



City known as the Town of
GREENFIELD, MASSACHUSETTS

ZONING BOARD OF APPEALS

Town Hall • 14 Court Square • Greenfield, MA 01301
Phone 413-772-1549 • Fax 413-772-1309
EricT@greenfield-ma.gov • www.greenfield-ma.gov

William F. Martin
Mayor

Members:
Twarog, Eric
Director, Planning & Dev.

Allis, Brickett (2018)
Joseph, Christopher (2014)
Killeen, Christopher (2019)
Maloney, Mark (2019)
Winn, James (2017)

ZONING BOARD OF APPEALS
Minutes of September 29, 2016
Department of Planning & Development
114 Main Street

The meeting was called to order by Chair, Mark Maloney at 7:00 p.m. with the following members:

PRESENT: Mark Maloney, Chairman Christopher Joseph Brickett Allis
James Winn Andrew Killeen

ALSO PRESENT: Applicants

CHAIRS STATEMENT: This meeting is being recorded, if any other persons present are doing the same, you must notify the chairperson at this time. No one responded.

Public Hearings:

Application of Matthew Brown for property located at 130 Leyden Road (Assessor's Map R28, Lot 15A), which is located in the Suburban Residential (RB) Zoning District, for a special permit pursuant to Sections 200-7.16 and 200-8.3 of the Zoning Ordinance in order to allow the installation of a 44 panel 12.76 kW ground-mounted solar photovoltaic system at this location.

Chairman Maloney explained the public hearing process to the applicant. Joseph read the public notice into the record. Members sitting were Mark Maloney, Chair; Christopher Joseph, Clerk; James Winn; Brickett Allis; and Andrew Killeen. Also in attendance were the Applicants, Matthew & Alice Brown; representative to the Applicant, Marin Goldstein, Trinity Solar; and members of the public.

Maloney Introduced the Board members sitting and asked the Applicant to introduce himself and explain what he wants to do, where he wants to do it, and why.

Goldstein Stated his client would like to install a 44 panel 12.76 kW ground-mounted solar photovoltaic system at their residence. The system would be built 120 feet from the front yard line, 15 feet from the side yard line to the north, and 57 feet from the side yard line to the south. The system would be built on concrete footings and galvanized steel pipes to support it. Stated there would be 4 panel columns and 12 panel rows totaling 44 panels.

Maloney Inquired what the elevation of the system would be.

Goldstein Responded the system would be 8.5 feet high. It would be 2 feet off the ground and the length of the system would be 45 feet long.



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- Maloney Stated he would like all ground-mounted solar photovoltaic system applications to include perspective elevation plan/photos showing the system and the adjacent views.
- Joseph Inquired why the system was not installed on the roof.
- Brown Responded, the roof is too steep.
- Joseph Inquired why the system was not located in the back of the house.
- Brown Responded, the back of the house is wooded so there would be shade issues.
- Goldstein Stated a dig safe will be performed prior to any construction.
- Allis Stated there is a Town sewer right-of-way located very close to the proposed system location. Stated he strongly recommends the applicant to not build the system over the right-of-way as the Town Department of Public Works (DPW) may need to rip out the system to access the sewer line. Stated the DPW would not be responsible for damages and compensation.

Chairman Maloney opened up the hearing for public comment.

Dick & Jane Rozak, 140 Leyden Road

Stated he is concerned that the solar system will be an eyesore from his house and may cause glare issues. Stated he is concerned with the system's location in relation to the common driveway. Stated he is not against solar, he just does not like the proposed location. Showed Board members photos of his property in relation to 130 Leyden Road.

- Goldstein Stated the panels will be oriented to the south. Therefore, the house located at 140 Leyden Road would not see the panels; they will see the back side of the solar system.
- Allis Inquired whether the Rozaks will be okay with their house facing the back side of the solar system and if the Board conditions 8-10 feet high arborvitae.
- Rozak Responded he doesn't think the arborvitae would survive as the common driveway is salted and plowed during winter storms.
- Goldstein Stated the solar system would be setback 10-15 feet from any plowing. Stated he does not think arborvitae would be impacted.

Lynnette Scott, 112 Leyden Road

Inquired where the solar system would be located in relation to her property. Inquired whether there would be any glare issues. Inquired whether any trees would be removed as part of this project.

- Goldstein Showed Scott the project location as indicated in the submitted site plan. Stated properties to the south of 130 Leyden Road would not see the solar system as there is existing trees blocking the



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view. Stated the panels are oriented to the south. Stated no trees will be removed. Stated the solar panels are designed to not cause glare. Stated the solar system will be 2-feet from off the ground and will be 8-feet high from the top of the system.

- Maloney Inquired whether there would be screening.
- Goldstein Stated the applicant could provide screening. Showed the Board members photos of arborvitae at another grounded mounted solar project in Greenfield, as an example of what screening could look like.
- Maloney Inquired why the solar system could not be built behind the existing house.
- Goldstein Responded, the back yard is shady due to the existing trees. Stated the shade would increase the energy generated from the solar panels.
- Maloney Inquired whether the applicant could split the system in two locations on-site with a smaller array in the front yard.
- Goldstein Responded he is concerned about the shade from the backyard and from the western side of the property.

Lynnette Scott, 112 Leyden Road

Inquired why there are 44 panels proposed. Indicated that 44 panels seemed like a lot.

- Goldstein Responded, the amount of panels is based from a year long electricity report conducted on the house. Stated the house has electric baseboards and the solar will just break even for the amount of electricity produced.

Dick Rozak, 140 Leyden Road

Inquired whether a fence could be installed around the solar system. Stated his tenants that reside at 140 Leyden Road have some children and don't want them walking near the system.

- Maloney Responded, the Board could condition a fence and arborvitae.
- Rozak Stated the arborvitae could take a long time to grow.
- Goldstein Stated there would be screening around the system so no children can get through to touch the associated wiring.
- Joseph Stated the size of the proposed solar system size meets the confines of the Zoning Ordinance for non-commercial scale solar energy installations. Stated it is less than the maximum height allowed under the Zoning Ordinance.



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Joseph Read correspondence from the Board of Health, Licensing Commission, Town Engineer, Fire Department, Planning Board, and Inspector of Building.

Public Hearing closed at 7:30 p.m.

Discussion/Decision

Matthew Brown for property located at 130 Leyden Road (Assessor's Map R28, Lot 15A)

Goldstein Stated there are very old maple trees along the common driveway that are doing fine with salt treatment and snow plowing during the winter months. Stated he thinks arborvitae would survive at that location.

Stated having two solar arrays would not work for this site. Stated there is not enough room to provide two locations due to shading from trees. Stated the production value for electricity would be decreased if the array was moved to a shady location.

Allis Stated he is concerned with the solar system's concrete foundation over the Town sewer right-of-way. Stated it could be dangerous for the Town DPW to tear out the system, in case of an emergency. Stated the Town DPW would not be responsible for lost damages or compensation of damages. Stated he would like to condition screening from the neighbor to the north. Stated he would be satisfied if it was either arborvitae only, fence only, or a combination of the both.

Winn Stated he would like screening be conditioned. Stated he is concerned with the proposed solar system being so close to the Town sewer right-of-way.

Joseph Stated he would support this project if the solar system did not cross over the Town sewer right-of-way. Stated he would like to see screening around the back side of the solar system. Stated the property owner is trying to do something positive for the environment. Stated the property owner cannot put the system on the roof; therefore, ground-mounted is their only option. Stated it does not make sense to move the solar system and cut down trees to do so.

Maloney Stated the solar system is proposed in the front yard of a main road. Stated the applicant's engineer does not know the exact location of the property line along the side yard to the north. Stated the project is proposed either over the Town sewer right-of-way or very close to it. Stated he would like screening to the north and east of the solar system. Stated the applicant may want to check with the Town DPW about the Town sewer right-of-way.

Killeen Stated the applicant can build by right over the Town sewer right-of-way, though they may not want to, in case the Town DPW needs to rip it out to access the sewer line.

The Board requested Pollock to contact the Town DPW about what, if anything can be built on Town sewer right-of-way.



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- Allis Inquired whether the applicant is surveying the property.
- Goldstein Responded, they are currently in the process of surveying it.
- Maloney Stated he would like to have more information regarding the Town sewer right-of-way and the property line survey.
- Brown Stated he would like to request a public hearing continuance until October 13, 2016.

MOTION: Moved by Allis, seconded by Killen, and voted 5-0 to continue the public hearing for the application of Matthew Brown for property located at 130 Leyden Road (Assessor's Map R28, Lot 15A), which is located in the Suburban Residential (RB) Zoning District, for a special permit pursuant to Sections 200-7.16 and 200-8.3 of the Zoning Ordinance in order to allow the installation of a 44 panel 12.76 kW ground-mounted solar photovoltaic system at this location until October 13, 2016.

Application of appeal of James & Denise Elwell of Jim's Tree Service from the letter dated July 28, 2016 by the Inspector of Buildings, Mark Snow, determining a previous non-conforming use has "changed, been extended, and altered" for property identified as Assessor's Map 88, Lot 9, which is located in the Urban Residential (RA) Zoning District pursuant to Section 200-8.6 of the Zoning Ordinance.

Chairman Maloney explained the public hearing process to the applicant. Joseph read the public notice into the record. Members sitting were Mark Maloney, Chair; Christopher Joseph, Clerk; James Winn; Brickett Allis; and Andrew Killeen. Also in attendance were the Applicants, James & Denis Elwell; Representative to the Applicant, Attorney Scott Cote; Mark Snow, Greenfield Inspector of Buildings; Nicole Zabko, Greenfield Health Director; and members of the public.

- Maloney Introduced the Board members sitting and asked the Applicant to introduce himself and explain what he wants to do, where he wants to do it, and why.
- Cote Stated his clients are appealing the letter submitted by Mark Snow, Greenfield Inspector of Buildings, dated July 28, 2016.
- Snow Stated he wrote a letter, dated July 28, 2016 regarding a non-conforming use located within the Urban Residential (RA) Zoning District. Stated it is his determination that the prior business there, which stored golf carts to its current use of storing large tree trunks, equipment, etc. triggers an automatic "change of use" requiring a special permit. Stated that after the Greenfield Health Department received some complaints, he conducted some research. Stated that in 2008, a letter from the Greenfield Department of Planning & Development addressed to Jim's Tree Service indicated that the operation may move from their Norwood Street to a parcel within the General Industry (GI) Zoning District. The letter stated the operation would be allowed by right within the GI Zoning District but would require site plan review. Stated the operation did move to 275 Wells Street (Assessor's Map 88, Lot 24), which is located with the GI Zoning District. Stated the appeal is addressing the use at the parcel across the street from 275 Wells Street, which



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is the property identified as Assessor’s Map 88, Lot 9. Parcel 88-9 is located within the RA Zoning District. Stated there have been complaints received regarding the amount of trees being stored at Parcel 88-9 and the insects that accompany.

Stated in order to determine a non-conforming use, he considered the three part test to determine whether a change, extension, or alteration has occurred at Parcel 88-9. Stated the three part test is outlined in the letter abovementioned, dated July 28, 2016. The “three part test includes:

- 1) Does the use reflect the nature and purpose of the nonconforming use prevailing when the zoning took effect? This office believes no for the following reasons. Country Club Enterprise LLC stored golf carts on this property,
 - Jim’s Tree Service indicates they will store motor vehicles, trucks, trailers, wood servicing equipment (Splitters, processors, chippers, log picking trailers, stump grinders) and/or other similar business equipment upon the lot.
 - Jim’s Tree Service indicates storage of product would be stored upon the lot, with the understanding that such product would not exceed the height of the existing (or future) fencing of (6’) feet. Wood product is unloaded and loaded by equipment.
- 2) Is there a difference in the quality or character and/or degree of the resulting use? This office believes yes for the following reasons,
 - Increase in storing and operation of heavy equipment.
 - Wood products draw in insects and rodents.
- 3) Is the current use different in kind in its effect upon the neighborhood? This office yes for the following reasons,
 - Storage and operation of heavy equipment, trucks, trailers, woods servicing equipment (Splitters, processors, chippers, log picking trailers, stump grinders) and/or other similar business equipment upon the lot.
 - Increase in the generation of dust, dirt, vapors, or gases.”

Stated that based on the three part test, there was a determination that there was a change, extension, and alteration. Stated the Greenfield Zoning Ordinance allows one nonconforming use to change to another nonconforming use by special permit. Therefore, this change, extension, and alteration would require a special permit.

Cote Inquired where Snow got the three part test from and whether any case law was from MA

Snow Responded he attended a MA Department of Housing and Community Development (DHCD) seminar, prepared by Donald Schmitt. There was a handout at the seminar which went over the three part test. Stated the case law referenced in the three part test were Green v Board of Appeals of Provincetown (1988) and Jesper v Donlon (1968). Stated he has another handout from a different DHCD seminar prepared by Donald Schmitt which also went over nonconforming use.

Cote Inquired if the latest case law Snow was referencing was from 1988.

Snow Responded, yes.



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Cote Inquired what year Zoning Ordinance is being applied to the case in hand.

Snow Responded, 2015.

Cote Inquired whether the three part test is for issuing a special permit.

Snow Stated he believes it is to assist with the determination of whether a change, extension, or alteration has occurred.

Cote Inquired if the three part test is to determine whether a change, extension, or alteration for a special permit.

Snow Responded, yes for a special permit.

Maloney Stated in the letter, dated July 28, 2016, Snow cited a complaint from a rear abutter about noise being a nuisance. It also states that the caller's home is located on Chapman Street behind the tree service business. Inquired whether the home is located on the eastern side of the train tracks.

Snow Responded, yes.

Maloney Stated he would like to differentiate complaints between the operations at 275 Wells Street, Parcel 88-24 which is permitted by right, and the uses in question at Parcel 88-9.

Maloney Inquired whether there is a fence around Parcel 88-9.

Cote Responded, yes.

Maloney Inquired whether there is storage of vehicles at Parcel 88-9.

Cote Stated, yes.

Maloney Inquired whether there is storage of product at Parcel 88-9.

Cote Stated, if you consider tree trunks as product, then yes. Stated there are about 20 left.

Maloney Inquired whether the tree trunks will go away or will more tree trunks be stored at Parcel 88-9.

Cote Stated the mass in size of tree trunks that were stored at Parcel 88-9 will helpfully never come back. Stated his client would like to store a few tree trunks there from time to time.

Maloney Inquired whether there is any operation of equipment on Parcel 88-9 beyond moving of equipment in and out of storage.



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- Cote Responded, the only processing of product at Parcel 88-9 would include picking up a tree stump with a picker, putting it on the ground, and picking it back up to put it on a trailer.
- Maloney Inquired whether the actual process of the business occurs at across the street at 275 Wells Street, Parcel 88-24, located in the General Industry (GI) Zoning District.
- Cote Responded, yes.
- Killeen Stated it sounds like the noise complaints received are in ear shot of the operations occurring across the street at Parcel 88-24, located in the General Industry (GI) Zoning District. Inquired whether that was correct.
- Maloney Responded, yes.
- Allis Inquired if the issue in hand is in regards to the storage of vehicles at Parcel 88-9.
- Snow Stated the issue is that there was a previously nonconforming use at Parcel 88-9 and there is currently a nonconforming use there, as there has been a determination of a change of use. Therefore, under the Zoning Ordinance, the applicant is required to file a special permit.
- Allis Stated that according to the July 28, 2016 letter, the change of use would include the storage of motor vehicles, trucks, trailers, wood serving equipment (splitters, processors, chippers, log picking trailers, stump grinders) and/or other similar business equipment occurring at Parcel 88-9. Inquired whether that is correct.
- Snow Responded, yes. Stated he would like to refer to Cote's letter, dated July 12, 2016, which he describes which specific operations and storage occur at Parcel 88-9, so that is why the July 28th letter specifies the types of equipment and vehicles.
- Maloney Stated the Board was not given a copy of the July 12th letter.
- Allis Inquired whether all the complaints were just concerning noise issues.
- Snow Responded, no. Stated that he has a list of complaints. Stated Nicole Zabko, Greenfield Health Director has received complaints too.
- Killeen Inquired whether there is a way to distinguish between the noise coming from the west and from the east side of Wells Street.
- Maloney Responded, the letter does not distinguish which side of street the noise comes from.
- Killeen Inquired whether there are members of the public that are present that could distinguish which side of the street the noise is coming from.



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Maloney Responded, the Board will open the public hearing in a bit.

Maloney Stated the Board was not provided Cote's July 12, 2016 letter. Inquired whether Cote could read the letter out loud for public record.

Cote Responded, yes. Stated he received a letter from Snow, dated June 9, 2016, which triggered the July 12th response. Stated conversations were had on July 6, 2016 between Snow, Eric Twarog, Planning Department Director and himself. Stated the July 12th letter was part of a negotiation between himself and Snow. Stated at the time, he did not believe he was going to need to appeal anything. Cote read the July 12, 2016 letter out loud for public record.

Stated that his July 12th letter was in response of the June 9th letter sent by Snow. Stated that Snow left out verbiage from the June 9th letter and that perhaps it should have been included in his July 28th letter. The June 9th verbiage includes: "this office is aware the previous business known as 'Country Club Enterprises' #275 Wells Street sold, leased, repaired golf carts, and seasonal storage of golf carts for their business and that business had used this property. The selling, leasing, repairing, and storing of golf carts in the 'RA' zoning district is not a permitted use, therefore this office must determine the use of this property as pre-existing non-conforming."

Stated he responded to Snow in the July 12th letter that storing product and equipment was exactly what Jim's Tree Service wanted to use the property for. Therefore, it does not trigger a special permit because it is one nonconforming use to another nonconforming use. Stated Snow disagrees because of the classification of the business is different. Stated the use continues. The use determines the nonconforming use, not the classification of the business.

Stated the golf cart business stored hundreds of golf carts and gas powered eighteen wheelers with daily loading and unloading. Stated he knows this as former Zoning Board of Appeals member and as a former Country Club Enterprises employee who rented from them.

Allis Stated that he lives in the neighborhood. Stated he has witnessed the former business operations at Parcel 88-9 which consisted of daily loading and unloading of golf carts onto semi-trucks.

Chairman Maloney opened up the hearing for public comment.

Jamie Cook, 280 Wells Street

Stated she has lived at her property for the last 15 years. Stated she rented from the golf cart business. Stated she has no problem with Jim's Tree Service. Stated she has never observed an insect problem. Stated she works Monday – Saturday and that she does not hear any noises after 5:00pm unless there is an emergency. Stated she does not hear any noise at night or on Sundays, unless there is an emergency.

Bob Grazick, 290 Chapman Street

Stated his quality of life has decreased due to the operation of Jim's Tree Service business. Stated the noise decimal for the business is at 80. Stated the maximum decimal under State law is 70. Stated the business impacts air quality. Stated he has seen tree sawing take place at Parcel 88-9. Stated the mass amount of tree trunks at



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Parcel 88-9 is a fire hazard. Stated if someone lit a match, the whole neighborhood would go up in flames. Stated most of the people living in the neighborhood are retired and are home during the day. Stated they have to listen to the loud noise. Stated the noise level for the golf cart business was barely an issue. Stated he has lived at his property for 39 years.

Dennis Bronnes, 280 Chapman Street

Stated he cannot continue his conversation on the telephone inside his house when the business operates their equipment. Stated there is no scheduled time for processing product. Stated sometimes they operate for 15 minutes, sometimes on/off for 3 hours, and sometimes as early as 7:00am.

Joseph read correspondence from the Board of Health.

Zabko Stated she has a list of complaints with some anonymous and some with names identified. Stated there is a difference between Parcel 88-9 and Parcel 88-24. Stated the Planning Board is reviewing the submitted site plan for the operations at Parcel 88-24 on October 6, 2016.

Killeen Stated the Board needs to separate the business activities taking place at Parcel 88-9 and Parcel 88-24. Inquired whether Zabko received any complaints for Parcel 88-9.

Zabko Stated, yes.

Maloney Inquired how many of those complaints are from abutters.

Zabko Responded, about half of the complaints are from abutters.

Killeen Inquired whether Snow's assessment is only based on complaints or did he conduct site inspections confirming activities.

Snow Responded, he did not check.

Public Hearing Closed at 8:20 p.m.

Discussion/Decision

James & Denise Elwell of Jim's Tree Service, property identified as Assessor's Map 88, Lot 9

Joseph Stated Snow made the case that the use at Parcel 88-9 has been changed, extended, and altered. Stated he believes that it is a change, with a different business and with a different process. Therefore, a special permit should be required. Stated storing massive amounts of tree trunks is not the same as storing golf carts.

Killeen Stated he does not believe there has been a change of use.

Allis Stated Jim's Tree Service has not changed the nonconforming use. Stated it is a continuation of use. Therefore, a special permit should not be required.



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- Maloney Stated most of the complaints are regarding activities occurring at Parcel 88-24. Stated Snow did not check the property after complaints received. Stated his determination is based on complaints only. Stated there is a stockade fence on 3 sides of Parcel 88-9.
- Winn Stated he is surprised by Jamie Cook's comments that she does not believe there are noise issues related to this business. Stated the Zabko and Snow did a great job reviewing this matter.
- Killeen Stated he believes the noise issue is coming from Parcel 88-24, not Parcel 88-9.
- Joseph Stated noise does come from picking and dropping of tree trunks at Parcel 88-9.
- Killeen Responded, good point. Stated he drives by Jim's Tree Service several times a day and thinks that overall it is a quiet operation.
- Joseph Inquired whether Board members believed open storage of raw materials, finished goods, or equipment is the same as storage of golf carts.
- Allis Responded, yes.
- Killeen Responded, yes.
- Maloney Responded, yes.
- Joseph Responded, no.
- Allis Stated the cease and desist order is due to the noise coming from Parcel 88-24, not Parcel 88-9.
- Killeen Stated he is glad the Town took the complaints seriously. However, he believes the use is the same so a special permit would not be required.
- Winn Stated the use has not changed; therefore, a special permit would not be required.
- Maloney Stated the storage of tree trunks at Parcel 88-9 shall not be above the 6-ft stockade fence.
- MOTION** **Moved by Allis, seconded by Killeen, and voted 4-1 (Joseph opposed) to grant the application of appeal of James & Denise Elwell of Jim's Tree Service from the letter dated July 28, 2016 by the Inspector of Buildings, Mark Snow, determining a previous non-conforming use has "changed, been extended, and altered" for property identified as Assessor's Map 88, Lot 9, which is located in the Urban Residential (RA) Zoning District pursuant to Section 200-8.6 of the Zoning Ordinance.**

Discussion Items



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Winn, James (2017)

Approval of Minutes:

MOTION: Moved by Allis, seconded by Joseph, and voted 5:0 to approve the Minutes from September 7, 2016.

Adjournment:

MOTION: Moved by Joseph, seconded by Winn, and voted 5-0 to adjourn the meeting at 9:35 p.m.

Respectfully Submitted, Maureen Pollock, Assistant Planner & Conservation Agent