

Town of Clarence  
One Town Place, Clarence, NY  
Zoning Board of Appeals Minutes  
Tuesday August 14, 2018  
7:00 p.m.

Chairman Daniel Michnik called the meeting to order at 7:00 p.m.

Zoning Board of Appeals members present:

Chairman Daniel Michnik	Vice-Chairman Ryan Mills	Patricia Burkard
Richard McNamara	Jonathan Hickey	Patrick Krey

Town Officials present:

Director of Community Development James Callahan	Councilman Paul Shear
Town Attorney Lawrence Meckler	

Other interested parties present:

Martin C. Lougan Jr.	Polly Lougan	Anthony Ricchiazzi	Rosanna DiSalvo
Frank Capodagli	Brian Burr	Sara Burr	Deborah Berg
Thom Palmer	Tom Klebes	Jeffrey Blum	Edward Nowak
Jim Bielmeier	Maria Cook	Brenden S. Cook	Jim Schlabach
Doug Larkin	Joseph Heins	David Sutton	Allen Mann
Art Pogorzala	Fred Cook	Sharon Cook	Tish Schmidt Pfalzer
Donald Pfalzer	Charles Malcomb		

The Zoning Board of Appeals Committee entered into executive session and Attorney/Client Privilege session at 7:01 p.m. The session ended at 7:17 p.m. and the Zoning Board of Appeals meeting opened.

### Old Business

**Appeal No. 1**(from July 2018 Meeting)

Christopher Galasso  
Industrial Business Park

Requests the Board of Appeals approve and grant a 100' variance to allow a 200' front yard setback for the construction of a residential single-family home located at 9300 Wehrle Drive.

\*Established residential front yard setback of 100'.

### **DISCUSSION:**

The applicant has asked to be removed from the agenda until further notice. Documentation is on file.

**Appeal No. 8** (from July 2018 Meeting)

Anthony Ricchiazzi & Rosanna DiSalvo  
Residential Single Family

Requests relief from a previously approved condition of approval requiring the front yard setback of a proposed residential single-family home to be between 500' and 650' at 9075 Sesh Road.

Appeal No. 8 is in variance to Zoning Board of Appeals Meeting Minutes of September 13, 2011.

**DISCUSSION:**

Joe DiSalvo, of DiSalvo Construction, submitted paperwork that shows the cost to install the waterline in the back of the property, the paperwork is on file. He also referenced a new proposal that he had the engineer draw up in which the engineer explained no water from the applicant's property will go to the neighbors. Mr. DiSalvo showed the new plan to the building inspector who said he should not have any problem going to the neighbors if the plan is followed, but if Mr. DiSalvo wants to make it more efficient he could put a 16" drain pipe alongside the property where they are going to put the house. He went on to say it is not his fault if there are drainage issues on the neighbors properties. He said a retention pond is being considered in the back of the property to have more drainage to the pond and eliminate any water problems.

Anthony Ricchiazzi said there is a pond next to both neighbors, both of those ponds are overflow ponds, that is what is causing the drainage right now, it has nothing to do with the property that he owns. He has looked at these ponds and evaluated them, it has nothing to do with what he is trying to do. They have the proper drainage drawn up, there will be swales and a berm, the water will be contained. The pond that is facing to the left of his property is dumping water on to his property. To extend the driveway it would cost \$60,000 alone. They want to be in line with the neighbors, to be 500' back and to be in the middle of the woods is ridiculous.

There is no written report that accompanies the engineer's plan.

Mr. Krey asked if there were any other estimates provided. There is a NYSEG estimate. Mr. DiSalvo said his architect said there will be another soil test which will determine what type of foundation they will do. Mr. Krey asked if the insurance changes because the property is in a floodzone. Mr. DiSalvo said he does not know. Mr. DiSalvo checked with his plumber who said it would be so far back that at minimum a 1" copper line must be used, which would be approximately \$28,300.

One of the neighbors referenced the plan saying the applicant's car barn will be 350' back so the driveway has to go at least that far back anyway. The neighbor has not reviewed the new information that the applicant submitted since the last meeting. He said the property that is next to him that is 2' below grade is the retention pond right now for both he and his neighbor. If it is built up where will that water go? Mr. Ricchiazzi said that is wrong, he referenced the pond that is next to the Burr's and said there is nothing, no edge line at all, it is flat. If there is rain for a half day it will just continue to run off. If they build in line with the neighbors they would have the same flooding issues, so it would be in the applicant's best interest to do the proper thing. They would add drainage to their property which would benefit both their neighbors, and they would have an actual retention pond in the back. The ponds that are on the neighbors properties are not retention ponds.

Sarah Burr said every time it rains water streams into her basement, if it floods she will never be able to sell her house. Mr. Ricchiazzi said if they have the problem already, he is not adding to it, they will add the proper drain tile so it will help the neighbor in diverting the existing water.

Mr. Mills asked, as part of the approval process, does the applicant have to demonstrate with the Town Engineer that they are not going to make this situation any worse. Mr. Callahan said there are strict regulations for the construction of ponds now, he does not believe a pond could be built on this property because a 100' setback from the property line is required, it does not appear that the applicant has the room. To build a house the applicant's design would have to satisfy the Town Engineer's requirements. The applicant must demonstrate to the Town Engineer that construction of their home will not make the water situation any worse. Mr. Mills said it appears that the applicant is suggesting going above and beyond the engineer's requirements and is planning to install more drainage on either side of the property. Mr. DiSalvo said they are willing to do anything the Town Engineer suggests.

Mr. Burr said he grew up in his house and bought it from his parents, he has been there for 44 years. He has not had a drop of water in his basement until the previous owners started moving the soils and digging drainage ditches on the property in question. He referenced minutes from the first meeting: "everything is conditioned on Building and Engineering drainage review and approvals." Now he has water in his basement. He is also concerned with his resale value.

Chairman Michnik asked how far off the property line the applicant is looking to build a barn. Mr. Ricchiazzi said he does not know, he does not even know if he can build a house at this point. The barn will not be 350' back. If the house is setback 75'-100' the barn will be behind that. The neighbor's barn is approximately 375' back from the road, he has a driveway going to it. The neighbor went on to say the minutes from the 2011 meeting indicated that it was not just a question of how far back the house had to be but also how far from the property line the driveway and the house had to be. He asked if the barn can go against a property line. Chairman Michnik said there are regulations as to how far the barn has to be from property lines. The applicant spoke with the neighbor and told him how far back he would like to put the barn, it was about 325' off the road.

Town Attorney Lawrence Meckler said it seems that the Board would need a lot more information before they can make a determination. The drawing is on file but where is the engineering report for the Town Engineer to review. Mr. Ricchiazzi asked what the difference is if he builds 100' back or 500' back. Nobody can answer that question. He is still going to build on that property, he is still going to have a drainage issue, they want to build where it is cost effective. Fixing the drainage issue is simple and they are going to do that. They have done their homework, answered all the questions and will build the right way, all they are asking for is approval to build a house.

Chairman Michnik voiced his concern saying the applicant's bought the property but were not aware of what was associated with it. Now they are asking the Board to make an exception to what they put in the minutes and how they read. He is not faulting the applicant but someone did not do their homework and now the Board is being asked to make an amendment.

#### **ACTION:**

Motion by Ryan Mills, seconded by Patrick Krey, to **table** Appeal No. 8 under Old Business to allow time for the applicant to provide more data and precise information concerning engineering of how the water is going to be distributed and where the home would be located if approved. A narrative along with a drawing from an engineer to depict exactly where the drain tile will go and how the situation would be corrected. As part of the preparation process for the next meeting the applicant is to consult with the Town Engineer and the Army Corps of Engineers.

**ON THE QUESTION:**

Town Attorney Lawrence Meckler said the applicant needs to obtain input from the Town Engineer as part of the engineering plan when the applicant comes back before this Board. After further discussion it is noted that the applicant needs to obtain information from the Army Corps of Engineers as well. Both requirements have been added to the motion.

Mr. Krey said the applicants provided further information on the costs, as was asked by the Board. It is the best path forward that the applicants have explained how they will handle the drainage in the area.

Mr. Hickey said that in order for him to think about voting for relief of the variance he needs the neighbors and the applicants to talk because he needs to hear that they are both satisfied.

Patrick Krey	Aye	Jonathan Hickey	Aye
Richard McNamara	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**New Business****Appeal No. 1**

Deborah Berg  
Residential Single Family

Requests the Board of Appeals approve and grant a variance to allow a detached accessory structure (emergency generator) within the front yard setback located at 6027 Jessica Place.

Appeal No. 1 is in variance to §229-55(D).

**DISCUSSION:**

Deborah Berg is present and explained she wants to put a natural gas generator on the side of her house. Because she is a corner lot she has two (2) fronts. The generator would be on the street side.

There are two (2) neighbor notification forms on file.

Mr. Hickey asked if the proposed generator is the same size as those others in the neighborhood that have recently been before the Board. She said yes and the same contractor as well. The secretary of the Home Owners Association is present and said they give their approval. He confirmed that this generator will be the same size and will run at the same frequency as the others in the neighborhood.

Mrs. Burkard asked for the reason it is being placed in the front yard. Ms. Berg said it is because of where the gas meter is and she was trying to be a good neighbor and not place it on the side where her neighbor is. Mrs. Burkard asked about the neighbor across from the front yard, they will be seeing it. Ms. Berg said she will put landscaping around the generator. The neighbor across the street is present.

Chairman Michnik voiced his concern with the location of the generator but if there will be adequate landscaping he would not have a problem voting for it.

**ACTION:**

Motion by Jonathan Hickey, seconded by Daniel Michnik, to **approve** Appeal No. 1 as written with the condition that within 30 days of installation of the emergency generator appropriate landscaping/greenery with the shrubbery being 3' minimum height, be installed to blend in with the rest of the property to completely block the generator from neighbors and passers-by.

Jonathan Hickey	Aye	Patricia Burkard	Aye
Richard McNamara	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 2**

Blum Development  
Residential Single Family

Requests the Board of Appeals approve and grant an 8' variance to allow a 2' side yard setback for the construction of a detached accessory structure (emergency generator) located at 9672 Sandcherry Court.

Appeal No. 2 is in variance to §229-55(E)(1).

**DISCUSSION:**

Two (2) neighbor notification forms are on file. Jeffrey Blum is present and explained that he is looking for an 8' variance to the side yard requirement to allow the generator to be put at the front left of the house as you face the property. This location is where the gas line is coming in and it is at the unfinished part of the basement. It is approximately 22' from the neighbor's house to the property line.

It is clarified that Gary Praetzel is the owner of 9664 Sandcherry Court and has signed the neighbor notification form that is on file. This is the neighbor directly west of the property in question.

Mrs. Burkard asked if the applicant will expand on the existing landscaping to cover the generator. Mr. Blum said the owner plans on doing more landscaping in the spring. If landscaping is made part of the approval, Mr. Blum said the property owners would be ok with that.

Mr. Mills asked how the applicant plans on dealing with the elevation drop, will the generator be mounted on the side of the house. Mr. Blum said it would be too heavy so a pad would have to be installed and they would then build it up with some landscaping. J & L Premiere will do the landscaping.

Chairman Michnik asked if the generator could go in the back of the house. Mr. Blum said there are two (2) issues if they put it in the back. It is a finished basement back there so there are drywall ceilings and repair work to deal with. The gas is as at the front so there would be additional cost to bring the gas lines to the back. The owners also want to enjoy their backyard. Mr. Mills noted that a good portion of the rear façade of the house is glass.

**ACTION:**

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 2 as written with the condition that the applicant provides landscaping around the generator approximately 3' in height, the applicant can

chose the appropriate vegetation. The landscaping is to be installed within 60 days of the generator installation.

Jonathan Hickey	Aye	Patricia Burkard	Aye
Richard McNamara	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

### **Appeal No. 3**

Bielmeier Builders  
Residential Single Family

Requests the Board of Appeals approve and grant a 3' variance to allow a 7' side yard setback for the construction of a detached accessory structure (emergency generator) located at 5484 Firefly Court.

Appeal No. 3 is in variance to §229-55(E)(1).

### **DISCUSSION:**

One (1) neighbor notification form is on file. There is also a letter on file from Bielmeier Builders stating that Edward Nowak has been authorized to represent Jim Bielmeier with reference to this variance request.

Mr. Nowak is present and explained that to the north and south of this property is empty land. To the west is a conservation area which is a 500' buffer area from Goodrich Road. They are requesting a variance to install a generator on the north side of the property. There is only ten (10) feet on either side of the home, they need a 3' variance to put the generator in, because the generator is 2' wide and needs to be about 18" away from the home. The generator meets all federal standards and operates at 60-62 DBs, which is about the same as an air conditioning unit. It will operate 15 minutes a week for exercise and charge the battery. The only other time it will run is when there is no power.

Mr. McNamara asked why the generator could not go on the other side of the house. Mr. Nowak said there are windows there and the regulation is that the unit has to be 5' away from windows. Also, the proposed location is on the same side as the gas meter, which is preferred. Plantings will be installed as part of the landscaping plan. The house is Mr. Nowak's.

Mr. Mills asked if there will be a house built to the north of the property in question. Mr. Nowak said eventually, as it is a building lot. Mr. Mills said the landscaping would be important especially with a potential neighbor.

Mr. Nowak would like to install the generator within the next 2-3 weeks. A contractor will be installing it.

### **ACTION:**

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **approve** Appeal No. 3 as written with the condition that within 30 days of installation of the generator, appropriate greenery 3' in height be planted to blend in with the rest of the landscaping and to obscure the view from passers-by.

Jonathan Hickey	Aye	Patricia Burkard	Aye
Richard McNamara	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

## MOTION CARRIED.

**Appeal No. 4**

Brenden S. Cook  
Traditional Neighborhood District

Requests the Board of Appeals approve and grant an 816 square foot variance to allow a 1,536 square foot detached accessory structure located at 8320 County Road.

Appeal No. 4 is in variance to §229-66.

**DISCUSSION:**

There are six (6) neighbor notification forms on file. Mr. Cook is present and explained the proposed structure will be used to store his new trailer, a snow plow and other equipment he needs to keep out of the elements, there will be no construction equipment stored here.

Mr. Mills asked if the applicant can get away with any smaller size of the structure. Mr. Cook did not realize the size would be a problem considering the large structures that surround his property. He already bought and has the package on his property. The cost of the structure is \$11,000, Mr. Cook will install it. Mr. Cook stipulated for the record that there will be no business conducted out of this structure. The floor will be stone and when he can afford it he will have a concrete floor installed.

Mrs. Burkard asked if this structure is smaller than the buildings in the surrounding area, Mr. Cook said yes.

Mr. Cook grew up in the house and bought it from his father about 15 years ago, he plans on living in it for a long time to come. There will be no running water in the structure. Mr. Cook is a handy-man and will store items he uses such as ladders and a dry wall lift in the barn. Chairman Michnik said on the right of the property there is some machinery buried in the woods. Mr. Cook said he is storing it for his friend down the road until they are done with their driveway, it will not stay on Mr. Cook's property.

**ACTION:**

Motion by Patricia Burkard, seconded by Richard McNamara, to **approve** Appeal No. 4 as written.

**ON THE QUESTION:**

Mr. Hickey said although this is a substantial request there are several factors that make the request unique. The surrounding properties have similar if not larger structures than what the applicant is asking for. The proposal is innocuous with there being no water, no electricity, no commercial use planned for it. The balancing of the factors with respect to the benefit to the applicant versus any detriment to the surrounding community favors a request such as this.

Jonathan Hickey	Aye	Patricia Burkard	Aye
Richard McNamara	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 5**

Clarence Fire District #1  
Traditional Neighborhood District

Requests the Board of Appeals approve and grant a variance to allow an LED sign located at 10355 Main Street.

Appeal No. 5 is in variance to §181-3(D)(5).

**DISCUSSION:**

Jim Schlabach is present and explained that their sign fell over and was destroyed in the March 2018 wind storm. They use the sign for notifying the public of special events the fire department has, district voting, elections, meetings, blood mobiles. Anything they use the building for they put on the sign. They decided to move the sign back 10' because people who are travelling east on Main Street would have a better view when there is an emergency and the fire department has to respond. It also gives the fire department a better view looking from the west to be sure there is no one coming down Main Street.

One neighbor notification form is on file. A notification was sent certified mail to Wendy Knoell at 10335 Main Street, She called Jim Callahan and spoke with him, she is aware of the request.

An audience member asked what standard the Board is applying to this request, a use variance or an area variance. Chairman Michnik said it would be a use variance. Mr. Callahan said in the Traditional Neighborhood District the Town does not allow LED signage. Chuck Malcomb is present on another matter but said he has often thought this could be considered an area variance and he referred to the definition of an area variance. It is clarified that this request is a use variance.

Mr. Hickey asked the applicant to compare the details of his sign to those in the community. Mr. Schlabach said the sign itself, the LED portion, is the same size and has the same brightness as Mazia's, it is the same manufacturer. The base will match the stone that is on the fire station. They wanted to match the stone walls that are all around Clarence. Mr. Krey asked if the fire hall up Main Street by Harris Hill has an LED sign. The answer is yes. Mr. Krey asked if the proposed sign is similar to that one. Mr. Schlabach is unsure but thinks that sign does not have as much brickwork as what they are proposing. The size of the proposed sign is just about identical to Swormville's sign. Mr. Schlabach said they will stay within the code with regards to the display on the sign.

Another representative from the Fire Department said they can use the sign to warn people about a slippery hill or lines down or snowstorm east. It would be beneficial as a public service and would help that they could change the sign from the building if the weather is bad.

The estimated cost for the sign is \$25,000, the whole project will be closer to \$30,000.

Mr. Schlabach said there will be stone underneath the sign but going the pillars at a certain point there will be brick. They are using the same materials that they used on their renovation project. The sign will be bordered by brick. It is the same size as the sign that blew down. Mr. McNamara asked if the LED will have the same message on both sides or will the message be different. Mr. Schlabach does not know. They would like to start the project as soon as possible and be done by the end of September 2018. Chairman Michnik asked if there will be landscaping around the sign. Mr. Schlabach said yes it will be similar to what they had before which was a small flower and shrub bed that circled the sign, but it won't happen until next year.



Mr. Callahan noted that there is the standard Memorandum of Agreement for LED signs to ensure that the applicant will hold the message on the sign per code, which is 30 seconds, the code also indicates there is to be no scrolling or flashing pictures.

**ACTION:**

Motion by Daniel Michnik, seconded by Patricia Burkard, to **approve** Appeal No. 5, as written with the condition that the base will be stone and the sides will be brick and match the existing building. In the spring the applicant will plant shrubbery around the base of the sign.

Jonathan Hickey	Aye	Patricia Burkard	Aye
Richard McNamara	Aye	Ryan Mills	Aye
Daniel Michnik	Aye		

MOTION CARRIED.

**Appeal No. 6**

RSA Development LLC  
Restricted Business

Requests the Board of Appeals approve and grant a variance to allow a density of eight (8) residential units for the proposed multiple-family project located at 6449 Transit Road.

Appeal No. 6 is in variance to §229-126(D) \*Code allows up to six (6) residential units.

Chairman Michnik and Richard McNamara recused themselves and left the dais. Vice-Chairman Ryan Mills presided over the meeting.

**DISCUSSION:**

Joseph Heins, with Bouvier Law, is representing the applicant. One of the principles of RSA Development, Russell Salvatore is present as well as Dave Sutton of Sutton Architecture. Mr. Sutton noted that they had a neighborhood meeting on August 9, 2018 and received good input from the neighbors. As a result of that meeting they will be asking to table the request this evening. They want to take more time with the input from the neighbors. He will introduce the project to the Board, allow the neighbors to express their input/concerns. They will have a month to respond to the concerns and react accordingly. The existing mixed use building was a project that was done a couple of years ago, this is phase 2 of this project. They are proposing two four-unit townhouse style apartment buildings. They will be leased apartments and will each have their own private garage. They are high-end two-story luxury apartments. The variance is for eight (8) units instead of six (6). The units are located in commercially zoned property. The only part of the project that is in the residential district is the required fire turn-around, the applicant has talked with the Planning Department and they believe this will be allowed. The applicant is prepared to design the project so it is not a negative impact to that residentially zoned property. Those elements could be that it is gated or the applicant could produce grass street pavers. One of the main justifications for the variance request is to limit any of the development or exposure onto the commercial piece of property and not spill into the residential. If they need to maximize this property they do have the ability to introduce one or two single family homes in the residential district. The applicant feels as though that would have a greater negative impact to the neighboring properties because of the impact in terms of the clearing, the vegetation and the proximity of the new residences to the adjacent property owners, this is why they want to keep all eight (8) units on the commercial property. One of the main reasons the applicant is tabling this is because the property at the rear of the project was discussed at the neighbor meeting, a few of the neighbors thought

there might be an opportunity for Russ to sell the property to the neighbors, this would give them the ability to protect their interest and allow them to expand their backyards. The applicant will be prepared to put a formal presentation on for the Board next month.

Chuck Malcomb is an attorney with Hodgson Russ and is representing Tom Nelson who lives at 8081 Clarherst Drive. Mr. Malcomb submitted a letter dated August 13, 2018, the letter is on file as Exhibit A. He voiced his concern with the proposal noting that when you apply the area variance factors he believes the request should be denied. The increase in density is substantial, it is a third of an increase of what is allowed by code, 33%. He referenced a case where the Zoning Board of Appeals denied a request because it was substantial, at 33%. The variance would have a negative effect on the neighborhood, the remaining portion of the zoning district that is left on the property is not sufficient to handle the density that they are proposing there. There is spillover with the emergency turn-around. This is a component of a multi-family use and multi-family uses are not allowed in the residential zoning district. This is a special use and per approval by the Town Board is allowed as long as the criteria in the zoning code are adhered to. This meeting is to vary from the code which whittles away at what the Town Board determined was appropriate for the location. Mr. Malcomb referred to the concept plan the units are close to the zoning boundary and is spilling over with the multi-family use. It has not been explained why the variance is necessary, is there a reason why six (6) units won't work on this site. He went on to say that the hardship is self-created. The Board has the power to mitigate some of these impacts if they approve the variance, they can impose reasonable conditions on the development. If they move forward Mr. Malcomb thinks an appropriate condition would be screening for the nearby residents. He suggested a significant condition which requires a deed restriction on the property to prevent further development behind those additional residences to prevent a Phase 3 or 4.

Marty Logan, of 8280 Clarherst Drive, agreed with what Mr. Malcomb said. He said there are reasons there are density restrictions in the code and they should be followed unless there is a good reason for not doing it. The variance has to be beneficial not only to the developer but also has to not negatively impact the rest of the residents. It can just be for the benefit of the developer. He has lived at his property since 1988.

Fred Cook, of 6415 Woodberry Court, asked for clarification on the plan. Mr. Sutton said the only variance that was obtained for Phase I was a side yard setback. Vice-chairman Mills clarified that the applicant does not need a variance to build six (6) units. Mr. Salvatore said the six (6) units can be built on the same footprint as the eight (8) unit proposal. No matter what changes they can get six (6), they are looking for the eight (8) because they did not want to get to the residential portion to develop it. He is not looking to do this but if they went to a multi-family like they did in the front it would allow for eight (8) units. They are looking to do this in the residential component as opposed to the commercial component with the additional residential component to make it look like it's a more of a neighborhood feel than what the front looks like. He did not think it was proper to put it in the back.

Art Pogorzala, of 8101 Clarherst Drive, said he moved in 14 years ago and the traffic was handled easily. He referred to the Town Plan and said he sees a trend not only with this project but with others as well where a space is being created on Transit Road that is not conducive to travel or in and out of neighborhoods. In the 14 years that he has been here the traffic has become abhorrent, the whole purpose of the zoning is to work this out so there remains some type of flow and he does not see it happening. Where is this all headed, is there a bigger plan that the residents don't know about to alleviate the traffic along Transit Road, are there stop lights and stop signs that will have to go in? If these variances keep being granted what is happening to the overall effect of his quality of life and the quality of life along that area?

Allen Mann, of 8091 Clarherst Drive, agreed with the points that Mr. Malcomb raised. The turn-around is going to be in the residential portion of that lot and will impact his and his neighbor's property values. That turn-around will be directly behind one of the buildings where the residential homes are on the street, three doors down. He is also concerned with noise and traffic. People from the commercial building will be parking in the turn-around.

Mrs. Burkard would like to see more details regarding the financial part of this request, specifically why the applicant needs to have two (2) more units in order to make it viable. Mr. Sutton said this is an area variance not a use variance which is solely obligated to show financial justification. They will present a balancing test with the five (5) criteria the next time they are before the Board and they will explain why not only financially but for other reasons from a design standpoint that this is a better approach than an alternative, which is an as-of-right. Mrs. Burkard asked for more photos. Mr. Sutton said it will be a prototype because they are not sure if they are designing a three or a four unit building.

Vice-Chairman Mills suggested the applicant come back with more details on screening, berms, mitigating the field of view for the neighbors, as well as different possibilities as to the turn-around.

Mr. Sutton said they will further enhance the landscaping and the screening. He referenced the turn-around and the gate and said it is not intended for people to park there, it is an emergency access only. They are proposing an expansion of the parking lot for the successful businesses. The visual impact of this building will not change one bit, if they are obligated to do six (6) units they will use the same footprint as if they were building eight (8). The Planning Department has reviewed this request and they are comfortable with it, the applicant is willing to forgo the residential ability to build in the back. The greenspace will be preserved in the back without having to sell the back portion of the property as a single family or two estate lots. Mr. Sutton confirmed that the rent roll would be more significant with eight (8) smaller units than six (6) larger units, and that would not require them to consider development of the back of the property.

Vice-Chairman Mills noted Exhibit E of the submission (which will be Exhibit B in the file) is the list of the adjoining neighbors, they have all been notified via certified mail. The neighbors will need to be notified again if the plan changes. The applicant submitted an aerial photo, the photo is on file as Exhibit C. Mr. Sutton said they have been in contact with many neighbors via e-mail as well.

#### **ACTION:**

Motion by Jonathan Hickey, seconded by Patricia Burkard, to **table** Appeal No. 6 for the reasons set forth at this meeting and per Mr. Sutton's request.

Patrick Krey	Aye	Jonathan Hickey	Aye
Patricia Burkard	Aye	Ryan Mills	Aye

**MOTION CARRIED.**

Meeting Adjourned at 9:15pm

Carolyn Delgato  
Senior Clerk Typist