

**TOWN OF CLINTON
PLANNING BOARD MEETING
FINAL MINUTES
September 19, 2023**

MEMBERS PRESENT

Paul Thomas, Chairman
Jack Auspitz
Tom Bonanno

Justin Carroll
Alex Ferrini
Gerry Thorpe

Secretary – Arlene Campbell

MEMBERS ABSENT

Gerald Dolan

ALSO PRESENT

Eliot Werner, Liaison Officer
Jeff Newman, MCEI

Chair Thomas opened the meeting to order at 7:00 pm. He gave his opening remarks about the agenda items. Six Sense Conference Center Special Permit is tentatively scheduled for a workshop on October 3, 2023 at 6 pm right before the regular Planning Board meeting. This meeting will be live telecast via YouTube and on local TV channel 22. Town consultants will be in attendance.

Chair Thomas gave an update about available training courses online. He also indicated the invite from the Cornerstone neighbors for a site visit to give their own perspective. There is no definitive date as of today.

VARIANCE APPLICATION:

DeMello Variance for Ground Mounted Solar Energy System – 13 Mountain View Road, Tax Grid No. 6368-00-070730

Applicants seek area variances to Sec. 250-71.1 Attachment 8, Appendix 2, and Attachment 9, Appendix 3) for a front yard setback reduction from 300 to 144 feet and an increase in the maximum height of the system from 12 to 15’9” to install three ground solar flower on a 10.48-acre lot.

Ilsa Fallis, architect from the Art of Building appeared and explained their proposal. They are proposing to install a 15-foot tall ground mounted solar system 144 feet from the front yard. This is not a typical ground mounted SES. This is called a solar flower. They needed a variance to the front yard and the height of the system as shown on the site plan. The only other place that the system can be installed is in between the house and the barn but the property owners didn’t want it there. Other areas on the property are heavily wooded.

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Mr. Auspitz expressed his strong concern. It seems that there is another area to locate the proposed structure. He asked the applicant to point out on the map about the other possible site to install the solar flower. What the property owners want is the location where it is visible from the road instead of the area that is visible to them. It is a question of – “Who should have the burden of looking at this? Is it the property owners or the neighbors who will be passing by every day?” Mr. Auspitz commented that he’s not sure whether they can pass this burden to the neighbors.

Mr. Auspitz indicated his other concern about the proposal. He understands that the applicant wishes to install the solarflower because it is attractive, but the code clearly states that there should be a balance to the benefits of the solar system and the aesthetic. Part of the balance are the regulations about the height and the setback. The zoning regulations already made a decision about the maximum height of 12 feet. He asked, “Why should the board rule that because the applicant/property owners have a different view?”

Mr. Auspitz stated that the applicant can have the system of less than 12 feet without the need of a 15-foot tall solar flower to achieve the solar system that they need. He asked how do you justify the owner’s aesthetic view versus the neighbor’s or passersby’s view or the town who wrote the zoning regulation?

Ms. Ilsa stated that she wasn’t the one who did the research about the location. She inherited this project. She thinks that Darren who was assigned to this project has a reason why they chose the location. In terms of aesthetic, she agreed with Mr. Auspitz that it’s very subjective. She thinks that there is a cost benefit versus the visual of people driving by or the aesthetics. She added that she also lives nearby and drives by Mountain View Road all the time.

Chair Thomas asked if this sunflower rotated. Ms. Ilsa responded, “Yes.”

Mr. Auspitz felt that they should not be making an aesthetic choice when the code is clear about the 12 feet height. He expressed his strong concern about the issue. He also indicated that there was no mention in the paperwork about any plans for screening or evergreen. The zoning regulation requires screening for ground mounted solar systems. He advised the applicant to provide a screening or fencing plan when she goes back before the board if they get the variance. He wouldn’t be happy approving a system that is visible from the road.

Mr. Thorpe asked if the reason for the system height of 15 feet was due to the solar petals. Can it be reduced to 12 feet? He cited a property on Route 9G who has a similar system. He doesn’t think that system exceeded 12 feet.

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Mr. Carroll echoed Mr. Auspitz's concern about the height and the visibility to the road. He remarked, "This is really close to the road!" This will not be an issue if the system is like 500 feet from the road and is not visible from the road.

The board had a lengthy discussion about the matter.

Mr. Ferrini asked, "What about putting the system to the right of the pool? Ms. Ilsa responded that they were recently granted a building permit to construct an addition and put a spa in that location.

Chair Thomas discussed screening. This will be substantial screening like mature trees. He commented that this might be a condition of the site plan approval if the variance gets approved and they come back before the board. Fencing will not look good aesthetic wise.

The board discussed the application. Mr. Auspitz suggested issuing a neutral recommendation on the setback variance and negative on the height. Having heard the application, there may be a viable location. There is an alternative way to achieve the benefit.

Mr. Ferrini shared Mr. Auspitz' view. There is an alternative site instead of the proposed location where everyone is looking at it.

Mr. Auspitz agreed and remarked, "Who wants to look at it?"

Mr. Carroll opined that it is a neutral recommendation since they have to insist on screening the good part of the road with mature plantings.

Chair Thomas agreed. It is not the distance. If there were mature or adult trees between the road and these solar flowers then the distance will be irrelevant.

Mr. Carroll agreed and added the fact that nobody can see them.

Mr. Thorpe asked the board, "Will you issue the recommendation without further research? Mr. Auspitz responded that the code is clear about the height of 12 feet. He doesn't think that this is the board's call to make. The code already made an aesthetic judgment there.

Mr. Thorpe agreed. He feels that if the solar flower can be reduced to 12 feet height then this wouldn't be an issue.

Mr. Auspitz commented that he is curious to see about the efficiency difference in using the sunflower solar system this tall versus the typical solar system.

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Chair Thomas said that the sunflower solar rotates. He's also curious about the benefits of height. His view is ---this will not be an issue if this is a smaller version of the proposal. The board agreed.

Ms. Ilsa asked the board if they will be more interested in seeing a traditional array. Mr. Ferrini responded that it is not a question of preferability. There is a code that requires 12 feet.

Ms. Campbell noted that screening is mandatory per the regulation. Mr. Ferrini commented that given the curve on the road, they have to line the road with trees. He asked, "Are the owners okay with this?"

Chair Thomas agreed. The screening will be substantial and this will be part of the site plan approval process.

Mr. Auspitz commented that there might be cost benefits between the system and the screening.

After all the reviews and discussions were made, the board passed a resolution, to wit:

Mr. Auspitz motioned that the Town of Clinton Planning Board approves the following resolution in the matter of the **DeMello Area Variances** for the installation of three "Smartflower Solar Units as requested by Michael Clark and Charmaine DeMello on property located at 13 Mountain View Road, **Tax Grid No. 6368-00-080753** in an AR5 Zoning District.

WHEREAS

1. Applicants Michael Clark and Charmaine DeMello seek area variances for their 10.48 property located at 13 Mountain View Road in the Town of Clinton (#6368-00-070730) to install a ground mounted solar energy system which does not meet the front setback and height requirements of Section 250-71.1 of the Zoning Code.
2. Specifically, applicants seek a reduction of the front setback requirement from the 300 feet required by the regulation to 144 feet and an increase in the maximum height of a system from 12 feet to 15' 9" (250-71.1 Attachment 8, appendix 2 and Attachment 9, appendix 3)
3. Section 71.1 recognizes the benefits to the environment and the cost benefits to the owner of using solar energy but also states that such systems "must be reasonably regulated ... to preserve and protect the aesthetic qualities" of the Town. 250-71.1(A)

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4. Turning first to the setback requirement, applicants assert that the site is largely wooded and that the proposed site is the place that is the farthest from the road that provides “adequate sky-plane exposure” and that the proposed location is “as far from the road as the site will allow.”
5. It is true that the back part of the property is wooded and that any viable location for a solar array would require a front setback variance. Applicant’s representative acknowledged at the Planning Board meeting on Sept. 19, 2023 that there was another site on the property (between the guesthouse and the pool) that would be appropriate for a solar array. That location would require a smaller setback and would be less visible from the road but more visible from the house and other structures on applicants’ property. The issue can be seen as who should have to look at the solar units: applicants or their neighbors driving on Mountain View Road.
6. If a setback variance is granted and the matter is returned to the Planning Board for review under 250-71.1, we are required to consider what plant or tree screening is appropriate. Such screening may, if it is extensive enough, help mitigate the impact of the variance on the neighborhood. No plan for screening was submitted to the Planning Board in connection with this variance application and we express no views regarding screening at this time.
7. As to the second variance, for the height of the three solar devices, applicants say they believe the arrays they favor are significantly more attractive than others on the market. But Section 71.1A makes it clear that the Town specifically considered aesthetics is setting the height maximum and other restrictions for placing solar arrays. Thus, allowing a system that is higher than permitted would substitute one aesthetic view in place of that imposed by the Zoning Code. Because people can differ widely on what is or is not attractive, we do not believe it is our role to substitute our idea of beauty for that made by the Code. Obviously, if there is a petal shaped system which is less than 12’ tall, that system could replace the proposed one and avoid the need for a height variance. Even if a shorter petal system is not available, there are clearly other ground mounted system that could achieve the benefits of solar power which applicants seek without the need for a height variance.
8. Placing three larger than permitted solar arrays about twice as close to the road as permitted by 250-71.1 could have an adverse impact on the neighborhood. The fact that applicant seeks both distance and height variances intensifies the impact of the proposed system on the area. Many people consider any solar array to be unsightly even if it is beneficial. Granting the variances requested here could upset the balance between

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solar efficiency and aesthetics which 71.1 sought to achieve by setting specific height and setback limits.

9. The requested variances are substantial, requiring reducing the front yard setback requirement by about half and increasing the height maximum by about a third. Applicants point to existing farm buildings and equipment on Mountain View but that is irrelevant to a section of the Code that specifically regulates solar; agricultural uses are covered by other sections of Town and State law.

10. The difficulty is self-created. Even though any solar system on this property would require a setback variance, applicants propose a bigger variance than the alternative, as well as a taller system than other ground mounted devices. The proposed array will not have an adverse environmental impact.

NOW THEREFORE BE IT RESOLVED that the Planning Board respectfully makes a neutral recommendation to the Zoning Board of Appeals with respect to the request for a variance to the front setback requirement, on the assumption that adequate screening may mitigate the setback variance to some extent, and a negative recommendation with respect to the maximum height requirement.

Seconded by Mr. Ferrini,

Discussion. Mr. Thorpe asked about the setback variance. Mr. Auspitz responded that they're proposing to install it 144 feet from the road.

Mr. Bonanno asked if negative recommendation goes away if they reduce the height of the solar flower to 12 feet. Mr. Auspitz responded, "Yes." The applicant still has to come back before the board to get site plan approval if they get the variance.

Mr. Carroll questioned the negative recommendation instead of neutral. He understands that without the height issue, the recommendation can be positive. He asked what's the difference? Why is it negative instead of neutral?

Mr. Auspitz disagreed. He felt that the applicant is seeking a variance because they feel that the system looks better. In terms of aesthetic, above 12 feet is not. He added that they need a variance no matter what since there is another feasible location (area between the pool and the existing cottage) to put in the solar system.

Mr. Ferrini noted that the board gave a neutral recommendation on Levin variance to install ground mounted solar system but not positive.

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Chair Thomas agreed. This application needs a variance no matter where you install it. The issue is about the height.

Mr. Thorpe asked if this system can be seen from Schultz Hill. Mr. Auspitz responded, "No."

All Aye, Motion carried, 6-0.

PUBLIC HEARING:

None

APPLICATION:

None

OTHER MATTERS:

Mr. Werner gave an update about the proposed Farm Operation Local Law. Hopefully the final draft will be ready for the October Town Board meeting.

The board had a lengthy discussion about Short Term law. Mr. Werner encouraged the board to send comments or input for the upcoming proposed amendment of the Short Term Law.

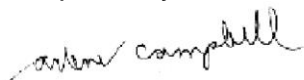
APPROVAL OF MINUTES:

Mr. Auspitz motioned to accept the minutes of 9-5-2023 seconded by Mr. Ferrini, all Aye, Motion carried, 6-0.

ADJOURNMENT:

Mr. Auspitz motioned to adjourn the meeting at 8:40 pm, seconded by Mr. Auspitz, All Aye, Motion carried, 6-0.

Respectfully Submitted,



Arlene A. Campbell, Clerk
Planning & Zoning Board of Appeals