

REGULAR MEETING OF THE PLANNING BOARD OF THE BOROUGH OF KENILWORTH HELD ON THURSDAY EVENING, SEPTEMBER 10, 2020. CHAIRMAN RICH PICERNO PRESIDED.

The meeting began with an affirmation of the Open Public Meetings Act. The schedule of meetings is on file in the Borough Clerks' office, was posted on the bulletin board, and has been mailed to the Local Source, and the Star Ledger.

Pledge of Allegiance was led by Chairman Picerno.

Mr. Picerno noted that on the agenda the Oath of Office was scheduled for the new Council Representative Daniel Lopez. Unfortunately, Councilman Lopez was ill and could not make the meeting. We will do the Oath of Office at our next meeting.

**ROLL CALL**

Mr. Picerno, 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 Christian Cueto, Borough Engineer.

**Approval of July 9, 2020 Meeting Minutes**

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

**Communications:** None

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

**Motion was made by Mr. David, seconded by Mr. Mazzeo to approve a Resolution for Application #2-20, RJB Nivas, LLC, 121 South Michigan Avenue, Block 135, Lot 13. Roll Call: Mr. David voted yes, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello voted yes, Mr. Scuderi voted yes .**

**Resolution:** Application #380  
Blue Blade Steel  
109 North 8<sup>th</sup> Street  
Block 60, Lot 101

**Motion was made by Mr. Laudati, seconded by Mr. Grimaldi to approve a resolution for Application #380, Blue Blade Steel, 109 North 8<sup>th</sup> Street, Block 60, Lot 101. Roll Call: Mr. David voted yes, Mr. Pantina voted yes, Mr. Mazzeo voted yes, Mr. Laudati voted yes, Mr. Calello voted yes, Mr. Scuderi voted yes .**

**Old Business:** None

**New Business:**                   **Application #20-01 & #3-20**  
  **FDV Realty, LLC**  
  **207 North 15<sup>th</sup> Street**  
  **Block 33, Lot 2.02**

Mr. Donald Fraser, Jr. , Perrotta, Fraser & Forrester, Clark, New Jersey.

Mr. Fraser said he has 3 witnesses this evening, Mr. Ed Dec, Engineer who he does not think he has to call, but he is here if there are any questions that would be relevant from an engineering perspective that the Board or any professionals may need, Mr. Vincent Paparatto who is the principal of FDV Realty and our professional planner, Mr. Nick Graviano to address the planning criteria on this application and particularly the contents of Mr. O'Brien's report. The application in question is very simple, it is a 100 ft. by 100 ft. square. The applicant proposes to sub divide it into two 50 x 100 ft. lots. Each one of those lots will be fully conforming in all respects with your zoning ordinance. The reason we are here is because the use of those two units as two families, require as per your ordinance 7500 sq. ft. per lot rather than 5,000 sq. ft. per lot. The application is to put a two family on each of those lots, conforming in all respects to all the setbacks and open space and FAR and what have you. The zone says 7,500 sq. ft. for a two family and the zone also says 50 ft. width. Given that in this entire area everything is 100 ft. deep including the subject lot, from the perspective of the applicant, that does not entirely make a lot of sense. It is the applicants request and position this evening for an application for a variance and that the construction of the 2 two family houses be permitted as part of this sub-division. He will call Mr. Paparatto if the Board has questions. We do have a proposed elevation of what the two families would look like if the Board and members of the public would like to see it, we could do that. But if that is not necessary, he is also happy to just proceed with the planning testimony, he is at the Board's pleasure.

Mr. Picerno said that Mr. Fraser can continue, he is sure the Board has many questions based on the way the ordinance reads and in addition to that we understand that this is a two-family zone which requires a 75 x 100 lot. We also know that the surrounding homes that are there are two families on a 50 x 100 lot. Mr. Fraser said respectfully he does not think that the zone says 75 x 100, he thinks the zone says 50 wide, 7500 bulk. He said that is the struggle, the ordinance says 7500 sq. ft. for a two family but it also says 50 wide and part of the application is, well wait a minute, if it says 50 wide then you are saying it has to be 150 deep and where would those 150 lots be in the 5A zone because he does not think there are any. He said that is a preview of that argument, with that having been said, maybe .....

Mr. Grimaldi said if we are getting to that point of the question of your saying its 75, it says 50 ft. minimum and yes it definitely does say 7500 and we as a board made that point very known that it was supposed to be 7500. Although there are people in town and on council that have said that this was a typo to the point where a council member started yelling in a meeting about a year ago in reference to that ordinance. It is definitely 7500 and this Board did not make a mistake by making it 7500, it was not a typo, it wasn't a clerical error, it was something that we did. He does not like the statement by the lawyer stating that everything is in compliance.....no it is not in compliance because they are coming here with a two family, so don't represent to the public or the Board that this is in compliance, it is not in compliance and you would not be here otherwise. If you would like to do two single family homes then you do not have to be here.

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Mr. David read page 43 from the Master Plan which states new two-family homes, all new two-family homes shall require larger lot sizes of 7500 sq. ft. with a maximum density of 11.6 unites per . That is clearly stated the lot size should be 7500.....it is not a typo, it's in the Master Plan.

Mr. Fraser said respectfully it's slightly premature for the Board to be essentially arguing against that before he made his application. He said clearly he is here for a bulk variance.....what he said was we are in compliance except for this, the zone says 50 ft. wide is conforming, the zone does not say 75 ft.....it just doesn't. He agrees with Mr. David, the Master Plan says 7500 sq. ft. , that is why we are here. The fact that it is in the Master Plan does not prove that it is not a typo. The Master Plan could have a typo, he does not know. He said we are here for a variance and the fact of the matter is if the intent really is that you are supposed to have a 50 ft. minimum width for a two family and you are also required to have a 7500 minimum size for a two family, simple mathematics show that if we comply with the 50 width then that means we are talking lots 150 in depth. The entirety of the R5A zone, these 150 ft. lots are the verible uniform .... the lot that is 100 ft. throughout. If this is not a typo in either the Master Plan or in the zoning ordinance, one must then question what was the intent? Because where are these lots that are contemplated by the Master Plan. He said he appreciates where the proverbial battle lines are drawn on this subject and he will present the evidentiary basis for the relief that we seek which he does concede is a bulk variance.

Mr. Obrien and Mr. Cueto were sworn in by Mr. Rago.

Nicholas Graviano, planner and partner with Graviano & Gillis, Architects, 101 Crawford's Corner Road, Holmdel, NJ was sworn in by Mr. Rago.

Mr. Graviano distributed an exhibit A1 that should help put the neighborhood context in perspective. A-1 is an exhibit called area conditions, block 33, lot 2.02, Kenilworth, NJ, 207 North 15<sup>th</sup> Street, prepared by his office on September 10, 2020. He distributed 15 copies to Board members. Mr. Graviano said A1 depicts two images, the first is the Borough Tax Map with the established land uses along North 15<sup>th</sup> Street, this exhibit only looks at North 15<sup>th</sup> Street between Sheridan Avenue and Monroe Avenue. The second image which is similar to what is found in the Board Planner's letter is an aerial photography taken from google maps of the subject area. He will get into those as he gets into his testimony. As you heard from the applicant's council, the applicant is requesting minor sub-division approval with associated C variance for the lot size to accommodate the proposed two-family dwellings on the parcel. The applicant, as previously stated, will comply with all other bulk, height and other requirements that are specified by the district. When you look at the neighborhood, the subject property is located on North 15<sup>th</sup> Street between Sheridan and Monroe, this is a neighborhood that is characterized by a mixture of uses, single family residential and two family residential. There are municipal uses which is the Little League Field as well as the DPW uses. The prominent residential development type of North 15<sup>th</sup> Street between those two streets are two family dwellings, eight of the other 10 residential parcels in the street segment are two family dwellings. When you drive down the street, this is a two-family residential street, there is one single family residential dwelling on the entire street which is in Block 33, Lot 1. When you look at this in context of the applicant's proposal, this is not a substantial departure from the established land uses in the area. All other developed residential dwellings, except for the one house on the corner have two family dwellings on lot sizes that are 1) less than 7500 sq. ft. and 2) less than a lot width of 75 ft. When you analyze this application, the applicants request for the bulk variance for the lot size is a C2 scenario where in an application relating to a specific piece of property, the applicant would demonstrate advancement of the purposes of the Municipal Land Use Law as well as showing that there is no substantial impairment to the zone planners zoning ordinance. When you look at those various

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components, with respect to this relating to a specific piece of property, here you have Block 33, Lot 2.02 a vacant parcel consisting of 10,000 sq. ft. along a street that contains primarily two family dwellings as well as municipal uses of the municipal little league field and the DPW complex. In terms of the advancement of the Municipal Land Use Law, this proposal helps advance three purposes of zoning in the Municipal Land Use Law 1) to encourage Municipal action to guide the appropriate use or development of lands which will promote the public, health, safety, morals and general welfare. In this instance you have construction of housing built to modern standards of the Borough's roughly 3,000 housing units. The medium age of such housing is 1956 and 68% of the Borough housing stock was built before 1959. This is an introduction of modern housing designed to current building codes and modern building standards. This proposal also helps advance purpose G, to provide sufficient space and appropriate location for a variety of residential uses to meet the needs of New Jersey citizens. This is a zone that permits two family dwellings and this established neighborhood consists of two-family dwellings on less than 7500 sq. ft. lots. This is a neighborhood with excellent proximity to parks, transit bus service and also educational facilities within walking distance of the property. Lastly, this proposal helps advance purpose I to promote a desirable visual environment to creative development techniques and good civic design and arrangement. This is certainly a proposal that is consistent with the design and arrangement of the established neighborhood and the introduction of new houses on this location will promote a positive street scape. Negative Criteria: The applicant must show that the benefits of the deviation would outweigh any detriment and there is no substantial impairment to the zone planners zoning ordinance or any detriment to the surrounding community as a whole. As he stated previously, this is certainly something that is in keeping with the established development pattern and this zone permits the two-family lot with two family dwellings on a lot width that the applicant is providing. Here you have an applicant that 1) is meeting the required lot width of the district and 2) is providing the required yard setbacks to the neighboring property owners. While the applicant does not meet the required 7500 sq. ft. of the district, the applicant is meeting lot width and the applicant is meeting the rear yard set-back which is a crucial factor in this point. In this context there is no discernable difference to someone traveling down the street or someone living in the rear of this property then there would be to a conforming development scenario. When you have those conditions, there could be no substantial impairment of the zone planners zoning ordinance because to the person travelling down the street, this could be a conforming development. There were previous mentions tonight of the Master Plan and how this project impacts the Master Plan and Mr. O'Brien makes a couple of good points in his review letter. The Master Plan goals and objectives on page 22 indicate that there is a desire to insure that new residential development is consistent and compatible to the existing neighborhood character. There is no feasible way that anybody can make any argument that a two-family house is not consistent to the neighborhood character when 8 of the 10 neighboring residential dwellings in this stretch of block are two family dwellings. Additionally, the Master Plan seeks to preserve single family neighborhoods from any two family or multi-family encroachment. North 15<sup>th</sup> Street between Sheridan and Monroe is not a single-family neighborhood, it's a two-family neighborhood and the applicant's proposal is certainly in keeping with that development scenario. Additionally, one item that was not in Mr. O'Brien's letter, but he picked up in the Master Plan was a desire to maintain and improve Kenilworth's character and by promoting pride in the appearance of residential neighborhoods and commercial areas. The applicant is proposing buildings that will improve the identity and character of this block by the introduction of an impeccably designed two family-house to the area. In summary, this is certainly an application that 1) relates to a specific piece of property and in this context the specifics of this property are that it is not located in a single family area, the predominantly land uses of this block are two family residential and are municipal in nature 2) it helps advance purpose of zoning A, G & I in that it helps provide new housing stock, it's an appropriate location for the proposed two family dwellings. Lastly it will be a positive influence to the North 15<sup>th</sup> Street scape. There is not a substantial impairment of the zone planners zoning ordinance and

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the applicant is meeting the required lot width and the required back yard depth and the applicant will comply to all other aspects of the zoning ordinance. This is certainly a scenario where the applicant can demonstrate the positive and negative criteria with this application. Mr. Fraser asked Mr. Graviano if Lot 7.02 right across the street if that was a two-family house and what is the width of that house and Mr. Graviano said yes it is a two-family and it is less than 50 ft. Mr. Fraser asked Mr. Graviano if Lot 1 is the only lot on this entire street that has a one family house and also asked Mr. Graviano if Lot 2.01 has been approved for a two-family house and Mr. Graviano responded that is correct. Mr. Graviano said when he did his field visit Lot 2.01 was not developed yet so he did not indicate it in his analysis, if that was included in the scenario another two family dwelling would be 9 of the 10 surrounding properties would be developed with two family dwellings.

Mr. Picerno asked Mr. Graviano when was Lot 2.01 approved for a two-family dwelling? Mr. Graviano said he believes Council may have that date and Mr. Fraser said it was in 2020. Mr. Fraser said Lot 2.01 was submitted for two-family building permits which were granted by the town. Mr. Grimaldi asked if the neighboring property is owned by the person in front of us today and Mr. Fraser said that's true. Mr. Grimaldi said it was a 150 ft. lot.....and he said he was going to bring up something that this Board brought up for a different project and he believes, and maybe our professionals can help us out with this, he believes there is a statue that if you have an undersized lot and you are going to end up in a variance situation, one of the first things you do is see if you can purchase the adjoining property to take yourself out of that situation. They are all owned by the same person.....but how could someone, without coming to this Board, have a permit granted to a property that is 50 x 100 unless they pulled the permit for 100 x 150 lot which is what it was and now they are subdividing that lot to a now nonconforming use so putting the original permit, he doesn't know the correct legal word..... Mr. Picerno said the way he is reading this is that Lot 2.01 is 50 x 100 and lot 2.02 is 40 x 100.....am I correct? Mr. Fraser said no 2.02 is 100 x 100. Mr. Picerno said that you just said lot 2.01 is 50 x 100.....is that correct? Mr. Fraser said yes which is white on the Exhibit. Mr. Picerno said you also made a statement that they pulled a building permit to build a two-family house on a 50 x 100 lot.....is that correct? Mr. Fraser said yes that is correct. Mr. Picerno asked how did that happen?? and Mr. Fraser said that is a question for the Building Department. Mr. Fraser said from his perspective, he believes everyone understands that in reality.....his answer to that question is and it's not just this street and not just his client, there are a variety of lots that he can demonstrate throughout the municipality, permits are granted for two families on 50 x 100 and in fact in one case on a 45 x 100 lot. Mr. Fraser said that is what is happening in the real world. Mr. Picerno said if the building department is granting two family homes in a 50 x 100 lot and the Planning Board doesn't know about it..... then that's a problem. Mr. Fraser said he does not disagree with that but that is not on us. Mr. Picerno said what you did was, you brought that up as a point, to say that we just got a permit to build on Lot 2.01...why is it not OK to build on 2.02? Mr. Fraser said he did not say that or phrase it that way.....and Mr. Picerno said you alluded to it. Mr. Fraser said it's not just 8 out of 10, it's 9 out of 10 and the only lot on this block that has a one family is lot 1 which is 25 ft. in width and is a 2500 sq. ft. lot. He is suggesting to the Board that the Board should not and cannot ignore that fact. He said when you go on that street he thought who would put a one family on this street which is chocked full of two families. Mr. Fraser said this in a much more educated planning way than he does but when he is on the street as a lay person, he looks at it and no one is going to put a one families there. The only one family that you have on that street is on a 25 x 100 lot. He said the building department charged his client for building permits for lot 2.01. It's not just his client or this street, its 3 or 4 or 5 other lots that are as small as 45 x 100 that the Borough approves two families on. Mr. Picerno said we are here to hear lot 2.02, not 2.01, however you made a statement that is an issue .....he had no idea that there was approval for a two-family house on lot 2.01.

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Mr. Fraser said on the whole block there are no two-family homes except the pre 1930's house of 25 ft. He said this is a 100% two family zone and its 100% less than 7500 sq. ft. He said that is appropriate and that's what is really happening out there and to single out this applicant to say they are the only guy out there on a street where everybody and their brother has two families and they have to put one family? That is fundamentally wrong and the suggestion by Mr. Grimaldi that somehow this was done improperly, respectfully, is offensive because that is not what happened. There was not by his client a prior sub-division because he would have been up here. His understanding is that there were two parcels acquired and a pre-existing 50 x 100 parcel that his client acquired and made a proper application for it and was granted a building permit and there was also a 100 x 100 parcel and we are here tonight for that sub division approval. Sub-Division approval .....the sub-division itself we are entitled to as a right but it would be sophistry to say give us the sub division so we can come back next month to argue about whether it's two family or one family. Mr. Picerno said if you have a 100 x 100 lot and you are going to sub divide it then that is a minor sub division so you are really looking at trying to sub divide this lot but if you make it 50 x 100, you have 5,000 sq. ft. and it doesn't fit the ordinance.....correct? Mr. Fraser said not if he wants two families. Mr. Picerno said you are saying.....why can't my client build on this lot?? Well he can if he wanted to build a two-family house in the center of the lot, we are here to hear it and we are trying to work it through it but don't say he can't because it makes the Board look a little foolish.....he can go the other route but he is looking to put 2 two families on a 50 x 100. Mr. Grimaldi said or two single families. Mr. Picerno said that would be a little difficult too.....2 single families would be non-conforming in a two-family zone. Mr. Fraser said they would be allowed, they could do that but nobody would.

Mr. David made a recommendation, and he asked Mr. Fraser if he has additional witnesses and if he does then his suggestion would be that we let Mr. Fraser complete his who presentation before we get into the banter back and forth about.....unless there are specific questions obviously to the witness.

Mr. Fraser said he can tender Mr. Graviano as a witness, and he is happy to withhold his comments with Board until the conclusion of testimony. Mr. David said he is just making a suggestion, it is up to the Board and the Chairman if they want to do that but from his perspective if Mr. Dec is going to testify he would like to hear that and if the applicant is going to give testimony he would also like to hear that but unless the Board has specific questions of each of the.....

Mr. Picerno said he is all for what Mr. David said, that is usually how we conduct this, we hear everything and then we have a litany of questions but it just seemed that Mr. Grimaldi needed to make some clarification, he would like to reboot this and go the other way but he would like to hear from Mr. Rago.

Mr. Rago said to Mr. Graviano if he know if those 8 lots were there or exists legally.....did they just happen, were they approved.....were they given the appropriate permits.....or don't we know. Mr. Graviano said he does not know the full details or the history of each of those parcels, all of those homes exhibited show some signs of aging and seem to have been there for quite some time. Mr. Graviano said those houses have two mailboxes. Mr. Rago asked if he checked with the Assessor ? Mr. Graviano said he did a combination of walking the street as well as looking at the images on google maps and he did confirm that those dwellings have two mailboxes. He said due to the limited hours of the tax assessor he was not able to speak to the Assessor to verify his findings. He said lots 1, 2 and 3 contain a mixture of residential and commercial uses. He said this neighborhood is by no means considered to be a two-family neighborhood, h did not do an analysis of 16<sup>th</sup> Street.

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Mr. O'Brien said this neighborhood is part of the R3 zone which was a single and two-family zone between 1995 and 2015.

Mr. Mazzeo said on lots 13 on North 16<sup>th</sup>.....it looks like 7500 frontage and that is an example of a lot that could be 75 ft. wide and meet the criteria of two family. Mr. O'Brien said that is a two-family zone now. Mr. Grimaldi said this is a two-family neighborhood and it always has been, he is not arguing that. Mr. Fraser said all these various elements that everyone is discussing within the context of the neighborhood are valid and he is not doubting anyone's opinion or input on the matter but when you look at this neighborhood context.....what is going on at 16<sup>th</sup> Street is irrelevant to what is going on at 15<sup>th</sup> Street because it is an entirely different neighborhood characteristic. North 16<sup>th</sup> Street has more single-family houses and is further removed from the hodgepodge mixed use nature that you have on 14<sup>th</sup> Street, there are no commercial establishments on 16<sup>th</sup> Street but they are on the 14<sup>th</sup> Street side. So as you step away from North 14<sup>th</sup> Street, each one of these blocks has their own little characteristic and the characteristic of North 15<sup>th</sup> Street is that it is a two family block.

Exhibit A2 is a picture of the house that is located on lot 7.02 across the street from the subject property. Mr. Fraser passed around the one copy of Exhibit A2 which is a 40 x 100 lot. The reason he is handing this exhibit in is because it is a two-family house that appears to be more recent than some of the other houses. Mr. Graviano said based on his field observation it appears to be a two-family dwelling, the dwelling is more than 40, less than 50 in the 46 to 48 range.

Mr. Grimaldi said looking at 214, from google earth it looks like a single-family house but again his contention is that this is a two family neighborhood but it does look like a single family house. Mr. Graviano said he noticed in the field analysis that made it appear to be a two family house for him.....this is the house right next to the little league field. Mr. Grimaldi said it has a single mailbox, single meter.

Mr. Vincent Papparatto was sworn in by Mr. Rago.

Vincent Papparatto said he is the principal of the FDV Realty and it is his intention that the Board act favorably upon his application that his company will be .....the contractors who are going build the houses that are proposed. Mr. Fraser showed Mr. Papparatto a copy of A3 which is a copy of the proposed style of the two-family house that is a side by side variety. Mr. Fraser gave Exhibit A3 to the Board to pass around. Mr. Rago said is what you are showing us proposed for each lot? Mr. Papparatto said it will be different elevations. Mr. Rago asked if he was looking at one lot? Mr. Picerno said it's a two family house on 150 x 100 so you will see two of these side by side. Mr. Fraser asked Mr. Papparatto if the house depicted on A3 would still comply with all set-backs and all design standards and requirements of the ordinance, save the 7500 ft. rule.....and you will comply with everything??????.... Mr. Papparatto replied correct. A3 is a house Mr. Papparatto built in town on 38 North 19<sup>th</sup> Street in 2016 on a 50 x 100 lot. Mr. Picerno asked Mr. Papparatto what is the width and length of that house and Mr. Papparatto said 40 ft. wide and the length is 51 ft. Mr. Fraser said when it's 40 ft. wide that allows for a 5 ft. set back on either side. Mr. Fraser said so when it is 40 ft. wide, that allows for a 5 ft. set-back on either side for 10 ft.

Mr. David asked what are the applicants plans for the homes after construction? Mr. Papparatto said maybe one we will rent and the other two we will sell. Mr. David said that makes 3??? Mr. Fraser said that is including the one on 2.01.....Mr. David said he is only interested in the property presented tonight. Mr. Papparatto said he would like to sell them. Mr. Fraser said to Mr. Papparatto is it his intention to sell both of the two families?.... and Mr. Papparatto said correct.

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Mr. Picerno said the properties that Mr. Papparatto is building right now are for sale.....Mr. Papparatto said yes he will sell the 2 two family dwellings.

Mr. Grimaldi asked if they were more of a duplex and Mr. Papparatto said yes it's a duplex.

Mr. Fraser said he has Mr. Dec if there is an engineering question out of the abundance of caution but he does not see any engineering issues, the applicant will comply with any and all technical and engineering requirements that exist per the ordinance or the reasonable demands of the Borough professionals.

Mr. Picerno asked Christian Cueto if there is anything he needs to speak to Mr. Dec about? Mr. Cueto said he said he would agree to all the comments in his letter.

Edward Dec was sworn in by Mr. Rago.

Edward S. Dec, licensed as a professional engineer and land surveyor in New Jersey.

Mr. Picerno asked Christian if he had any questions for Mr. Dec. Mr. Cueto asked Mr. Dec, if he reviewed his letter of 9/3/20 and he asked if he had any issues with any of the comments in his letter? Mr. Dec said no, he would enter the report as evidence to be part of their plot plan application if this project is approved. Mr. Cueto said that is OK.

Mr. O'Brien said he raised a number of questions on page 2 of his report that have not yet been answered. Mr. Fraser asked if he was talking about Section 3, page 2 and Mr. O'Brien said correct. 1) No air conditioners are shown and he asked Mr. Dec if he has any problem in complying with where air conditioner condensers are going to be placed and Mr. Dec said he does not. 2) No street trees are shown, the ordinance calls for one every 30 ft., 3 trees are required, on behalf of the applicant, Mr. Fraser said he stipulates that he will install the requisite street trees. 3) No door landings or walkways have been shown on the engineering plan and he asked Mr. Dec if he had any problem or objection to depicting door landings and walkways on the engineering plan if this were to be approved. He said he is familiar with the Borough's ordinance as far as the distance of sidewalks and side property lines and also the landings so he will make sure we meet those requirements. Mr. O'Brien said you have very little space on each side because you maxed out your sideline so you are only allowed a couple of feet. Mr. Dec said they had the same issue before and they were able to meet that requirement. Mr. Fraser said the applicant is not seeking any such relief, just to be clear. 4) In regard to item #4 there is little space available to set back coverage for typical residential structures such as shed, deck, pool or patio and he said to Mr. Dec.....that is understood??.....and Mr. Dec said yes. The applicant is not seeking any relief to do that, to put items on it or to improperly invade set back limitations. 5) No architectural plans have been submitted, that is true, he got this report a few days ago and we have shown an elevation of what it is that the applicant proposes, we have no objection as a conditional approval to submitting appropriate architectural or floor plan or whatever else the Borough might require that would comply with that. We responded to Mr. O'Brien's concern about that. In terms of what the buildings would look like, he thinks the picture is worth a thousand words and in terms of whether it will fit into the character of the neighborhood, he would respectfully suggest that, not only will they fit into the character of the neighborhood, they will enhance and improve it in many respects.

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Mr. Rago said A3 is a photo of a house that Mr. Paparatto built and he asked Mr. Fraser, if this is approved, then the houses will look substantially like that? .....is it going to be brick, aluminum, stone? Mr. Fraser said if you look at A3, one of the 2 houses are going to look like that. 6) Individuality of housing units via the look alike ordinance, the second house is going to be like that but there will be sufficient architectural differences, so they don't look like identical houses side by side. Mr. Fraser said he thinks he addressed all of Mr. O'Brien's points. Mr. O'Brien said they have been addressed and he said he will let the Board make their own decision.

Mr. Picerno asked Mr. Dec, where this house is going to be situated on the 50 x 100 lot, Mr. Paparatto said it will be 40 ft. wide by 51 ft. long. Mr. Picerno asked what is the backyard fence line to the house?? and Mr. Dec replied the rear yard set-back minimum setback is 20 ft. and front yard is 25 ft. Mr. Picerno asked where is the house going to be placed, that's 20 + 25 and that doesn't add up to the 100 so where would that house be set? Mr. Dec said we will be placing the front set-back and then the remainder of excess would be between the rear line and the back of the house. Mr. Picerno said so the front set back will be 25 and 24 in the back? Mr. Dec said that is correct. Mr. Picerno said so you have 24 in the rear, 51 for the house and 25 in the front. Mr. Fraser said yes you are required 20 in the back and you have 24. Mr. Fraser said not only would all set-backs and coverage requirements be complied with, the rear yard set-back would exceed what is required by the zone.

Mr. Grimaldi said he thinks it is normal practice, if someone comes before us and they have a non-conforming lot, one of the first things we ask of them is .....have you approached the neighbor to buy the property? He said he thinks there is certain language of.....undo hardship.....but you make a reasonable effort..... If we have a project in front of us and the other property is also owned by the applicant.... You can put those two together and then sub divided them then they have the ability to meet what we have in our ordinance.....why would they not do that? He asked Mr. O'Brien if he could take a picture of his letter because he misplaced his, we said they have 15 houses and he does not know how he got misunderstood, this is a two family neighborhood and it has been a two family neighborhood for a long time, that is not an argument. We put information in an ordinance to make it 7500 sq. ft., it was not a typo and not a misunderstanding. He thinks the reason that we left the 50 was to appease, this is more of an opinion than a fact, the people that were saying "if you say it has to be 75 you put every house in Kenilworth out of compliance....no.....this is going forward, everything that is there is our housing stock and it is what it is.....going forward we try to better it. The same reason why in 1930 that 25 ft. single house is fine, now it is not. We, as a Board have come up with a recommendation of 7500 sq. ft. He said the fact that Mr. Paparatto is going to sell these alleviates the problem he has with these developments not having the owner on site. He said we also know that this is the suburbs and people like to put up sheds and decks and patios and pools and if we had 7500 these owners of these new residents can put up their shed, patio and those other items. He said don't we have the obligation to ask the applicant why he did not sell himself part of his other lot to come up with 2 conforming lots? And then he would come up here and then everything would be in conformance and he could say he would like to sub divide his 150 ft. property that he owns to 2 75 x 100 lots and do 2 fully conforming properties and beautify and do everything else that they just testified to. We, as a Board are working on updating the Master Plan to benefit the town and he does not know why they should ignore that now. Mr. Picerno said he will not ignore that and he thinks Mr. Grimaldi makes valid points. Mr. Picerno said, speaking for himself, lot 2.01 is not on the table at this point and in hindsight that would have been a great idea. He said now you would have 2 conforming lot's but he thinks financially is why that wasn't in play. Mr. Grimaldi said we have asked other applicants about lots that are not in front of us.....we asked them to talk to their neighbors. Mr. Picerno said we are talking about 2.01 which he owns and Mr. Grimaldi said he knows that lot 2.01 is not in front of us but in the past we as a Board have asked applicants about neighboring

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properties that were not in front of the Board. Mr. Grimaldi said it is fair for the Board to ask that question. Mr. Picerno said he is not saying that we cannot ask the question, what he is saying is that he does not think the Board has the ability to go into the applicants head to say why didn't you do it this way? He said you can make your judgement based on what he should have done but.....so when he says that 2.01 is not in front of us, we can keep that in the back of our minds when making a decision on how you are looking at this property and this property only. He can't look at 2.01 now because if he does then that would raise another litany of questions. Mr. Fraser said the question has been asked and if it is going to be in the back of everyone's mind and part of the calculus then let us answer. He said.....here is the answer, lot 2.01 is already an approved building permit that has been issued, it is not available for this application and was not available to this application. In the world of reality here and what the facts would be is that when these lots, both lots the 100 x 100 lot and lot 2.01 were acquired, the cost to acquire was so high that there is no possible way that you could do 2 houses on it, it would have to be 3 and that is why lot 2.01 cannot be sold and combined into this, it is a properly and duly submitted and approved two family.

Mr. Picerno said he has to address that because you have opened that can of worms. If that property was purchased and the applicant went and got a permit to put a 2 family home on there and they got an approval.....that is not what he is looking at, he can't base a decision on a 100 x 100 lot because a two family house went up there without an approval. Mr. Fraser said they got an approval. Mr. Picerno said they got a building permit, they did not get an approval, it's two different things. Mr. Fraser said it's not a planning board approval but it is an approval. Mr. Picerno said somehow that happened and he is not here to question why.....it's done, it's done. You are here to make us understand that 2 two family houses can go on a 50 x 100 lot but to bring in that they just got a building permit for lot 2.01, if I were you I would have probably kept that quiet. Mr. Fraser said he thought about that but he felt it would be disingenuous and he tries to be fully honest and open and transparent about what he is doing. He has a reputation and he does not like to play fast and loose and even if he wanted to he has no doubt that it wouldn't work. He would like to think he is not an idiot, and somebody would have figured out who owned lot 2.01 and the same question would have been raised. He said it doesn't change the equation and that land is not available for this. Everything on the street, lots 6, 5, 4 and 3, 7.02 , 7.01 are not 75 ft. wide, they are not 7500 ft. lots, they are just not.

Mr. Picerno said we are going back and forth with this and he will yield to all of this.....you talked about the financial outlay of these lots and that it would not financially feasible for the applicant to put 2 houses on there, he could only put 3 houses, that is not a concern of the Board. The financial decision to make and purchase properties is that persons decision, we are not here to remedy that. Mr. Fraser said when asked he has to answer. Mr. Picerno said he doesn't think we asked how much it costs and he doesn't think we were saying if you spent \$500,000 you better make \$700,000, we are saying that whatever happened on 2.01, we don't care, he is concerned with 2.02.

Mr. David said to Mr. Fraser.....it has been established that the applicant owns 2.01...correct? Mr. Fraser said correct. Mr. David asked what is the applicant's intent for the construction of that two-family home once it is built? Mr. Fraser said do you mean is it going to be owned or rented? Mr. Fraser checked with Mr. Paparatto and confirmed that his intention is to rent it. Mr. David said that answers the question that the lot is set aside, and nothing can be modified, the applicant owns it and intends to rent it so he is going to keep it so he can do whatever he wants with it including sell it to himself to make 2 complying lots.

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Mr. O'Brien said he does not know if this is of interest to the Board but the two lots are currently under the same owner until 2019 ..... a different owner owned both lots.

Mr. Grimaldi said to Mr. O'Brien's point, that owner passed away and the estate sold the property and at that time anything could have been done to the 150 x 100 lot .....it was 150 x 100 property that was purchased.....he doesn't care what the break-up is.....they could have chosen to do whatever. He would suggest since we are talking semantics and economics .....right now from what is going on in the real estate world, although it is definitely a two-family neighborhood.....you can put two family homes on there and it would sell because anything with doors and 4 walls seems to sell and are selling like crazy so it would sell.

Mr. Fraser took exception to one of Mr. Grimaldi's statements.....in fact, as Mr. O'Brien just pointed out, his lots were under separate ownership.....the client bought these lots from two different people. Mr. Papparatto said no.....Mr. Fraser said he stands corrected. Mr. O'Brien said they were the same ownership .....Mr. Fraser said he misunderstood what he said, he apologized.

Mr. Pantina said he agrees with what Mr. Grimaldi was talking about.....he gets it's a two family neighborhood.....he said that the Board decided to state the fact that if two families/duplexes were going in, we wanted 7500 sq. ft., he agrees with that and that is a fact. It has been said that on the block there is a bunch of two families on less than 50 ft. lots, he has been on this board long enough that while that ordinance was in play.....we have heard cases and if it wasn't 7500 sq. ft. then they needed a variance, so got a variances and a lot of them didn't. He asked Mr. O'Brien when did the 7500 sq. ft. go into effect? Mr. O'Brien said the 7500 sq. ft. recommendation was made in the 2011 Master Plan and it was adopted in the zoning ordinance , which was adopted in early 2015. Mr. Pantina asked if the houses that are yellowed out on the exhibit were built before 2011? Mr. O'Brien said he is relatively sure that all of them were built prior to 2011.....Mr. Pantina said so the fact that they are under 50 ft. lots or under 7500 sq. ft. lots is because they were grandfathered and they were there before.....Mr. O'Brien said that is correct. Mr. Pantina said as a Board, we decided in good faith and consistent with the Master Plan that duplex or side by side two families were going to need more width and that could be one of the reasons why we came up with the 7500 sq. ft.

Mr. David said for Mr. Pantina's education and as someone who has lived in town for 61 years, the majority of those homes were built pre 1975. Mr. Pantina said the reason he is bringing this up because the way Mr. Fraser and witnesses were kind of indicating that what is the difference if we do this on a 50 ft. lot.....because all the other houses are like that anyway.....well all the other houses have been there for 50 years and just because we have some empty lots and we want to make things better and we want to improve the integrity of the neighborhood and improve on the Master Plan and ordinances ....just because it was doesn't mean it has to go forward.

Mr. Picerno said there are some key components that maybe we are not privy to.....because of who was on the Board at that time.....who was part of the Master Plan at that time.....but the 7500 sq. ft. lots came by way.....far back before the last 2 or 3 administrations while he was still on the Board and we were together and that was primarily based around the girl scout property. There was so much property back there they said from here on in all that empty land.....it goes back to Mr. Frasers question, show me the 7500 sq. ft. where you could put 2 families. He said he was on that Board and part of the Master Plan back then with Kevin and everyone else , he said the 7500 in that area makes sense, it was empty land.....it was a community within a community. He also raised the question that if a two-family

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house burned down in a single family zone would they be allowed to build a two family house and the answer was no....it would not conform. He said that would be a detriment to that person who owned the two family house.....the mother lived downstairs.....the uncle lives upstairs. He said he had a hard time with it then and he has a hard time with it now, however, even with a situation where you have all of these 50 x 100 two family lots.....does the 7500 sq. ft. apply to them in the middle of the house? The scenario is, let's say lot #5.....something happened.....the earthquake hit and it fell down.....he can't put a two family house back up there? He thinks that is going in the opposite direction. Mr. David said there is relief. Mr. Picerno said you come to the Board but here we are.....what do you do in a case like that? He thinks he is looking at a case like this in some respects. He can't look at lot 2.01 Nick. Mr. Pantina said everyone is entitled to their opinion but we came up with these ordinances for a reason.....we all have our opinions and we should vote however we want to vote.

Mr. Laudati said to Mr. Picerno in your scenario relating to a fire, people understand a hardship. We have had construction people come up here and they should know better.....he thinks there is a big difference between a builder and someone's house burning down.

Mr. David said he is feeling like the hearing is off track.....we are debating the merits of the case and we still have not opened it to the public.

Mr. Fraser said he heard a comment earlier that said that the reason we did it this way and left the 50 in play was because there was a cohort of property owners whose properties would be thrown into none compliance.....he asked if he heard that correctly? Mr. Fraser asked why was the 50 ft. width requirement left in place when the 7500 bulk requirement was put into place? Mr. O'Brien said to his recollection, this is a few years ago and Board members can correct him, no one wanted to penalize the existing two families but that future two families would need additional room. Let's just say in the case of the two adjacent Papatatto properties the thought would be they would make 2 two families rather than 3. Mr. Fraser said he understands the emotion.....OK you don't want to penalize the existing property owners, because you would be making their properties none conforming.....so if you changed it from 50 to 75 you made all those people none compliant.....didn't you equally do the exact same thing if they have 5,000 by making the new zone 7500? Mr. O'Brien said no because the ordinance specifically applied only to new two-family buildings. Mr. Fraser said at the May 19<sup>th</sup> special meeting for the Master Plan.....you said the following.....a wider lot encourages a duplex which looks more like a single family dwelling and fits in better in residential neighborhoods.....isn't that exactly what is being shown on A3. Mr. O'Brien said he accepts that statement. Mr. Laudati asked why for this house we don't have elevations of the unit or where the air conditioners units are or where the paths are? He said he would like to see that before.....that would be part of his decision. Mr. McMahon asked if this was a normal ask of a Board to approve a change like this without elevations to see what they are proposing? He agrees with Mr. Laudati that it would be good to know what they are proposing. Mr. Picerno said to answer your question.....there is nothing really normal.....they come in sometimes with a piece of paper and sometimes they inundate you with volumes. What we like to say most of the times is that the more you present us.....as Mr. Laudati is asking for.....the better off you would be as an applicant so we don't have to ask those questions.....it almost leaves us on a blind side.....he said your question is spot on.....the more they give us the more we have to work on. Mr. Fraser said the problem with the lots are that they are 100 ft. deep rather than 150.....there is nothing that you can see in any elevation that changes that fact. In a perfect world it would be better if I had an elevation rather than a picture, maybe but this is a house was just built in town.

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Mr. O'Brien said because this is a Minor Sub Division and bulk variance, elevation is not required by the checklist.

Motion was made by Mr. David, seconded by Grimaldi to open the meeting to the public on Application #20-01 & 3-20. All in favor.

Mr. Hesham Kammoura, 203 North 14<sup>th</sup> Street was sworn in by Mr. Rago.

Mr. Kammoura asked the applicant when the house on North 16<sup>th</sup> was built and Mr. Papatatto said around 2011. He asked Mr. Papatatto if it was on a 50 x 100 lot and if he had to come before the Planning Board and Mr. Papatatto said yes it was on a 50 x 100 and no he did not come before the Board. Mr. Kammoura said for lot 01 he got a building permit and its 50 x 100. He said noticed two other lots on 11<sup>th</sup> Street and 12<sup>th</sup> street got building permits and they built it already and they are 50 x 100 and two family houses. He said he had a very bad experience with the ordinance. He said the Borough ordinance is not really clear in some cases, one of those cases is 7500 sq. ft., nobody knows if it should be a 50 x 100 or 75 x 100. He said developers and regular people are confused. He said in 2014 his friend Mr. Gahzy had a house in front of this property.....Mr. Picerno asked which property in question and Mr. Kammoura said the property in question today.....Mr. Gahzy owned lot #5 in block 52. Back in 2015 he submitted an application to the zoning officer and the answer was no you don't have a 75 x 100 lot and if you will not be able to do this unless you go in front of the Planning Board. He said his friend and applicant at the time, because he had a limited budget, could not come in front of the Board and spend all that money and then it's not granted at the end of the day so he decided to just sit tight. He said that is one case and as an engineer he is just looking at this....and said he is very glad that you are being very honest and telling everyone why that 7500 was done back then. He said he had the same bad experience since 2002 with his house which is on a corner lot on the Boulevard and 14<sup>th</sup> Street. Some developer decided to buy a piece of property 100 x 100 and he tried to sub divided to make a two-family house. He said for some reason they changed the entire ordinance for this area to make the lot 100 x 75 so of course now his house which is 50 x 100 is not conforming any more. He was in the same room here and he was assured that if he came back anytime to do an addition he would be granted and that never happened. He submitted an application to the former zoning officer and he cannot do whatever he wants as he was conforming before. He is not sure why they are going this route....why for a special case you have to change the entire ordinance for everybody else. He owns another house on 8<sup>th</sup> Street which he brought before 2011, it's a two family house on 50 x 100, he paid all his money in this house and now after you changed the ordinance it becomes non-conforming.....guess what..... he lost his money and he said it's unfair and you should think about this one more time.

Mr. Rago said this Board does not have the power to change ordinances, we grant relief but we don't change ordinances.

Mr. David said the purpose of the public comment is to make comments specific to the application, Mr. Kammoura said this is specific to the application because.....Mr. David said he respectfully disagrees because you are bringing up mishaps that have happened during a period of time throughout different areas of the community and we are focused on this case tonight. Mr. Kammoura said he is sorry but the applicant was granted a building permit on lot 01 while his client was declined the same application and existing house to be a two family house back in 2014. He said it's time to stop and think about this because you are hurting everyone else.

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Robert Herbert .....Mr. David said to Mr. Herbert unless his comments are specific to this case, he does not think we should be hearing it. Mr. David said there are general comments from the public which will happen later but this particular point is specific to the case.

Robert Herbert, 14 North 12<sup>th</sup> Street – He said if a house burns down you do not have to come in front of the Board, you can put back exactly what was there and not change the façade under case law. He asked Mr. Rago if someone is going for a sub division and it doesn't conform with the requirements is the applicant obligated to acquire additional land to make it conforming but in this applicants case he can see his argument because on our tax map 90% of the town is 50 x 100, they are 200 ft. plots from block to block so there is no possible way for this applicant to meet the 7500 sq. ft. because the lots are only 100 ft. and unless he buys the property on the next block, they he deals with 2 front yards. It's like a catch 22 if you go for a sub-division you have to prove your hardships, your positives and your negatives and the Board has to take that into consideration. Mr. Rago said if an applicant comes in front of the Board and they have dimensional issues, then the Board either gives them a very short form letter that they mail to the neighbors asking for them to sell XXX square feet.....do you want to buy XXXX square feet from me to try to mitigate the deficiency. 99% of the time those letters are thrown in the basket but towns want you to give it a shot. He said with other towns you go to your neighbor to the right and neighbor to the left and if nothing ....then that's OK.....He said here he does not see it being viable because he owns one lot and the other lot seems to be.....you don't want to make lot 3 any smaller so in this case.....but there are towns who do like you to go through the format. Mr. Herbert asked if there was any case law for that? Mr. Rago said if an objector comes in, lets say you own 2.01 and you came in and objected and said I will sell my guy the property, I offered him a piece of my property to make his lot so he will have 2 conforming lots, that would be very relevant and important and if he says he doesn't want to buy from Mr. Herbert that could certainly be considered his claim that there is a hardship because you are coming in to alleviate the hardship unless you say you want a million dollars. He said there are situations where Boards can consider that but we don't have that here. The case law says basically try to mitigate.....try to get more land.....but it doesn't happen a whole lot. Mr. Rago said if it's a totally conforming house and it burns down, you are right, you go to the building and you are going to do the same thing.....if it's a house that is there by a variance of a non-conforming use you have to go back and forth.....if his house burns down and if it was there by a previous variance and I want to rebuild it the same way and come to the Board, the Board will understand that he didn't cause the fire, it burned down and it's a hardship and most Boards will say do it but you really have to come back to the Board, its only when the house is there, no variances, no nothing, its permitted, you submit the building plans and then it's a go.....other than that you have to give the Board a heads up on what you want to do, if you lose a non-conforming lot or a non-conforming use you have to start from scratch. Mr. Herbert said so you are telling me that a pre-existing non-conforming property which on 15<sup>th</sup> Street at one time all those houses were conforming and they were approved back in the day because it was conforming but now today they are non-conforming because our Master Plan requires 7500 so the Borough made everybody's 2 family house on North 15<sup>th</sup> Street that sits on a 50 x 100 non-conforming. He said this is important and some of the newer members have to be educated.

Mr. Scott Pentz, 186 Boulevard. Mr. Pentz said the Master Plan was done for a reason, lot of towns have Master Plans your 75 x 100 is spot on. He said to Mr. Herbert that this is only for new construction, this is a no brainer for the Planning Board. It has to be 75 x 100 and that is it for a two-family house. The ordinance is there, if he does it then someone else will want to do it and then someone else will want to do it and so on. You will have a whole bunch of two-families on a 50 x 100 lot. You will put a strain on the town, the water system, flooding, everything comes together. Vehicle parking on the street.....it's

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a dead end?...now you have a parking issue, you also have a school issue, the average amount of kids for a family is 2.5 kids times 4 that's 10 kids and that puts a strain on schools, Harding school already has an issue. You start building all these two families all over the place.....does Kenilworth have the ability to float a bond to either add to Harding School or build somewhere else, this is a no brainer for the Planning Board. Mr. Fraser said he has a couple of questions for that witness. Mr. David said he is not a witness. Mr. Fraser said he made factual statements or statements that he considered to be non-factual before the Board and the nature of testimony is respectfully subject to cross examination. Mr. Rago asked Mr. Pentz if he minded answering a couple of questions from Mr. Fraser? Mr. Fraser said that Mr. Pentz stated that the Borough ordinance says 75 x 100 ft. .... He said it doesn't say that does it? Mr. Pentz said 7500 sq. ft. Mr. Fraser said excuse me but you said it says 75 x 100 and it doesn't say that does it? Mr. Pentz said no it doesn't. Mr. Fraser said you said 2.5 kids per building unit.....what standard or text are you using to make that statement? Mr. Pentz said that is just a generalized statement..... Mr. Fraser said are you a demographer? Mr. Pentz said he has been in government for 32 years. Mr. Fraser said his question was are you a demographer or an expert in reproductive rates and Mr. Pentz said no. Mr. Fraser asked if he had any citations to support that statement for 2.2 kids or is that something you just pulled out of???

Mr. Pentz said at the next Planning Board meeting he will bring back all the demographics you want. Mr. Pentz said he has seen the facts.

Motion was made by Mr. David, seconded by Grimaldi to close the hearing on Application 20-01 and 3-20. All in favor.

Mr. Fraser said he said what he had to say and the application is clear, there is simply no 7500 ft. requirement. If the Board wanted there to be a 7500 ft. requirement then the town would have done that and the town did not do that. What the town did when they put in 50 wide and they put in 7500 they were contemplating 50 x 150 lots that simply don't exist. The ordinance does not exactly as written make a lot of sense whether it's a typographical error or a conceptual error, fundamentally it doesn't matter, at the end of the day, in accordance with the Planners testimony the positive and negative criteria of the Municipal Land Use Law as applied to this property in this neighborhood, the requirements for the grant of a variance are met and we respectfully request that the Board grant the relief sought. He thanked the Board and said he appreciates the attention and care that the Board has given to this matter even where the commentary was spirited and he did not agree with all of it, he appreciates the fact that people care enough and the time that is donated on a volunteer basis to the citizens' and he thinks that is not always appreciated enough and it is understood and appreciated.

Mr. David said the argument about creating non-conforming lots, for him it's a nonstarter, the whole purpose of reviewing your Master Plan and modifying it and updating it on an ongoing basis over time is because the times change and things need to change with the times. There will always be a scenario where the zone is changed, the code is changed or whatever and homes that were previously conforming are no longer and there is a something for when that happens. His home is an existing non-conforming use and that is something that he has to live with. He is not being sold on the issue about the fact that all the other ones are on 50 x 100 lots, those homes were built in different times under different zones and different codes. The other issue he has is the applicant has stated that he owns an existing piece of property which did become part of the hearing this evening that has not been built on yet and he intends to build a two-family home on it and he intends to rent it. If he decides not to do that and combines that property with the existing property to go back to 150 x 100 lot that can then be subdivided into 2 75 x 100 lots and he can build his 2 two family homes that are 100% compliant with the existing code and more specifically the one that requires 7500 sq. ft. That is where he is coming from. He said this is an applicant who knows the community extremely well so he knew what he was doing when he bought the properties

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and he does not feel that someone should be rewarded for a possible mistake made by our Building Department because, again, the requirement is 7500 sq. ft. and if he got a building permit on an undersized lot, he doesn't know how that happened and he thinks that should obviously be looked into but again, he does not feel someone should be rewarded for the fact that the Borough made a mistake. There is a way to remedy this, he has the ability to remedy and that's the way he would go for this particular case.

Mr. Grimaldi thanked Mr. David for saying it much better than he would. He said it is a two-family area but he still thinks a single family would sell there. Mr. O'Brien's letter said with the set-up that is presented to the Board right now, you couldn't have what every family is going to want to have , a shed, a patio or this or that, it can't be done with this, we increased it for those reasons. We need to go back and look at that because we also need to reset and along with that we need to reset our set-backs and our coverage and everything else to mold that 7500. He asked Mr. Rago that the comment he had with the ex zoning officer, he thinks that statement is still in play because he asked that to the gentleman that came in front of us at 8<sup>th</sup> Street if he had the ability to buy the property, our property owners need to talk to each other to get better pieces of property. He makes sure he asks that question then because that question has been used against him while presenting in other towns so he knows it very well. He said economics should not come into this and are beyond our statement but as Mr. David said, this owner knows the town well, knows what he was buying and he had the opportunity to come in here and make his life easier. He agrees with Mr. David.

Mr. Pantina applauded Mr. David and Mr. Grimaldi on their comments. He was thinking about 8<sup>th</sup> Street and our decision on that, he knows it is a different case but again one compliant lot 7500 sq. ft. and that what its stated at and if you are not happy with our ordinances then.....

Mr. Picerno said he applauds all that Mr. David said but there are some things he will share as well. He said he feels for the public what they go through every time there is either an administrative change, zoning change everyone says OK I can't do it today but I can do it tomorrow.....should I wait to go before the Planning Board or maybe next season it will be a little bit better. With respect to what Mr. Pentz says about how it impacts the schools, he looks at single family homes and he looks at two-family homes a little bit differently. If you have a two-family home on a 75 x 100 you've got 4,000 sq. ft. plus and if you have single family home you have 2,000 sq. ft. so the impact is relatively the same so he can't listen to it that way, he has to look at it from another perspective. They already made a statement that they are 40 x 51 just above 2,000 but if you are going to build a huge two-family house you will probably have more than that on a 150 x 100 lot as he sees it. He said way back when he was for the 75 x 100/7500 sq. ft. new two-families on empty lots in an open area but he was not for what is going on in a street like 14<sup>th</sup> Street, 15<sup>th</sup> Street in other communities that have two-family homes already there. He said it's almost like a catch 22 because in this particular instance, yes the applicant can say I'm not going to pull the permit on that other house and I can put 2 75 x 100 conforming lots. Let's just say he didn't have that and he got 2 50 x 100, he understands that this Board is going to say we have to stand by the ordinance and that's what the ordinance is.....is the ordinance reading the right way. That is all he is going to ask this Board to take a look at as well, he does agree with the 7500 by 100 in open space but in pre-existing conditions where we have a situation like this he thinks this Board and the Board after us and others should take a look at it because it really affects a lot of people who own two-family houses in a 2 family zone who want to make it look exactly the same. He thinks it may be out of touch putting a two-family house on a 75 x 100, he thinks it throws it out of kilter, that is just his statement. He is the Board Chairman and he stands by the ordinance, he can't look at it any other way in this particular case. He will promise the public that he is going to talk to the Board and we think we need to have more discussion on how this has to work in

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different areas, he is having a hard time with this, he does agree with his Board members that the ordinance is in place.

**Motion was made by Mr. Grimaldi, seconded Pantina to deny Application 20-01 & 3-20, FDV Realty, LLC, 207 North 15<sup>th</sup> Street, Block 33, Lot 2.02 based upon what Mr. David said. Roll Call: Mr. Picerno voted yes, 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.**

Mr. Picerno thanked everyone and said he is sorry the way this turned out but hopefully we can have further conversations and see where this goes.

None

OPEN MEETING TO THE PUBLIC

Motion made by Mr. David, seconded by Mr. Grimaldi to open the meeting to the public.  
All in favor.

Mr. Herbert said he wanted everyone to know that asked the Council to put a large thermometer up in town for a fundraiser to raise money for the Fire Department who did not make any money because the carnival was cancelled. He said the Council was receptive to the suggestion. He asked the Council for an answer on this next question.....if we need a 7500 sq. ft. lot to build a two-family house how did the applicant that owned a separate lot 50 x 100 get approval and get building permits. Mr. Picerno said that what we are going to find out and look into. Mr. Picerno said he heard 3 cases in 10 minutes that are very surprising to all of us up here. Mr. Laudati said the person is in the business and they knew what the ordinance was, he knows you have to get a denial, why would you say that's OK when you know it's wrong. Every builder in town knows what the ordinances are so why would you try and circumvent the process. Mr. David said to Mr. Herbert that he can make whatever comments you want here tonight but he would also suggest that you go to the next Council Meeting, the Board does not control the Building Department, all we do is hear cases and give decisions accordingly. In terms of if the Building Department if not following our code or Master Plan or whatever, that is really an issue for Mayor and Council. He said, don't get me wrong, he intends to find out personally what happened. Mr. Herbert said he knows the answer, the Building Department will not issue a permit unless they get zoning approval, the don't override zoning. He said there were comments about how people were denied when this ordinance was in effect, he said let me refresh you guys memory because you were all around. In 2011 the Master plan was adopted and voted on and in 2015 the previous administration never adopted the township ordinances to match the Master Plan so there was a two week window that the former Mayor Anthony and the Council said we go back to the blue book, they had an emergency meeting and after those two weeks they put it back to 7500 sq. ft. but some of those houses that were approved during the 7500 fell under that time frame because that's when the application came in because it has to go by the ordinance that is in effect. There was a comment about a 11<sup>th</sup> Street house with 45 ft. and he said let me educate you on the history there.....there was a sub division of that property and in the deed it said that 45 by 100 was a buildable lot so it could not be denied. He said the zoning officer did his homework because the zoning officer would not go against the ordinance.

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Mr. Picerno said he is looking forward to meeting our new Council liaison Mr. Lopez who was ill tonight and could not make the meeting. He said he wanted to take a moment to recognize Robert Schielke and said he came a long way with us and he said he really misses him because he was right on top of the things and when we needed things he was right there. He said if Mr. Lopez does 50% of what Mr. Schielke has done.... we are going to be alright.

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

COMMENTS FOR THE GOOD OF THE BOARD

Mr. Grimaldi said he wants for all of us to find out what happened to lot 2.01. Mr. O'Brien said he will look into it first thing in the morning.

Adjournment

Motion to adjourn was made by Mr. David, seconded by Mr. Laudati. All in favor.

Respectfully submitted by:  
Kathleen Moschitta  
Recording Secretary