

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
May 26, 2011**

**MEMBERS PRESENT**

John Calogero, Acting Chairman

Charles Canham  
Norma Dolan  
Frank Kealty

Arthur Weiland

Arlene Campbell, Secretary

**MEMBERS ABSENT**

Joseph Malcarne, Chairman

Macy Sherow III

**ALSO PRESENT**

Bob Fennel, ZEO

Acting Chairman Calogero called the meeting to order at 7:40pm.

Acting Chairman Calogero asked the secretary if all the applications on the agenda were properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

Acting Chairman Calogero informed the public that the meeting was being recorded.

**AREA VARIANCE APPLICATION:**

**Walter Foucher** – property located on 258 Sunset Trail, **Tax Grid No. 6467-00-546645** for continuance.

The applicant proposed the following area variances for location of solar panel, to wit:

Sec. 250-22 A (3) (Accessory Structure) – Front setback for accessory structures from meeting setback to NOT meeting setback.

Sec. 250 Attachment 2 (Area Bulk Regulations) – Front yard setback reduction from 100 feet to 75 feet.

Christina Bagen of Hudson Valley Clean Energy appeared on behalf of the applicant.

Acting Chairman Calogero recapped what had transpired at the last meeting (ZBA meeting dated 4-28-11). Solar arrays were installed within the front yard setback of the

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property due to misread of setback numbers. Public hearing remains open from the previous meeting.

There was no new correspondence received from the adjoining property owners.

Mr. Weiland read the comment that was received from Scenic and Historic Roads Committee dated 5-26-11.

The board discussed the case. Mr. Calogero asked the applicant about the landscaping estimates that were requested at the last meeting.

Ms. Bagen who was reluctant in releasing the cost of the screening estimate stated that she was told to find out first who will be responsible for this cost before disclosing this information. She noted that they need to know before they can move on.

Mr. Weiland responded that the minutes of the previous meeting indicate that the applicant will take responsibility of financial burden. The minutes also indicate that the town takes no responsibility for financial burden of variance conditions.

Ms. Bagen stated that she remembered that the board will discuss who will take responsibility of the financial burden. She admitted that she recalled Mr. Wright (owner of Hudson Valley Clean Energy) indicated at the last meeting that Mr. Foucher will not be responsible for any cost and that Hudson Valley Clean Energy will bear the burden but not all..

Mr. Fennel asked Ms. Bagen, "Is it true that a small amount of shading has a negative effect on the output of the panel?" Ms. Bagen responded, "Absolutely true".

Mr. Fennel made a follow up question. He asked if the current location of the array is the site where you get the maximum sunlight. Ms. Bagen responded "yes". She noted that they studied the property and this is the most ideal spot to get the sunlight.

Since this is the ideal spot based on Hudson Valley Clean Energy's studies, Mr. Fennel asked, "What if he didn't misread the setback number on the building permit application and he denied the Building Permit, would they have sought an area variance?" Ms. Bagen responded "Absolutely".

Mr. Fennel cited that if the variance was sought then the board would have required Mr. Foucher to obtain screening as a condition to the variance. Mr. Fennel stated that that Mr. Foucher would have paid the cost of the screening if variance was sought first.

Ms. Bagen agreed. She stated that if the variance was sought first, then this would be a case between their client and Hudson Valley Clean Energy.

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Mr. Canham asked Ms. Bagen about the areas where you could get maximum sunlight. Ms. Bagen responded that the goal is to maximize direct sunlight which is to the southern exposure in this case.

Mr. Canham said the screening to the north (trees that are 15 feet in height), wouldn't effectively reduce the output of the array. Ms. Bagen concurred with Mr. Canham. She added that if it is to the south east, or west of the property then there is an issue.

Mr. Fennel opined that it seems that Mr. Foucher is maximizing the potential energy. If he would have gone for the variance and everything was done correctly, then Mr. Foucher should have paid for the screening.

Ms. Bagen disagreed. Mr. Foucher would have had a decision whether to move forward or not.

Mr. Weiland asked, "Would you ask your client to move the arrays 25 feet further from the setback?" Ms. Bagen responded that this would be up to the client. They will normally have variance meetings with the clients prior to the installation of the array.

Mr. Weiland asked Ms. Bagen if Hudson Valley Clean Energy had a case wherein variance is needed before installation of the array. Ms. Bagen responded "yes".

Mr. Calogero asked, "What if the array was located at the proper place, how much difference in efficiency will Mr. Foucher suffer without going for a variance of 25 feet or more?"

Ms. Bagen responded that she doesn't think that there will be a dramatic difference in output. There might have been a small impact from a large tree during winter. She said that there would be a shaded study on this property to determine the difference in efficiency output. She noted that they thought that the current location of the panel was within the zoning guidelines when they received the building permit.

Mr. Calogero asked, "Do you think a 10% loss is excessive?" Ms. Bagen responded that it's hard to tell. They need to conduct a study. It could be minimal or excessive. There's a lot to consider like the height and growth of the trees.

Mr. Canham stated that the landowners probably prefer to have the arrays back up to the tree line instead of the middle field since it doesn't interfere with their view. Property owners are essentially benefiting by moving the arrays to the setback or as close to the edge of the road as possible without affecting the output. Mr. Canham commented that screening is a legitimate issue.

Mr. Weiland asked if the trees on the road to the north will come down on the solar panel. Ms. Bagen responded "yes", these are big trees. Mr. Weiland stated that this is something that Mr. Foucher should consider although road side tree line is more sensible.

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Ms. Bagen indicated that there's a lot of consideration in locating these panels such as studies of shading, engineering, etc. She noted that they let landowners make a decision.

Ms. Bagen submitted an estimate amounting to \$5,450.00 (10 feet trees and 110' in length). She explained that the proposal is about installation of evergreen hedges and completely covering the back of the array.

Mr. Weiland commented on the submitted estimate. The estimate doesn't describe the number of trees, distance apart and species of trees. He stated that he is very concerned with species since there are few species that are deer proof. Ms. Bagen responded that she'll check into it.

The board discussed screening. Ms. Dolan stated that screening is more of the Planning Board's purview.

Mr. Weiland said that the board had cases in the past wherein the board specified screening. He doesn't think that the ZBA needs to ask Planning Board about screening.

Mr. Calogero stated that it seems that there are still issues to resolve before proceeding with this case.

Mr. Weiland remarked that he's ready to proceed with the variance without the screening information from the applicant. The board can make this condition to the variance.

The board discussed whether to proceed or not. Mr. Calogero stated that there is still a question of who is responsible for the cost of screening. Also, the applicant is supposed to get more estimates.

Mr. Weiland stated that this could be settled tonight. He doesn't think that the ZBA ever paid anything on landowner's property in order to allow them to have a relief of the variance. This would be precedence setting.

Mr. Calogero noted that he wasn't suggesting or insinuating that ZBA should incur the cost. There was a discussion at the last meeting whether there is some mechanism in the town.

Mr. Weiland responded that the board could make a ruling that would draw town's funds. He stated that he doesn't even know if the board has authority to draw on town's funds.

Ms. Dolan remarked that ZBA doesn't have an authority to do that. This is Town Board's purview. Ms. Dolan commented that she doesn't want to set precedence by turning down a variance that requires screening.

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Mr. Fennel expressed his thoughts about the dilemma. The board can just issue a variance and make a ruling to put up a screening. If the applicant doesn't comply with the condition then the applicant cannot be issued a Certificate of Occupancy. The property will be in violation.

Mr. Canham stated that he didn't see anything in the ordinance stating that the board has to be involved with financial issues. It seems that if the applicant feels that they have incurred the cost unfairly, they can take the town to court. Mr. Canham thinks that the financial issues here are off the table. The board doesn't have jurisdiction over this aspect.

Mr. Canham thinks that the issue here is whether there is a requirement in the variance for screening. He commented that people will get used to seeing this. He stated that it would be nice to see the Town Board address this issue but the applicant has to move on for now. It would take years to pass a regulation about this issue. Getting the town to pass a new law will take some time. The board has to deal with this issue for now. Mr. Canham expressed his wish to go forward with this case.

Ms. Dolan asked the ZEO if he ever receive an interpretation application whether this is considered one or four structures. Mr. Fennel indicated the letter that he received from Mr. Schaeffer dated 5-11-11. He stated that he responded to this letter dated 5-16-11. To date, he still did not receive an interpretation application from Mr. Schaeffer.

Mr. Weiland stated that Ms. Dolan could seek an interpretation about the number of structure. He vocalized his hopes to see an interpretation application from Mr. Schaeffer go through.

Ms. Dolan commented that it's very different when this is not in your backyard or neighborhood.

Mr. Calogero explained his troubles in voting on the variance. He noted that there is also a strong recommendation about screening from Planning Board.

Mr. Weiland explained how the board worked on screening conditions in the past. Usually, the board will help the applicants about screening plan. They don't ask the applicant to submit screening plan. The board can just identify the screening if they want screening. Mr. Weiland also noted that applicants incur the cost of the screening.

Mr. Calogero noted that this is a unique situation. He was actually prepared to vote on the variance at the previous meeting keeping in harmony with Planning Board's recommendation. There are unresolved issues at the last meeting. There is only one estimate submitted for review.

Mr. Weiland remarked that this estimate is quite big. With \$3,000 more, the arrays can be moved (based on the estimated cost given by Mr. Wright at the previous meeting)!

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Mr. Calogero agreed that this estimate is high. This is more than half of the cost to move the arrays.

Mr. Weiland asked about the length and height of the array. Is this 110 feet long? Ms. Bagen responded, "Yes". The poles are 13 feet apart.

Ms. Bagen explained that this cost is based on screening every poles and every visible area from every direction.

The board agreed to discuss the species of trees. Mr. Calogero stated that he wasn't sure if he was in a position to decide on this. This is about dollars and cents.

Mr. Weiland commented that the board had done it in the past. The board can make a ruling about putting a screening of let's say 6 or 8 ever greens (\$100/each tree).

Mr. Canham said that there are two ways to do this. You could (a) spend a lot of money or (b) less money on screening. If you want to achieve a complete screening instantly (12 to 15 feet tree, \$1,000/each) then you'll be talking about more money. On the other hand, if you want to do smaller plantings, then it will cost less money.

Ms. Bagen indicated Mr. Foucher's concern about the maintenance of the trees behind the panel such as growth of the trees and how often you need to cut these trees.

Mr. Weiland indicated his recommendation about the kind of trees such as 6 white pine trees (modest size) and 6 or 8 blue spruce (closer to the road). He noted that these trees should be deer proof.

Mr. Calogero reminded the board about the issue of who will be responsible for this cost. The property owner doesn't seem to acknowledge financial responsibility for this.

The Zoning Enforcement Officer noted that Certificate of Occupancy is not yet issued for these arrays. If the property owner wishes to sell this property in the future, he's going to have a problem. Mr. Weiland commented that this could end up to a situation wherein the property owner cannot sell because of illegal structure on the property.

Mr. Canham suggested that they don't need that resolution since the board already agreed that the board doesn't have that jurisdiction.

Mr. Fennel asked Mr. Calogero, "Don't you think that the responsibility of putting screening on one's property is the homeowner?" The property owner is the one benefiting from this screening not the town.

Mr. Calogero explained his views. He noted that he doesn't believe that ZBA has a mechanism for paying this screening.

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Ms. Dolan expressed her desire to see legal advice before moving on.

Mr. Weiland explained that there is a determination from the ZEO that this is an inappropriate location for these arrays. Ms. Dolan remarked that the said letter was acknowledged to be an error.

Mr. Weiland disagreed. He explained that the error was the placement of the structure in the front yard setback because of the misinterpretation of the building permit. The front yard setback of 50 feet on the building permit application was misread as 150 feet. There was a mistake in the process of building permit application. The applicant proceeded since they had a building permit. Another error was the applicant was not aware of the setback.

Ms. Dolan stated that it was also discussed at the previous meeting that the applicant would had put the panels on the ideal location either way if they sought a variance.

Mr. Weiland noted that the applicant stated that they would have seen the cost first and made a decision in relation to the cost.

Ms. Dolan stated that's not how she understood what was said at that meeting.

Ms. Bagen concurred with Mr. Weiland. She stated that they will always have a conversation with the property owners. If a variance is needed, they will explain to the property owners the possibilities, options, and they will discuss the financial responsibility. They will have to ask the property owners whether they want to move on or stay within the setback. They will also explain to the property owner how much output or efficiency they're going to lose in staying within the setback. Ms. Bagen noted that she doesn't know or cannot say if the property owner will decide to move forward for a variance. She noted that they cannot tell what the property owner will decide on this matter.

Mr. Weiland asked Ms. Dolan, "What are the issues that she needs guidance from the town attorney?"

Ms. Dolan expressed her thoughts about this case. She stated that she was disappointed that the board doesn't have guidance in our zoning law for this type of structure. She hopes that she could get a definition or clarification whether this is considered 1 or 4 structures. She noted that she doesn't want to infer approval of any format until some time the board gets a definition of this structure. Maybe this is too long to find out but this is how she feels. Also, the applicant has a choice in moving the arrays or screens them.

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Mr. Weiland stated that if the board makes a decision, the board will put it in a legal frame work. He added that Ms. Dolan can abstain if she's not comfortable with the motion.

Ms. Bagen asked, "What if they moved this 25 feet and cut all the trees?" Mr. Fennel and the board remarked that this would be the worst thing to do. Mr. Weiland noted that there are neighbors who will react on this kind of action. This is a scenic road and there are regulations in cutting trees.

Mr. Fennel shared his opinion about this case. This is about the detriment to the neighborhood. The board can make the applicant put the screening. If the applicant doesn't comply, then the town will not issue a Certificate of Occupancy. The town can also pursue this matter in the court to make them put it in. Mr. Fennel noted that the applicant is receiving the benefit from the location of this array.

Mr. Kealty explained his comments per his visit on site. He opined that he doesn't see anything horrible on the site - maybe because of the season. He expressed his understanding about the concern of the neighbors. He stated that he doesn't think that 10 feet screening is necessary to resolve the issue. He also doesn't think that the board has jurisdiction to make the town pay for the cost of the screening. Mr. Kealty suggested trying to meet the concerns of the neighbors and the town.

Mr. Calogero concurred with Mr. Kealty.

The board discussed the cost of screening.

Mr. Fennel commented that the submitted estimate is really high. This is a lot of money. Mr. Weiland stated that the estimate doesn't indicate specifications of trees.

Mr. Canham suggested that the board specify the basic dimension of the screening, how many trees, spacing, and kind of trees (such as blue spruce and white pine). He also suggested specifying the parameters and putting minimum of 6 feet trees behind the structure. He opined that this would achieve screening.

Mr. Weiland stated that there are conifers that can survive deer. These trees have to be a permanent, visual block or deer proof or need to be protected.

Mr. Calogero asked Mr. Weiland and Mr. Canham if they could sketch out a screening plan that would work. Mr. Canham suggested keeping the language of the screening as simple as possible. The more complicated the screening, the harder it is for the landowner to comply. The language of the screening plan will also be simple enough for the ZEO to inspect the screening.

Mr. Fennel agreed. The board can also require the minimum number of trees (6 or 8 trees). Get this off the table and the applicant can get the Certificate of Occupancy.

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Ms. Dolan asked the ZEO who's going to check the screening. Is he going to inspect this? Mr. Fennel responded "yes". He noted that he is going to rely on the resolution. He hopes that the language of the resolution is simple enough to understand.

The board agreed to take recess at 8:36 pm.

Acting Chairman Calogero resumed the meeting at 8:46 pm.

The board agreed to close the public hearing. Mr. Calogero motioned to close the public hearing, seconded by Mr. Weiland, All Aye, Motion carried, 5-0.

Mr. Weiland discussed the condition of the variance, i.e. array should be screened.

After all the reviews and discussions were made, the board came up to a resolution.

Mr. Weiland motioned that the Town of Clinton Zoning Board of Appeals grant to **Walter Foucher** of 258 Sunset Trail Tax Grid No. **132400-6467-00-546645**, a variance from Section 250-22 A (3) Accessory Structures, to allow the installed solar array to be 75 feet from the front line instead of the required 100 feet.

***Factors:***

1. An undesirable change will not be brought about in the neighborhood nor will there be a detriment to nearby properties because the placement of accessory structures on properties is a customary use of properties. This structure, a solar array, is noticeable due to its new and unique character but less incongruous than some other structures in the community. A likely increase in such solar array structures will make them familiar elements in the community.
2. The benefit sought by the applicant can be achieved by some other feasible method besides granting the variance such as moving the structure out of the front yard setback at great expense. Since the structure was placed due to a Township mistake in the application process, moving the structure would be an unreasonable hardship to the applicant.
3. The variance of 25% is substantial but reasonable considering the cost of moving the structure.
4. The placement of solar array will not have an adverse effect on the physical or environmental conditions in the neighborhood. The major environmental effect is aesthetic which is often modified with familiarity and can be modified with landscaping.

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5. The alleged hardship was created because of an error in the permitting process.
6. A residential area variance does not require an Ag Data Statement.
7. An area variance for a one, two or three family residence is a type II action under SEQRA and requires no further action.
8. The site is on a Scenic or Historic Road – Horseshoe Trail and may be on a Scenic or Historic section of Sunset Trail.
9. The structure is not within the boundary or buffer of a wetland.
10. The site is not in the Ridgeline, Scenic and Historic Protection Overlay District (500 foot elevation, Taconic viewshed, Hamlet or CEA district.)
11. There are no known outstanding zoning violations on this property.

**Conditions:**

1. The array shall be screened.
2. A screening shall consist of evergreen conifers. A minimum of 8 trees and at least 5 feet in height shall be placed between the collectors and the road. The trees shall either be protected from deer or deer proof and shall be continuously maintained as a screen.

Seconded by Mr. Canham.

**Discussion.**

Ms. Bagen asked if this condition needs to be done in order for the variance to be approved. She stated that she just got off the phone with Mr. Wright and they are concerned about who's going to pay the screening?

Mr. Weiland responded that this issue was discussed earlier. This is now between Hudson Valley Clean Energy and their client (Mr. Foucher). They have to work this out. Mr. Weiland expressed his understanding about the concern. However, Mr. Weiland noted that this is the structure of the motion that the board is willing to move forward.

Mr. Weiland recommended the applicant that if the condition of the variance wasn't satisfied, then the applicant will not be issued a Certificate of Occupancy. The said structure will be in violation of the zoning law.

All Aye, Motion carried 5-0.

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**Jean Luc Botbol** (Variance & Interpretation) - Coyote Ridge Dr., Tax Grid Nos. 6268-00-661108, 662090, 704093, 685099, 685083.

Applicant is seeking an interpretation of Sec. 6.3. Mr. Botbol is also seeking the following variances in order to create 2 lots out of 5 lots, to wit:

**Lot #1**

**Sec. 4. 1 of Town of Clinton Zoning Law**

- a. Minimum lot requirement reduction from 5 acres to 3.07 acres
- b. Minimum lot width reduction from 400 feet to 350 feet
- c. Minimum lot frontage from 40 feet to 0 feet

**Lot #2**

**Sec. 4. 1 of Town of Clinton Zoning Law**

- a. Minimum lot area from 5 acres to 2.41 acres
- b. Minimum lot frontage from 40 feet to 0 feet

**Sec. 4. 9 of Town of Clinton Zoning Law (Lots 1 & 2)**

Requirement for road frontage – to allow creation of a lot, driveway and building permit on lots of less than 40 feet of frontage and access to a public street.

**Sec. 4.4 A Lot improvement (both Lots 1 & 2)**

- to allow lot that does not meet area requirement to be improved.

Public hearing for the variance application was opened March 23, 2009 and public hearing for the interpretation application was opened April 23, 2009.

The applicant wasn't in attendance for this application.

Acting Chairman Calogero asked for any comments from the public. Hearing none, the board agreed to close the public hearing.

Mr. Calogero motioned to close the public hearing, seconded by Ms. Dolan, All Aye, Motion carried, 5-0.

**OTHER MATTERS:**

Mr. Weiland distributed to the board members documents related to his conversation with the New York State Attorney regarding inappropriateness of attaching variances to the life the property owner.

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**APPROVAL OF MINUTES:**

Acting Chairman Calogero motioned to accept the minutes of April 28, 2011 as amended, seconded by Mr. Weiland, All Aye, Motion carried, 5-0.

**ADJOURNMENT:**

Acting Chairman Calogero motioned to adjourn the meeting at 10:00 pm, seconded by Mr. Kealty, All Aye, Motion carried, 5-0..

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary