage that we had before so there were not any accidents. The rest of the house had been completed and we now had the dumpster empty to put everything immediately into the dumpster and to not leave a mess on the property. She said it a brand new house, everything is new. The buyers have been under contract for two months, they are closing on their property tomorrow and

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they have no intention of wanting a garage, we asked them whether they would like a garage there and they said no they do not want a garage, they preferred the off street parking.

Me. Hehl said he received and reviewed the reports from both Harbor Consultants and Mr. O'Brien and he does not think there are any technical issues, Mr. Watson will cover those in his testimony.

Mr. Zacharczyk asked if there were any pictures of the garage in bad condition before they tore it down? Ms. Burns said her associate takes photographs all the time of the property but she has not looked to see if there is one of the garage but he is sure there is.

Mr. McMahon said if you look at the house on Google Maps, you can actually see the new house from the Michigan Street view and if you look from the side street view you can see the old house and the old garage. It is kind of beat up looking.

Mr. Grimaldi said this is a variance for proceeding forward without an ordinance required for a garage .... is it up to this Board or the Zoning Officer that the garage was taken down without the proper permits filed and is that going to be addressed during this meeting? Ms. Burns said they had a demo permit for the house when we started the construction. Mr. Grimaldi said that you just testified that, he thought you just testified about .....somebody stated that they were not aware that a demo permit was needed to take down the structure. Mr. David said that is what he heard also. Mr. Hehl said that was when in Mr. O'Brien's report it was asked whether or not a separate permit was obtained and when he discussed it with Samantha she indicated yes they did get all the appropriate permits and approvals, demolition permits for the house and the additions but they did not realize a separate demolition permit was required for the demolition of the garage. He said as a condition of the CO, if this Board is kind enough to grant the application, then Kenilworth would be in the position to issue a CO to transfer the property without a garage. Mr. Grimaldi said again.....is someone going to address the fact that.....it is for this Board or the Zoning Officer .....is there a fine for just doing what you want without a permit? Mr. O'Brien said this matter started with an application for a zoning permit to have a property without a garage, that was denied and the recourse from that is to apply for a variance which is what is happening this evening. Should the applicant be successful in their pursuit when this matter is over and should they not be successful they would have to construct a garage and come into conformance with the ordinance. There are no penalties or fines at this point, none are anticipated, the primary focus of zoning enforcement is to bring properties into compliance.

Mr. Scuderi said to Samantha that she stated earlier that she looked through all the regulations for the town before building this house and had a special design to keep everything in conformity so obviously you knew there was a requirement to have a garage, he does not understand why you would not have made the necessary repairs ....is there a reason you did not repair the existing garage and just decided to knock it down or demoed it without having any plans to rebuild anything? Ms. Burns said at the time they submitted their plans, the architect made sure that everything was built in accordance with Kenilworth and they discussed that with us. The garage itself, looking upon it without in detail, it looked like it could have been repaired but when we started to repair it we realized that all the wood was rotted and that it would need to be demolished, during that time frame we then had the problem with the neighbors with the parking, with the on street parking and it was then realized it would probably be better because the garage, we measured it, it would not take a car, not a modern day car because it is so small. Currently the pad is still there but if she parked her car on the pad, she would be deducting 2 ft. outside the garage.

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Mr. James Watson was sworn in by Mr. Rago.

Mr. Watson said he is a licensed land surveyor in NJ and NY and a professional planner in NJ. Mr. Watson testified before this Board on numerous occasions and has been the Planner for the Township of Union, Borough of Carteret, Township of Warren Public Advocate. He said he is out with Steve about 7 or 8 nights a month.

Mr. Hehl said that Mr. Watson was familiar with the application having prepared the plans and heard the testimony of Ms. Burns and also had the opportunity to review the report from Mr. O'Brien and Victor at Harbor Consultants. Mr. Hehl asked Mr. Watson to provide an overview of the plan, survey because he believes he has knowledge of where the garage was and the size of the garage. Mr. Watson asked Laura to put up the plans. The cover sheet of the plans show the list of owners within 200 ft. in the upper left hand corner, below that are some general notes, in the center of the sheet is the tax map, buildings within 200 ft. and the zoning boundaries within 200 ft. The upper right-hand corner is a key map, the names of the owner applicant, the approval block for the Chairman, Secretary and Engineer, their title block with the table of contents and the schedule general requirements for the R5 zone. Everything that requires a variance denotes that it is an existing violation, he will talk about that later. The next sheet is a survey of the property, there are no proposed conditions so we did not show anything as being proposed. There is the two-story framed dwelling that is currently there. To the rear you see a paved driveway which is about 24 or 25 ft. wide, a new curb put on either side of it, the concrete pad that is shown in the southerly corner of the driveway and is the location of the former garage. That garage from outside wall to outside wall was 9 ft. x 18 ft. If you subtract 8" for each side for the concrete block that was on the foundation then you are looking at a garage at a minimum that had 7 ft. 8 in. inside to inside across and about 16 ½ ft. depth, if you consider the 8" across the back and 8" across the front. A typical car today would not fit in there, that garage was also set back 6 ½ ft. from the right of way line of Passaic Avenue so you really did not have room like you normally do in a residential set up where you can park a car in front of your garage. The lot is 33 ft. 4 in. wide by 125 feet deep, set-back for the front of the building is 17 ½ ft. and it is about 6 ft. from the southeasterly line of Passaic Avenue.

Mr. Hehl asked Mr. Watson to move on to what he has already indicated as the benefits of having no garage from a parking and safety perspective. Mr. Watson said this is an undersized lot of 4166 sq. ft., 5,000 sq. ft. is required. It is a corner lot and that creates problems, it creates 2 front yards, one along Passaic Avenue and one on Michigan Avenue and by ordinance you really don't have a rear yard. You have a street side yard and a side yard and you have the two front yards. It is a very narrow lot 33.33 ft. vs. 50 ft. which is contemplated in the zone and the garage was undersized. The footprint outside wall to outside wall is 162 sq. ft., your ordinance requires a minimum of 240 sq. ft. That size of 9 x 18 that he was talking about was actually the size of a parking space, a minimum parking space that is required in an outdoor parking area where you have room to go past the lines, you are not restricted. Using that garage today would be nearly impossible, you could probably pull a car in but unless you climbed out the back window, you would not be able to get out of the car. If you look at sheet 2, there is a building envelope which is 6 ft. wide, you could not put a garage on that property today without a variance. He said you actually could not put a shed on there without a variance right now. The original dwelling was built in 1928 and he thinks that things were not anticipated in 1928 that are realized today. He believes that we can comply and all of those things he just stated go to C1 for hardship. We have an exceptionally narrow piece of property, it is unusual in zone, not uncommon but it is unusual that it is so narrow that you can't build anything and the unique situation affecting this corner lot is the 2 front yards that are required on Passaic and Michigan Avenues. We can also apply for relief on your C2, we have to talk about a number of things, the first is a

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specific parcel this has to be linked to and you can look at this and realize this is not a typical lot in Kenilworth, it is an exceptionally narrow lot and 2 frontages make it almost impossible to comply with anything. Next he will talk about positives of this application, you get them from the Municipal Land Use Law and they comply with A which is to encourage Municipal action guide to appropriate use and development of all lands in the State in a manner that will promote public health, safety, morals and general welfare. With this application they comply with the general welfare and safety statement. The old garage was in poor condition, like Ms. Burns said, it was falling down. Providing 3 off-street parking spaces is much better than to have the old 1 off street parking space with no availability to park in front of the garage wall which means you would have to pull into the garage to get out of the right of way. Keep in mind, backing out of a narrow garage like that with basically 7 ft. entrance facing Passaic Avenue, you would be blinded until you got most of your car all the way out and into the right of way so that is an extremely unsafe condition where you could not see cars coming from the southwest also keep in mind that Passaic is a one-way street going in a northeasterly direction. If you are on South Michigan Avenue, you could not turn onto Passaic Avenue and go down. With the new set-up there are no site problems, you can see both ways for pedestrians and other oncoming cars. Positives for general welfare, you are updating the older antiquated house bringing it into modern times and repurposing it, you are giving it more bedrooms and making it a better market value for the Borough. Next he believes they comply with E which is the multi-establishment of appropriate population density and concentrations that will contribute to the wellbeing of persons, neighborhoods, communities, regions and preservation of the environment. In layman's terms, that is street scape, do we match what is around us and the answer is yes. Within this lot within 200 ft. you have 28 lots, there are 11 of those lots, which is 40% that do not have garages, they mirror the situation that we are providing here, they expand the parking to get more cars off the street and they allow entrances from either side streets or they basically put a shed at the end for their storage needs. There are 11 lots that do not have garages and they don't provide garages other than the open parking. He said we comply with I which is to promote desirable visual environment through creative development techniques, good civic design and arrangements, basically the new design is very creative and allows for flexible use of the rear yard so if they are having someone over for a party or an occasion they can move the cars out and you can have a usable backyard. The old garage cut the yard in half and made it extremely difficult to do anything with more than a few people. The creativity of getting rid of the garage, paving across the entire thing making it accessible for kids to play, have a picnic or anything and also allowing you to park 3 cars there and getting them off the street. Keep in mind that one parallel parking space is 24 ft. long and in this case you are losing a space in the street but you are getting 3 cars off the street with the situation we have. Finally, he believes they comply with M which is to encourage coordination of various public and private procedures and activities shaping land development with a lessening cost of such development and the more efficient use of land. He said everything is in place here, the only thing we are asking is to eliminate the garage. He has had houses for close to 40 years, everybody knows what happens with a garage, you rarely park a car in it, you put all your stuff in it. He said everything is in place, no new utilities needed, no curb cuts needed, everything is done and in place now and he doesn't think you will have any problems moving forward with this. Looking at your Master Plan for some other positives, parts of your Master Plan talk about ensuring that new residential development is consistent and compatible with the existing neighborhood character, 40% don't have garages, the house was dated and was upgraded but it still matches the street scape and it was not expanded on the footprint, just going up to add the extra bedroom. Your Master Plan also encourages the preservation and maintenance of all residential properties which Ms. Burns testified to that this was in disrepair, they have updated it, fixed it and it's actually on the market and has been sold. That was the second thing we had to talk about with the positives. Next we have to talk about negatives and with this application he does not believe there are any negatives. Light, noise, traffic that are generated by a residential use in a residential zone are already contemplated, there is nothing out of the ordinary with

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this application. To recap quickly, the hardships that we have, are it is a narrow lot, deficient in area, you can't build a conforming garage, let alone a shed, the old garage was outdated and too small for modern vehicles plus it was in a state of disrepair. Also we are on a corner lot and those restrictions make it very very difficult to build anything here. Recapping the C2, we are modernizing an old house, flexible use of the rear yard is a plus, you are getting 3 off street parking spaces, you are moving a delapidated structure and it's not out of the ordinary 40% don't have garages. It is an easy fix for an old awkward setup, the garage was in the middle of the backyard and it made things very difficult. We actually meet some of your Master Plan goals so when you weigh all of this out looking at a C2 proof that there is no substantial detriment to your zoning ordinance or to your Master Plan. He hopes you agree with him that this is an easy application to approve.

Mr. David asked Mr. O'Brien if the addition to the second floor is an expansion of an existing non-conforming use? Mr. O'Brien said that all he can say is that in this particular case, permits were issued and permission was granted for this to proceed last year some time. Mr. David said he does not know if that answers his question and Mr. O'Brien said he is trying to dodge it diplomatically. He thinks many planners would consider a new structure that is set back to require a setback variance but in this case it was not asked for nor was it required.

Mr. Grimaldi asked if he heard testimony correctly that the planner said they are going to maintain 3 off street parking spots? Mr. Watson said that is correct, the paved area in combination with the concrete pad that is there provides 3 off street parking spaces. Mr. Grimaldi said to Victor and Kevin.....so tomorrow if all goes well for them tonight, tomorrow this site will be sold and the new owners have no obligation to us and they could put up a fence and eliminate those 3 off street parking? Mr. Hehl said the resolutions are a condition of that approval and that would be something that they are bound to, he will defer to Mr. Rago. Mr. Rago said if the Board approves this, it is approving the property, not approving Ms. Burns, it's not approving the new buyers, it's approving the property so if approved by the Board and the new buyers are made award of it so they are not buying a pig in a poke then they are bound by the property, the new buyers would have to comply with whatever conditions and approval this board puts on the property, unless they come back in and want additional relief. One of the conditions would be, if this was approved, that there will constantly be 3 maintained parking spaces on the property.

Mr. O'Brien said Mr. Rago is correct that if that happens to be a condition of the potential approval by this Board than that would be dealt with by subsequent owners and in addition to that any subsequent owner can certainly file a permit application for a fence, a shed and it would have to be reviewed to see if it was consistent with the ordinance or not.

Mr. Vinegra said if you look at the curb to curb driveway, it's 28 ft. , that is the width of the roadway and that is a lot of pavement behind a home. He would like to see this moved down to only 2 car wide, not 3, there is no other home in the area with a 3 car wide driveway. It is making a sea of parking behind a home, he wouldn't mind if they put in a masonry deck in there but he would like to see the opening to the roadway limited to 20 ft. Mr. Watson said he wanted to point something out, unlike some of the other lots in the area you can't stack your parking here. Mr. Vinegra said he would like to get only two spaces off the road, not 3. That driveway is the width of the roadway of Passaic Avenue. Mr. Watson said Passaic Avenue has parking on both sides. Mr. Vinegra said so why have a 3 car wide driveway when you have parking on both sides, he said he has been on Passaic and there is parking, it creates a 3 car wide driveway, that is wider than Passaic Avenue. Mr. Watson said one of the thoughts in the process was that we were going to try and comply with RSIS, you need 2 ½ spaces, round up to 3 so that is why we went to 3 spaces. Mr. Vinegra said then you can build a garage and do 2 ½ .....so lets not go there. Mr. Watson

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said you can't build a garage. Mr. Vinegra said you can build a garage and you can ask for a variance, you can build a 20 ft. deep garage and ask for a variance, so you can build a garage. Mr. Watson said he meant without variances. Mr. Vinegra said also you need a variance for the curb opening. If you look at the street, he is looking on Google Earth now, nobody had anything near that, the closest thing is maybe 18 ft.. He does not know why you can't do a two car driveway and a patio for the tenant and not permit it all to be parking. Mr. Watson said when he testified about flexibility, they may use it that way. Mr. Victor said his comments are that he thinks it is way too wide, he does not ever remember permitting a 28 ft. wide driveway.

Mr. Hehl said, on behalf of the applicant, he said whatever the Boards desire, he thinks that area, part of it is used as a patio. Mr. Vinegra said he does not want to see it come all the way out to the street, he wants to see it necked to make it 20 ft. wide at the edge of the pavement.

Mr. David said Mr. Vinegra made his point well, so ultimately it will be up to the Board to determine if they want to proceed with approving it as it is or with modifications.

Mr. Pantina agrees with Victor at first he thought the garage would have been small from what he saw of the pad but 28 ft. is kind of wide and the fact that there is no curb out there, even if they narrowed down the driveway and blocked off or if there was curb there, if you put curb in front of where the old garage was you can easily get 2 cars in there and swing them around and probably move more cars.

Mr. Grimaldi asked Mr. Vinegra if there was anything limiting parking within X amount of feet of the corner? Mr. Victor said yes that is normally a traffic issue, distance to a stop sign, they do have sufficient depth to get a couple of cars on the street. Mr. Grimaldi asked from the edge of the paving now to the stop sign there is sufficient enough space for parking? Mr. Vinegra said yes.

Mr. O'Brien said to answer Mr. Grimaldi's question, there is a 50 ft. setback from the stop sign back and there is no parking allowed and that occurs on both sides of Passaic Avenue from Michigan to the west. Mr. Watson said, just for a point of information, he has the old survey and he measured the old opening and it was 28 ft. which is the same as it is now. Mr. Grimaldi said if we are 50 ft. from the stop sign between that and as we have all noticed this lot is undersized, we might be pretty close to not having a spot there. Mr. Watson said he is getting about 60 ft. from where the stop sign would be to the beginning of our driveway so at 24 ft. you would be able to get just shy of 3 parking spaces....so you get 48 ft. for 2 of them and you would have 12 ft. left for the next parking space. He said he thinks it is a more efficient use if you are pulling 3 cars off the street.

Mr. Hehl said they would defer to the Board for that configuration. If the Board is kind enough to approve the application, also no issues with respect to it.

Motion was made by Mr. Grimaldi, seconded by Mr. Mazzeo, to open the hearing on Application #2-20 to the public. All in favor.

No one wished to speak.

Motion was made by Mr. Mazzeo, seconded by Mr. Calello to close the hearing on Application #2-20 to the public. All in favor.

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Mr. Hehl said he appreciates the Board meeting particularly in this forum allowing us to make this presentation and we appreciate the feedback from the Board and the Board professionals both prior to tonight and tonight. We feel that this is not only an improvement by the renovation of the house but the elimination of the garage, eliminating that safety issue and also providing additional off-street parking. We think that the justification for the variance to eliminate the requirement of the garage has been provided. He looks forward to the Board granting this application so the house can be sold. He said there is no problem with the conditions and as far as Mr. Vinegra's comment, if the curb cut needs to be smaller and make the area where the pad is a patio we leave that to the Board.

Mr. Mazzeo ask for an understanding of the narrower width, is it going to be reduced from the Michigan Avenue side so that we have some room there or are we removing the concrete bed. Mr. Vinegra said probably the Michigan Avenue side to make that a little more green on that side. He said let them come back with a plan that makes a nice patio back there or something, he said he would rather not have someone walk out of the house into a car, you walk out to the patio so if you move the parking further away from the home, further away from Michigan Avenue, you have a smaller patio area behind the home as soon as you come down the stairs. Mr. Watson said you are just trading the street space for an onsite parking space and he said keep in mind if you want we could put a fence coming off the house to come back 8 ft. and then it right angles out to Passaic Avenue that would eliminate the parking space. Mr. Vinegra said he would like to see that asphalt removed. Mr. Rago said so we are removing the asphalt to on the patio? Mr. Vinegra said just along the street frontage, you can saw cut that and plant some shrubs and some chips. He said he would need to see a revised plan.

**Motion made by Mr. Pantina, Seconded by Mr. Mazzeo to approve Application #2-20 with the conditions stated by Borough Engineer Victor Vinegra.**

**Roll Call: Mr. David voted yes, Mr. Grimaldi voted no, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello voted yes, Mr. Scuderi voted yes, Mr. Mahon voted yes.**

Application #380 Variance #4-20  
Blue Blade Street  
109 North 8<sup>th</sup> Street  
Block 60, Lot 2.01

Mr. Hehl said this is an application for the installation for a small generator and liquid nitrogen tank in connection with Blue Blade Steel. Blue Blade has been an important member of industry in Kenilworth for quite some time. The request is important for them to continue modernizing their business. They use this product in conjunction with their furnaces, they already have the liquid nitrogen and hydrogen at their facility, these are just up-grades to that. All safety protocols will be met and they are actually installed by the suppliers and all appropriate safety mechanisms are in place. We have received the reports from Harbor Consultants and from Mr. O'Brien and we will address those but generally we have no issues, but we will explain in more detail.

Mr. Rago said this is a Board of Adjustment meeting because this is a use variance application. The Class I member is not present and the Class III cannot participate in this application. He said when it is completed, we are only calling 7 members. This application needs 5 affirmative votes to be approved.

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Mr. Rick Poland and Mr. Don Lindewirth was sworn in by Mr. Rago.

Mr. Lindewirth is Vice President of manufacturing at Blue Blade Steel and has been there for 20 years. Mr. Hehl asked Mr. Lindewirth to give a little background on what the company does. Mr. Lindewirth said Blue Blade Steel is a privately-owned company and has been owned and operated by Jerry Shaw who brought the company in the 1970's, it was in Newark at that time and he moved it to Kenilworth in 1985. They have gone through a number of expansions since they originally purchased the lot, the last expansion was in 2003 or 2004. The process is a heat-treating process, they heat treat strip steel which is used throughout the country for various applications, some of the more common applications are trowel blades, putty knives, etc. The process is that we purchase steel, heat treat it and send it back out to our customers who stamp it. The heat-treating process is we heat the steel strip up and cool it back down and that heat treat creates a different structure that is more suitable for the applications. We have 15-16 hourly personnel and that is spread across 3 shifts. The first shift is 10 people, the second shift is 4 or 5 people and the third shift is 3. We also have 6 or 7 administrative or management type people. Mr. Hehl asked Mr. Lindewirth why these upgrades are important for them to remain there? Mr. Lindewirth said Kenilworth has been a real good location for us, it is relatively local to the trucking area. There is not as many steel companies in the area now but there used to be, a lot of the laborers come out of the Kenilworth area. Mr. Lindewirth said he can't tell you what the nitrogen and the hydrogen are used for, it's the inner gases that are necessary in heat treating applications, we cover the material with nitrogen gas and that is an inner gas and is non-reactive to metal so it won't allow it to oxidize. Nitrogen is in the air that we breath, air is 70% nitrogen and we use it in a simplified form and it is vaporized into a gas form and put into the furnace.

Mr. Poland said the company is growing and we have a need to expand and increase our gas tanks to limit the amount of refills going from 3 times per week down to once a week or once every two weeks would help us to carry more gas on site so that we can continue to run our furnaces. Furnaces run 24 hours a day, 7 days a week and they have to be in a nitrogen/hydrogen atmosphere in order to produce the metal to the satisfaction and requirements and quality that our customers that we supply the material to need. The generator that we are looking for is, we have one piece of equipment that needs to run 24 hours a day and if there is a power failure it needs to run a small pump to keep circulating some water. It is not a very large generator at 60 amps, it wouldn't even run on your household it is a small little generator for a circulating pump a small blower and we put a 110 outlet so that if we need to put in a light to see in that area when we are working or doing some work in that area we have the ability to get 110 volt light up. Mr. Hehl asked if you have both of these gases at your location at the present time and Mr. Poland said correct. Mr. Poland said the hydrogen is in tubes and is now going to be replaced with a tank. They have hydrogen which is stored on site in tubes or what they call submarines, they are long circular tubes and are stored in a gaseous form but there are limitations on how much we can store on site with those tubes. The volume that we are looking to increase to, it made better sense for us and for the people that supply the gas to us to go to a cryogenic form of hydrogen and put it in a liquid tank. The nitrogen tank is going to get slightly larger but again it would increase volume, we are running 24/7 on the furnaces and we have to keep the atmosphere in the furnaces at all times so again it is just an increase in volume, increase in production and we would like to increase the size of the tank so that we can hold more on site and have less fill time with the supplier. Mr. Hehl asked Mr. Poland with respect to safety and protocol, inspections and the installation are done by the suppliers? Mr. Poland said the people that provide us the gas will do the installation and they will oversee the installation of all the safety equipment and safety valves. Mr. Hehl said one of the items in the report is the dumpster location and another is a minor parking, we are not changing the amount of parking but on site there is an existing issue where maybe we are a parking

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space short and he asked Mr. Poland if there is sufficient parking under your present configuration for your employees? Mr. Poland said yes, as Mr. Lindewirth already stated, we only have 15 people for the first shift on site, the second shift is 6 or 8 and third shift is only 3 or 4 so we ample parking spaces for the employees, office personnel and any visitors that would want to show up. Mr. Hehl said so generally the operations of Blue Blade Steel is not going to change in connection with this application. The number of employees, the amount of deliveries and the like will not change? Mr. Poland replied yes, if anything the deliveries will be lessened, instead of going from 3 times a week bringing in the trailers to reload the system we will go down to hopefully once a week or maybe once every two weeks.

Mr. Mazzeo asked if the method of delivery from these tanks change at all, you are saying you are reducing trips from 3 down to 1....are there bigger trucks.....anything different as far as that is concerned? Mr. Poland said the only thing that might change is the hydrogen truck, instead of bringing a gas truck which has the same tubes that we currently have on site, they will probably bring a truck that is similar to nitrogen which is more like a tanker that will pump the cryogenic fluid into the tank, other than that ....just the shape of the trailer that is towing but the truck size will be exactly the same.

Mr. Pantina asked how the products going from gas to liquid affect the surroundings, is it a bigger hazard? Mr. Poland said he does not believe it is a bigger hazard, one is a liquid form which is pumped into a tank that is designed to handle cryogenic material, the way it turns into a gas is when it is through an evaporator .....so basically it goes through a series fins. He said if you can picture a radiator and as it warms up because it is cryogenic, as it warms up it converts to gas and it comes into the building as a gas, so that is the only difference. It is handled by professionals, it is brought in by them, they have all the safety procedures in place, the filled mechanism is maybe just a different type of hose but it is the same principal. Mr. Pantina asked if there are safety features and closures, for lack of a better word, better than what you had there before. Mr. Poland said he does not know if they are better, they will be the most up to date type of systems, the companies that we buy our gas from are going to be in charge of installing that equipment and they follow what is called the NFPA 55 and their safety standards are following that and they supply all the equipment and they do all the installs. Mr. Lindewirth said It is their equipment that we lease from them, they put all the safety protocols in and they inspect their tanks all the time. The handling of the liquid is much more efficient, both from a delivery standpoint and also for usage. We do have an increase in our consumption in usage of both of those gases because of some of the more stringent quality requirements that we are getting from our customers. You need more atmosphere to keep the steel at a higher quality.

Mr. Edward S. Dec was sworn in by Mr. Rago.

Mr. Dec said he is a licensed engineer and a professional land surveyor.

Mr. Dec referred to sheet 1 of the Preliminary and Final Site Plan for 123 North 8<sup>th</sup> Street, Block 2.01 Lot 60. This is an aerial photo, on the lefthand side it has the 200 ft. radius map and to the right is the zoning map. This is in the industrial zone and all the adjoining properties are in the industrial zone. The property is approximately 2 ¼ acres, 95,000 sq. ft. On sheet 1 is listed all the criteria requirements for Industrial Zone and as you go through the chart in the existing and proposed column you will see some asterisks next to the numbers which signify that they are pre-existing non-conformities. The first one is the side set-back and it will show where that occurs on the existing condition plan. It is along the northerly side of the building, we have a very close set-back of the existing condition and that is going to stay the same. Nothing else is changing other than the area where the liquid hydrogen and nitrogen tanks are being placed. We are also removing the existing dumpster that is up against the building and on sheet 3 it shows

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that we are putting it alongside that work-station building. On sheet 1 on the zoning chart the other existing non-conformity would be the building coverage, we do meet that by less than 1% but we are within the allowable. The next would be lot coverage, we exceed the 80%, the open space ration is the inverse of the lot coverage and we exceed the 20%, we don't meet that not that we don't exceed it. The number of parking stalls, he has the parking calculations on the lower left-hand corner of sheet 1. The zoning chart show our calculations which show that the requirement for the use and the area of the building is 54 and we have 39 stalls at the site. The number of employees does not require anywhere near what is required, let alone what we are already providing. He said if you want to see what the parking looks like you can take a look at the aerial photograph on the left hand side, you can see the cars parked and you can see that there is no congestion in the circulation of all the equipment being brought to the site. Mr. Hehl asked Mr. Dec to show the existing hydrogen and nitrogen tubes and he asked him to also touch on, he knows there were comments from Mr. O'Brien on the dumpster and he asked Mr. Dec to highlight those items. Mr. Dec said he first wants to show you where the proposed generator will be which will be next to the cooling tower and you will see that on Sheet 3. The trash compactor will be removed and we will be proposing a dumpster between the existing steel building and the southerly property line which will be up against the existing fence. Mr. O'Brien said that one of the witnesses said earlier that this was a 60 amp generator, it sounds like it's a portable generator, is that correct? Mr. Poland said it is a stationary, we don't want it to go for a walk, it's about the size of a desk. Mr. Dec said, back to Sheet 2, the area he pointed to is the existing nitrogen and hydrogen location, those long tubes are the existing gas hydrogen location and adjoining it to the north is the nitrogen tank along with the evaporators. As you can see we have an access point from both North 10<sup>th</sup> Street and from North 8<sup>th</sup> Street, circulation is not going to be an issue with either the pedestrian or the employee traffic or the traffic that will be generated, which as Mr. Poland testified to, will be reduced to service those 2 units.

Mr. Dec said he will address the engineers review letter and showed Sheet 3 and what is being proposed and what is being removed. As he showed on Sheet 2 both the nitrogen and hydrogen will be replaced with new units. The nitrogen tank will be removed along with the evaporators and the existing storage tubes. It will be replaced with concrete pads and both where the new liquid nitrogen area will be and also where the new liquid hydrogen area will be. The pad will serve as a concrete pad for the trucks. The work will be done by 3 separate entities, all coordinated by the supplier of the equipment. There will be a construction service that will be doing the concrete pads, the fencing around the units, bollards and all the related construction work for placement of the equipment. There will be a separate entity that will be working on the nitrogen and a separate entity that will be working on the hydrogen. One will be the air products engineering and the other will be ??? North America. These are units that are being constructed, supplied and serviced and owned by those different entities and they will be leased to Blue Blade Steel for their processing. Mr. Dec continued with Mr. Vinegra's letter. #1 and #2 describes what is going to be removed and what is going to be replaced, the parking was answered sufficiently as far as the number of employees that are required at the site as Mr. Poland testified. The processes are there to provide a better material for their customers, not to produce more so there will not be an increase in the number of employees or any other type of expansion to the building. The dumpster location on Sheet 3 will be taken from where the trash compactors are shown on the plan and will be proposed alongside the building. There was a comment that was in the Planners letter, there is no detail of that and he is correct, we describe it as a 12 x 12 dumpster enclosure with a fence. As we were looking at the placement of that, we feel that we might be able to reduce the fencing on that but he will get into more detail on the fencing and the dumpster itself with the Planners review letter. The stop bar and stop sign, which is a recommendation made by the Board engineer will be placed at the exit of the site on North 8<sup>th</sup> Street. The ingress and egress on North 10<sup>th</sup> Street has the fence and that is mainly used for access for supplies not as a daily entrance way for the employees, we agreed to that recommendation. The bollards will be

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something that will part of the installation of both systems, and that is shown on the plans that were submitted to the Construction Department for the construction permits and they have details of the bollards and details of the concrete pad, thicknesses, rebar types and configuration, that could be submitted as evidence but they are part of the application package at the construction office, they are not part of this application. That will cover items #6, #7 and #8, impervious coverage is noted in this review letter and does not increase and there is no increase in storm water runoff and we are not proposing any improvements to that. No changes in grade and we are asking for a lighting waiver since nothing to the building or to the parking lot is being revised.

Mr. Dec said the variances that we will be requesting are the outdoor storage of the hazardous materials. The lot coverage of the space ratio and the parking spaces and the side yard, those five variances are part of our application.

Mr. Dec as far as the Planners letter of June 15<sup>th</sup>, on page 1 it is noted as far as the variance that we would need for the outdoor storage of hazardous chemicals and also the outdoor storage of the dumpster. In that section, page 2, as noted by the planner is the solid waste if stored outdoors be placed in metal receptacles, we are complying with that. The screen refuge area not to be located in the front yard, we complied with that. The storage area shall be surrounded on three side by solid uniform fencing or wall, that would be something and that is correct no plans were submitted and he thinks they were going to ask for a waiver as far as having fencing around all sides since it can be seen on sheet 3 there is a fence to the south of our dumpster and we probably connect the side of our dumpster location to that fence and it will still be a 4 sided enclosure, there would only be 3 sides that would be constructed for the use of the pad, we would have a gate in the front to have access to the dumpster area. The dumpster will be picked up and emptied as required, Mr. Poland can answer how many times per week that would be done depending he imagined on usage, that is something that can easily be rectified as far as how many times it needs to be removed. It should be noted that the area and property immediately to the south of our site where the dumpsters are located is also an industrial area so we are not having any adverse impact to the adjoining properties. We will provide a 6 ft. high fence surrounding that. He believes the other issue was the requirement of a minimum landscape area, we are requesting a waiver for that since the entire area is paved now and the whole area is in an industrial area and it is well hidden between the existing building and the buildings to our south so we feel that the need for a landscaped screened area is not necessary in this case. He said he believes those were the main points of both the engineers and the planner's letters.

Mr. O'Brien said as you were going through the zoning review actually dated June 15<sup>th</sup> which lists whether or not this application requires waivers or variances from the Land Use Ordinance. He wanted to recap that, you went through that a little quickly for him and he asked if the refuse storage area is going to be enclosed and enclosed with what? Mr. Dec said a 6 ft. high fence on 3 sides and would like to utilize the fence that is to the south of us as one section of the enclosure. Mr. O'Brien asked if the adjoining fence 6 ft. high? Mr. Dec said he is pretty sure it is, it's a chain link fence. Mr. O'Brien asked what will the 6 ft. fence on your side consist of? Mr. Dec said he hasn't determined that yet, he doesn't know whether it will be solid board on board type wood fence or a chain link fence with slats to fill in the opening. Mr. O'Brien said the ordinance requires a solid uniform fence, if you wish to do a chair link fence you will have to let the Board know about that. Mr. Dec said he doesn't think they need anything esthetically pleasing because it is really hidden very well from the street and the adjoining properties, he thinks just a chair link fence and if that requires a waiver he would request the Board to grant that. A chain link fence would be fence slats. Mr. O'Brien said the gate will consist of what? Mr. Dec said it's a 12 ft. wide pad so we would have two 2 ½ ft. wide gates that would open up and the dumpster would be taken out through that, it

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might have to be larger depending on the size of the dumpster but that is something he will coordinate with the owner. Mr. O'Brien said that would be chain link as well? And Mr. Dec said yes. Mr. O'Brien said that gate is 12 ft. wide? Mr. Dec said no, depending on the size of the dumpster that would be placed there, we will have to size the gate and it will be two gates that would open up for the access. Mr. O'Brien said because you are so close to the property line, you did note that next door is an industrial property which it is but can you identify what is next door? Is it their picnic area or a parking area? Mr. Dec said if you go to the aerial photograph on sheet 1, it looks like it's a wooded area of some sort. Mr. O'Brien said he is unable to make it out on his but it would be their picnic area and they will have a dumpster next to it? Mr. Dec said there is certainly a buffer of that tree area. Mr. Grimaldi said that buffered tree area is the back of the other company, really there is nothing there at times when that adjacent company has overflow of pallets, they end up back over there, it's nobody's picnic area, except for a couple of deer that hang out there, nobody's picnic area. Mr. Poland said the property next store is Preferred Packaging and they do not use that back area, it's the back of their building, it's overgrown with weeds and there is a very large tree that is falling apart, that we have actually trimmed ourselves for them, they do not use that back area other than just storage. He has never seen anyone back there. The fence to the south that Mr. Dec is talking about is 6 ft. high. Mr. O'Brien said the Board should make a note that a chain link fence or a solid waste enclosure would require a variance.

Mr. Nicholas Graviano was sworn in by Mr. Rago.

Mr. Graviano said he is a partner and planner with Graviano and Gillis Architect and Planners, 101 Crawford's Corner Road, Holmdel, NJ. He has a bachelors' degree from Rutgers University, a Master's Degree in City and Regional Planning from Rutgers University and a law degree from Temple University. He is a licensed professional planner in New Jersey and holds a AICP certification and have testified before approximately 100 boards in 16 different counties in the State of New Jersey.

Mr. Graviano said before he begins his testimony he wanted clarification on Mr. O'Brien for the variance that he just stated needed to be required for the trash enclosure. Mr. O'Brien said the citation is 120-17.31C. Mr. Graviano said tonight you have an application by Blue Blade Steel, Block 60, Lot 2.01 in the Industrial Zone. The applicant is requesting site plan approval with associated C variances as well as D variances to allow for the introduction of new hydrogen tanks and a nitrogen tank on the site. As stated in previous testimony, hydrogen and nitrogen are currently on the site and Blue Blade Steel fabricates a wide array of steel products for numerous industries and businesses nationwide. This application is the result of the need to meet the steel quality needs of Blue Blades clients. Mr. Dec went through the existing condition variances, the site has a number of pre-existing conditions, none of which are being augmented by this application. These conditions include side-yard setback, maximum lot coverage, open space ratio and deficient parking spaces, these are all existing conditions variances that can be granted due to the existing conditions and exceptional situations uniquely affecting this piece of property and strict applications of the Borough's regulations would result in practical difficulties and undue hardship upon the applicant of this property. The variance that was just indicated by Mr. O'Brien, that can be granted under the C2 criteria where hardship does not need to be demonstrated must be demonstrated that it relates to a specific piece of property. Here you have an industrial use that has existed on the property since 1985, it advances the purposes of zoning A promotion of general health and welfare of the community as well as G sufficient space and appropriate location for variety of industrial uses to meet the needs of New Jersey citizens. The granting of that relatively minor variance creates no substantial impairment of the zone planners zoning ordinance. The more substantial relief that the applicant requests this evening which are the D variances that are indicated in Mr. O'Brien's letter, specifically related to the outdoor storage of the tanks, the bulk storage of flammable materials on the site as well as the outdoor

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storage of the flammable materials on site so those are 3 D variances that the applicant requires. With the D variances the Board has the power to grant them in particular cases and for special reasons and the promotion of the general welfare which is the zoning purpose which most clearly amplifies the meaning of that term special reasons. The benefit to the general welfare and noninherent beneficial use applications derives not from the site itself but the development of the site in the community that is particularly suited for the very enterprise that is proposed. Negative criteria, the Board can't grant the variance unless the applicant demonstrates that relief can be granted without showing that there is substantial detriment to the public good and will not substantially impair the intent and purpose of the zone planners zoning ordinance. This is located in the Industrial Zone that permits a wide array of industrial and commercial uses, manufacturing, public garages, automobile repair shops, storage warehouses, gas stations, automobile service stations, all these uses have some form of flammable components or combustible components that are in conjunction with that business. These businesses are safeguarded by building code and other fire safety control mechanisms that help these things coexist on the site safely and this site is no different. Hydrogen and nitrogen have existed on this site since the 80's and the applicant is simply seeking to modernize their facility. With respect to the particular suitability on the site, the site has been home to the use since 1985, it is a lawfully existing permitted use that requires the use an outdoor storage of both nitrogen and hydrogen tanks and has utilized them since the 80's. You have also heard how Kenilworth's geographical location provides excellent access to the highway network and the distribution of its products throughout not only our region but the country as a whole. So here you have an existing manufacturing facility in an industrial district that permits manufacturing uses so this use is particularly suited for the applicant's proposal. With respect to the advancement of the purposes of zoning in the Municipal Land Use Law, this proposal helps advance purpose A to encourage action to guide the appropriate use of lands in a manner which will promote the public health, safety, morals and general welfare and that is done through the modernization of an existing industrial facility with current systems and equipment that are the modern norm in the business. Additionally, this applicant is an established business and employer in the Borough which also promotes the general welfare of the community. Lastly it helps fulfill purpose G to provide sufficient space and appropriate location for a variety of industrial use to meet the needs of New Jersey citizens. When reviewing the Borough Master Plan, Section 5, page 22, with respect to industrial goals indicates a desire to provide adequate infrastructure to meet the needs of industry. Here you have an applicant seeking to modernize it's business and needs this infrastructure within the property to meet the needs of it's industry. The negative criteria of the D variance is there is no substantial impairment of the zone plan or the zoning ordinance with the tanks that will be stored on the property. It is an industrial district with an industrial use and as he stated before, many uses in the district sell or store hazardous materials so the negative criteria is certainly met in this case. Look at some of the historic legal decisions in terms of D variance and in the Alpine Tower case vs. Mayor and Council it was determined that hardship is shown where sophisticated equipment requiring new construction is needed to continue a business. In conclusion you have a use that is particularly suited for the site, it advances purposes of zoning A & G in the MLUL, it advances the goal of the Master Plan in relation to meeting the needs of industry in the community, it is consistent with the Land Use Plan of the municipality and it does not substantially impair the intent and purpose of the zone plan or zoning ordinance.

Mr. O'Brien asked Mr. Hehl if anyone was going to address his planning letter dated July 6<sup>th</sup>? Mr. Hehl asked if that was the second one that was sent? Mr. O'Brien said he sent it Tuesday afternoon. Mr. Hehl asked Mr. O'Brien to point out the key items that need addressing. Mr. O'Brien said in his planning report of July 6<sup>th</sup>, planning comments are listed on page 2, he skipped over items 1, 2 and 3, have been addressed. #4 applicant to confirm there is no other proposed changes to the site beyond the chemical tanks and the generator and the solid waste enclosure.....is that correct Mr. Hehl? Mr. Hehl asked Mr.

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Dec if that was correct and he said and the generator that is in the front and stop signs and the dumpster location. #5 the applicant shall provide details of the tank installation and what surrounds the tanks, the application mentions bollards, site plan shows what appears to be a fence around the tank installation, please clarify, a detail showing what is proposed would be helpful for the Board to understand the application and in addition to that the Land Use Ordinance requires an 8 ft. wall surround the tanks. Since there is no detail, we do not know if that is there or not. He asked someone to describe what surrounds these tanks. Mr. Dec said he has the plans and will show you what is part of the construction application jacket, those plans were part of that, not part of the submission of his plans, they do have the details. He said as far as an 8 ft. high wall, no that is not shown on proposed anywhere. Mr. O'Brien asked so what surrounds these tanks, are you referring to items that were submitted for construction permits, the Board and I have not seen them so we have no idea what surrounds these tanks. Mr. Dec said he does not see anything as far as a wall surrounding. Mr. Lindewirth said he thinks the existing wall nitrogen tank has a chain link fence around it and that is 8' high so he is assuming, he hasn't seen the drawings, he thinks the new enclosures for the new tanks of nitrogen and hydrogen will have the fence around it. Mr. Poland said he believes Mr. Lindewirth is correct, both gas suppliers require that we put fencing around their tanks with access ports so they can get in, he does not know if they specified 8 ft. high but he can verify that, he does not think that will be an issue to go 8 ft. high. Mr. O'Brien said the application itself, not the site plan mentions bollards in this area, are there bollards? Mr. Poland said both suppliers require that there be bollards and we would put in the bollards at their specifications. Mr. O'Brien said, with all respect, we don't see them and we don't know what they look like and it is an ordinance issue. Can those details be provided to this Board for clarification and since the applicant is mentioning 8 ft. high fence and there is no relief necessary because it will conform to the ordinance but he thinks part of the application should show the detail of exactly what is there to confirm what you are talking about. Mr. Hehl said that is not problem. Mr. O'Brien said as for Item #7 on his page 2, the generators elsewhere in the Borough are not allowed in the front yard, that does not apply at this location so he is curious why that generator has to be at that location and can it go somewhere else? Mr. Poland said that is the easiest place for us to be able to put it without having to run extensive cabling and gas lines to get to the piece of equipment we need to run. It is also covered by a bunch of hedges and no one will even see it. Mr. O'Brien said so the gas line runs through there and that is the most convenient to put it. Item #8 on page 3, we talked about the dumpster enclosure, can a detail of that be given to the Board which would confirm the testimony that has been given already? Mr. Hehl said that will not be a problem. Item #9, the site plan refers Lot 101 which this is and the application refers to lot 2.01, that should be corrected somewhere in testimony this evening. Mr. Hehl said he thinks the original plan had a mis designation and the resolution compliance plans will cover that.

Mr. Dec said he has no issues with what Mr. O'Brien is requiring.

Mr. Pantina asked our professionals if they are satisfied with what has been heard? Mr. Vinegra said he has no issues with the dumpsters, you can see them on google earth, he was concerned about the backup generator in the front yard but it is screened the electric service drops into the building, if you look you can see the overhead wires coming into the building, if this was a residential neighborhood he would ask to move that but the closest residential is further down the road off of Washington Avenue. These back-up generators are done once a week for test fire, the location they have it now probably has the least effect on a residential area, normally we don't like to see these in the front yard but it is heavily screened and he does not think the noise coming off the generators will disturb any residents. Mr. Vinegra asked if they had compactors as well as dumpsters? Mr. Poland said we have to remove the compactor. The compactor will be taken out and used for daily trash and also the 40 yard trailer will be removed.

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Mr. O'Brien said his questions in his report have been answered, if there is a concern about the noise from the generator, the Board might want to talk about a 4 ft. high vinyl fence a couple of feet forward of the generator but as Mr. Vinegra says he does not see that it's necessary but it is up to the Board, the nearest resident is quite a way down North 8<sup>th</sup>.

Mr. Pantina asked if there is a threat to the Borough since our ordinance states the materials are not allowed anywhere in town. He asked if everyone is satisfied. Mr. Vinegra said the Fire Department will have to sign off on this.

Mr. Grimaldi said as long as the Fire Department has their chance to review the installation. He said Blue Blade is one of the quieter industrial neighbors in the area.

Motion was made by Mr. Grimaldi, seconded by Pantina to open the meeting to the public on #380 Blue Blade Steel. All in favor.

No comments made.

Motion was made by Mr. Grimaldi, seconded by Pantina to close the meeting to the public on #380 Blue Blade Steel. All in favor.

**Motion was made by Mr. Grimaldi, seconded by Mr. Pantina to approve Application #380, Blue Blade Steel with a statement that the engineers are satisfied with the additional paperwork that they were looking for to be shown on the drawings and the suggestions that our professionals brought up. Also that the Fire Department will sign off on this application.**

**ROLL CALL: Mr. David voted yes, Mr. Grimaldi vote yes, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello voted yes Scuderi voted yes.**

Mr. Hehl thanked everyone and said he looks forward to this important business to continue to grow and be part of Kenilworth.

Mr. David said he is not sure there will be an August Board meeting just so you are aware of memorializing the resolutions. Mr. Hehl said he will discuss with the.....he knows there is timing on getting the tanks installed so we will coordinate with the Construction Department to see if once all the approvals are in place to let them begin the installations. Mr. David said right now we do not have any new applications so it looks like we will not have a meeting but that could change within the next two weeks and if it does...

Mr. Grimaldi said the last time we had this situation, he thinks we just read into the minutes that, if everything is satisfied and we don't have the meeting that we would ask the Construction Department to allow them to proceed without the reading. Mr. David said he does remember that and he would be OK with that and he is sure the rest of the Board would be Ok and also he sees Mr. O'Brien saying yes.

Mr. O'Brien said if the request for the revisions are brought in fairly quickly, he will discuss that with his colleagues in the Building Department and there is a consensus on their part to allow this to proceed then he will certainly convey that.

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COMMENTS FOR THE GOOD OF THE BOARD

None

OPEN MEETING TO THE PUBLIC

Motion made by Mr. Pantina, seconded by Mr. Scuderi to open the meeting to the public.  
All in favor.

No one wished to speak.

Motion made by Mr. Mazzeo, seconded by Mr. Grimaldi to close the meeting to the public.  
All in favor.

Adjournment

Motion to adjourn was made by Mr. Calello, seconded by Mr. McMahon. All in favor.

Respectfully submitted by:  
Kathleen Moschitta  
Recording Secretary