

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
September 28, 2023**

**MEMBERS PRESENT**

Joseph Malcarne, Chairman

John Calogero  
Charles Canham  
Norma Dolan  
Ron Mustello  
Russel Tompkins  
Frank McMahan

**ALSO PRESENT**

Arlene Campbell, Secretary

Jeff Newmann, MCEI  
Eliot Werner, Liaison Officer

**MEMBERS ABSENT**

Chairman Malcarne called the meeting to order at 7:30 pm. He asked Ms. Campbell if the application was properly posted and the surrounding properties were properly notified. Ms. Campbell responded, "Yes". He also noted that the meeting is being recorded.

Chairman Malcarne welcomed everyone and asked his colleagues to introduce themselves.

**AREA VARIANCE:**

**Demello Variance** – property located at 13 Mountain View Road, **Tax Grid No. 6368-00-070730**

The applicants request the following area variances to Sec. 250-71.1 of the Town of Clinton Zoning Law in order to construct three "Smartflower Solar Units" (Ground Mounted SES – Tier 2) on a 10.48 acre in an AR5 Zoning District.

Sec. 250 Attachment 8:1 –Front Yard Setback reduction from 300 ft to 144 Feet

Sec. 250 Attachment 9:1 - Increase in the Height of the structure from 12' to 15'9"

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Ilsa Falis from the Art of Building appeared and explained her proposal. This is a 10.48-acre parcel in an AR 5 zone. They are proposing three units of sunflower solar system that is 246 feet of the front yard setback. The property owners do not like the traditional solar system so they've done more research and found this technology called smartflower solar system. They had chosen smartflowers over the conventional solar arrays as they are more efficient and more aesthetically pleasing than typical solar panels. She added that they also need a variance for the height of the solar system that is 15'9" feet.

Mr. Tompkins read the Planning Board's recommendation dated September 19, 2023 that is neutral for the front setback and negative in regards to the maximum height requirement.

Mr. Tompkins expressed his comment per his site visit. This is a beautiful piece of property. He indicated the past variances that were granted to this property. He asked what percentage of the electricity the solar panel was going to produce for the property. Ms. Falis responded that she believes it produces most of the electric usage for the site. Their clients are also willing to trim it down to 2 instead of 3.

Mr. Tompkins noted that the law is clear about the system capacity of not more than 25 kW AC and cannot produce more than 110% of the electricity consumed on the site for 12 months. He also didn't find the percentage consumption on the application. Ms. Falis responded that she doesn't know the answer to this question but she will look it up.

Sec. 250-71.1 – D Solar Energy System Permitting requirements for Tier 2 solar energy systems. Tier 2 solar energy systems include ground-mounted solar energy systems with system capacity up to 25 kW AC and that generate no more than 110% of the electricity consumed on the site over the previous 12 months, or an estimated future usage of no more 110% of the electricity consumed on the site over the ensuing 12 months based on new construction.

Chairman Malcarne who is well versed about solar systems found the response to Mr. Tompkins question about the production as indicated on the technical data sheet. He said that it is 3.4 to 6.2. depending on the area that it is in. It means that this is 15.6 kW maximum instead of 25 kW. Practically speaking, Chairman Malcarne said that this property would use 30 kW or more. They have so much stuff on the property.

Mr. Newman noted that over 25 kW doesn't mean that it is not allowed. It just goes to Tier 3 per the zoning regulation.

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Mr. Tompkins echoed the Planning Board comments about another area to install the solar system. He found two sites to install the proposal. One is the area between the poolhouse and the gym and the second one is the area where the house to the right and the vegetation. He noted that the area between the poolhouse and the gym is much more open. It will not block the view and with bright sunshine. He pointed on the map to the other feasible location. He feels that this is the most appropriate place to install the structure.

Mr. Tompkins indicated the comment by the Planning Board about the visual of the structure. Who should look at the solar systems? The applicants or the neighbors? Every person walking by or driving by this road will be looking at it. Mr. Tompkins commented that putting these smartflowers on the center of the property at the back will be out of sight. It's a much better place to put it. As far as the proposed height, Mr. Tompkins felt that regular, square or rectangular solar panels are more appropriate. He feels that this property has more open area to install the proposed solar system than putting it on the front.

Mr. Mustello stated that he also visited the site but did not see the suggested areas. He asked if the setback was the same or more. Mr. Tompkins responded that it's more.

Chairman Malcarne asked the applicant if that is an option.

Ms. Falis responded that she just inherited this project and to her understanding, the property owners prefer not to have a visual of the system and made a decision about the proposed site.

Mr. Tompkins felt that if the property owners want to have a smartflower solar system then they should be able to look at themselves instead of the neighbors.

The board had a lengthy discussion about the visual of the structure. Who should look at it? The property owners or the neighbors?

Ms. Falis stated that she can certainly discuss with her clients about the option.

Mr. Tompkins commented that he likes the idea of a solar system but expressed concern about the neighborhood view rather than the benefit to the property.

Ms. Falis stated that they have done some brainstorming in mitigating the issue about the height after the last Planning Board meeting. Since the proposed location is up the hill, Ms. Falis stated that they might be able to move some earth around to create a gully and plant some berms with proper drainage to mitigate the height along the street. They also thought about reducing the

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number of smartflower to 2 instead of 3. She indicated the landscape designer that they will be working with about four season screening that will block some of the view if the variance is granted.

Mr. Canham stated that it is clear that the regulation was designed to make these structures invisible from the road, i.e. 300 feet from the front of the road. He commented that putting these structures on the front of the property is the most visible place to put this on the property. Plantings are more vulnerable. Plantings die and need a lot of care. In his mind, there is a lot of areas on the property to install this. It is not ideal to encourage people to cut trees but there are certainly areas on this property to install these structures, perhaps not 300 feet but more of an invisible site.

Mr. Canham commented about the height issue. He echoed and agreed with the Planning Board's comments. It is well thought and agreed with the ordinance though the ordinance did not anticipate rotating smartflowers' design.

Chairman Malcarne stated that the proposed height is the least of his concern. He described how the smartflower is going to look. It will exceed 12 feet and it will be tilted, rotate and track the sun. He can't imagine how much screening would it take given the height. He expressed concern about the visual.

Mr. Canham echoed the concern.

The board discussed the height. Mr. Newman asked if it is 15 feet when the smartflower is folded, closed and it's in a standing position.

Chairman Malcarne responded that the structure is at maximum height of 15 feet. He explained how the smartflower works. Mr. Canham said that the dimension is 16 feet wide and 16 feet high.

Mr. Tompkins reiterated the ideal area to install the system. He feels that it will still achieve the same purpose. It will get the same electricity and will remove potential annoyance from the neighbors.

Mr. Mustello asked if this style was chosen for its aesthetics, efficiency or both. Ms. Falis responded that she thinks it's a combination led by aesthetics. Mr. Mustello asked the chairman what a more traditional solar array looked in terms of square footage.

Chairman Malcarne responded that it would require 1.5 times of that size to get the same type of generation.

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Mr. Mustello said that this design produces 50% more electricity than the traditional one. Chairman Malcarne concurred since this design tracks the sun and generates more light. He added that this smartflower folded at night.

Mr. McMahon shared everyone's concern. This is a visual concern between the neighbors or the property owners.

Mr. Calogero discussed the solar law when it was crafted. The height requirement was chosen due to aesthetics but commented that we also have the technology now that wasn't available at the time when this law was created. He stated that he is not too concerned about the height. It is the location that bothers him. With the other two alternative locations, Mr. Calogero doubted that anyone would even notice the height difference given the setback location.

Mr. Calogero was awed by the strength of the Planning Board's statements. He quoted some of the statements like –"The issue can be seen as to who has to look at the solar system, applicant or the neighbors?" He said that the fact the Planning Board had issued a negative recommendation about the height and neutral on the positioning, though he would have gone the other way, the Planning board letter shows concern.

Mr. Calogero said that this town is committed to being green. He indicated his harmony with the Planning Board on this. The board's role is to grant the minimum necessary variance to be incognizant about the effect to the town. He commented about the positioning of the unit. As far as the square footage, square or round, if it is out of sight and the property has areas to put it where there is no visual then he doesn't have a problem with that. He commented that they have alternatives.

The board exchanged opinions about the property owner's preference. Chairman Malcarne said that the property owner can put this in the back of the house, they can put screening so that they don't have to have visuals on it.

Mr. Calogero stated that there's a lot of benefits from solar. He encouraged working it out.

Ms. Dolan echoed everyone's comments. She said that positioning is her biggest concern. She agreed with the chair about putting the solar flower on the alternative location and screening.

Mr. Mustello agreed that the Planning Board did a great job in crafting their recommendation. He commented that one of the variance criteria is about having an alternative and, in this case, there are alternatives.

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The board agreed to open the public hearing. Chairman Malcarne motioned to open the public hearing, seconded by Mr. Tompkins, all Aye, Motion carried, 7-0.

There was no correspondence received from any of the neighboring properties.

Mr. Werner commented that the screening and the solar design are the Planning Board's purview. This matter still has to go back before the board if the variances are granted.

Mr. Canham commented that this will not go back to the Planning Board if the variance is denied unless the application is reconfigured and it doesn't meet the requirement. He noted that the Zoning Board of Appeals addressed screening in the past.

Ms. Campbell noted that screening is part of the solar system regulation as indicated below.

**Sec. 250-71.1 (4) Screening and visibility.**

**(a)** All Tier 2 solar energy systems shall have views eliminated or minimized from adjacent properties by fencing or a combination of berms, fencing, perennial vegetation and evergreen plantings. All screening must be maintained for the life of the solar energy system and until time as the solar energy system is decommissioned in accordance with the requirements of Subsection G(8) below.

**(b)** Solar energy equipment shall be located in a manner to reasonably avoid and/or minimize blockage of views from surrounding properties and shading of property to the north, while still providing adequate solar access.

The board had a lengthy discussion about screening. Mr. Canham commented that the solar system needs screening no matter where you put it.

The board agreed to close the public hearing.

Chairman Malcarne motioned to close the public hearing, seconded by Mr. Tompkins, all Aye, Motion carried, 7-0.

Chairman Malcarne solicited further discussion.

Mr. Tompkins commented that there is a price to it if they want a sunflower solar system. The property owner can look at them. The board agreed.

After all the deliberations were made, the board passed a resolution.

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Mr. Tompkins motioned that the Town of Clinton Zoning Board of Appeals grant the following variances as requested by Michael and Charmaine DeMello, 13 Mountain View Rd, in the Town of Clinton, tax grid #6368-00-080753 to allow a front-line setback requirement from 300 ft to 144 ft and an increase in maximum height from 12 ft to 15.9 ft for a Tier 2 solar installation in an AR5 zone. Sections 250-71.1 Attachment 8, and Attachment 9, appendix 3 being the governing sections of the Town Zoning Law.

***Factors:***

1. The applicants would like to install a Tier 2 solar array to produce on-site electrical power.
2. The property is beautifully landscaped with varying elevations, gardens and a large fenced in area including a pool area.
3. The proposed location for the solar panels is in a completely cleared area with high visibility from Mountain View Rd.
4. This is a 10.48-acre parcel in an AR 5 zone.
5. The request to reduce the front yard setback from 300 ft to 144 ft is substantial being 52 %.
6. The request to increase the height for 12ft to 15.9 ft is also substantial, being over 32%.
7. The variances should not have an adverse effect or impact on the physical or environmental conditions of the neighborhood.
8. The alleged difficulty is self-created.
9. An area variance is a type II action under SEQRA and requires no further action.
10. The requests should not produce an undesirable change in the neighborhood or be a detriment to nearby properties.
11. While the proposed site is the preferred location by the applicant it does appear that there is at least one possible alternative location that would require a smaller variance in relation to the setback.
12. The town of Clinton Planning Board issued a neutral recommendation to this request at it's September 19, 2023 meeting.

Conditions: All fees are paid

Seconded by Mr. Canham,

Discussion. Chairman Malcarne asked if the statement about type II action is included in the resolution. Mr. Tompkins responded, "Yes".

Unanimously Nay, Motion failed.

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The board discussed why the variance was denied. It's a small price to pay. If the property owners want to install a smartflower solar system then it's on their view instead of the neighbors'. There is also an alternative to put the system at the back of the property.

**INTERPRETATION:**

None

**ADMINISTRATIVE ITEMS:**

Mr. Werner discussed the update about the Proposed Farm Operation Local Law. He encouraged the board to send comments to him.

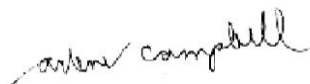
**APPROVAL OF MINUTES:**

No minutes were approved.

**ADJOURNMENT:**

Chairman Malcarne motioned to adjourn the meeting at 8:50 pm, seconded by Mr. Tompkins, All Aye Motion carried, 7-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary