

ARTICLE AMEND ZONING MAP

To see if the Town will vote pursuant to M.G.L. c. 40A, to amend the Town of Millis Zoning Map dated June 8, 1959, as amended, and rezone the following properties as stated:

From split zone Industrial I-P-2 and Residential R-S to Industrial I-P-2:

Assessor Map/Lot	Location	Lot Size	Title Reference
22/27	1280 Main Street	23.8 acres +/-	Certificate of Title No. 147890

or take any other action relative thereto.

Submitted by Property Owner
Bruce A. Berry, Trustee of J&B Realty Trust

You requested an opinion regarding a large-scale ground-mounted solar photovoltaic facility ("Solar Facility") proposed for 23.8 acres of land that are known as 1280 Main Street (Assessing Parcel 0011-0027-0000) and that are located between Route 109 (Main Street) and Farm and Cedar Streets, with access and frontage on Farm and Cedar Streets (the "Property"). The above map indicates that the Property is located partially in an Industrial District (i.e., the land closest to Main Street) and partially in an R-T Residential District (the land closest to Farm and Cedar Streets). Millis Zoning By-law ("ZBL") §V.Table 1.Use Regulations.Principal Uses.Wholesale, Transportation & Industrial.20 allows a Solar Facility in an Industrial District, as of right, but expressly prohibits such a use in all Residential Districts. Under ZBL §III.D.3, if a parcel of land is located within ten feet of a zoning boundary, then the zoning boundary shall be deemed to be the same as the lot boundary. The above map indicates, however, that a substantial portion of the proposed Solar Facility would be located in the residential district (i.e., the zoning boundary is not within ten feet of a lot line for the Property). You ask whether the Solar Facility may be constructed on the residentially zoned portion of the Property as shown on the above map. You indicated that you understand that the ZBL may contain a 'split lot' provision that allows the "zoning district that has more than 50% in area" is the zoning district that regulates the allowed use Under ZBL §V.Table 1; however, there is no provision on note to that effect in Table 1.

In my opinion, the Solar Facility may not be constructed on the residentially zoned portion of the Property because ZBL §V.Table 1 expressly prohibits a Solar Facility use in the R-T district.

In my further opinion, a Solar Facility may be constructed on the land that is in an industrial district, provided that any and all required site review or other dimensional restrictions contained in the zoning bylaw related to such facilities are satisfied and, provided further, that access shall not occur over land in the residential district. See, Beale v. Planning Board, 423 Mass. 690 (1996)(commercial retail use not allowed to use residentially zoned land, where the retail use was expressly prohibited, for access. In a very similar case, in Harrison v. Building Inspector of Braintree, 350 Mass. 559, 561-2 (1966), the Supreme Judicial Court held that "the use of land in a residential district, in which all aspects of industry are barred, for access roadways for an adjacent industrial plant violates the residential requirement [of the residential zoning district]." In that case, the property owner constructed a factory on industrial land and then built an access road on adjacent residential land where factories were prohibited under the zoning bylaw.

Please feel free to contact me with any questions.

Regards,

Ilana M. Quirk, Esq.

KP | LAW

101 Arch Street, 12th Floor

Boston, MA 02110

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Attachments:

- IMG_0364.jpg
- IMG_0363.jpg

fw: 1280 Main Street - Solar Use Proposed for Split Parcel in a Residential District and an Industrial District



Thu 2/23/2017 3:32 PM

From: "Suzanne Kennedy"

To: skennedy@millis.net

FYI

From: "Ilana Quirk" <IQuirk@k-plaw.com>

Sent: Tuesday, January 31, 2017 11:10 AM

To: "Brutus Cantoreggi (blueberryhollow@hotmail.com)" <blueberryhollow@hotmail.com>

Cc: "mgiampietro@millis.net" <mgiampietro@millis.net>, "Camille Standley (cstandley@millis.net)" <cstandley@millis.net>

Subject: 1280 Main Street - Solar Use Proposed for Split Parcel in a Residential District and an Industrial District

Hello,

You forwarded a January 31, 2017 e-mail to me, regarding a proposal to site a solar facility at property known as 1280 Main Street. The January 31, 2017 e-mail asserts that "Town Counsel incorrectly stated [in the January 26, 2017 opinion, a copy of which is set forth below] that access to proposed solar project is from Cedar St. Access will be from an existing driveway on Main St., as shown on the plans we submitted with our applications to the Town." I note I do not have the applications submitted to the Town and was provided with and reviewed only the plans attached above, which indicate 1280 Main Street does not abut or have frontage on Main Street. The plans do indicate an "existing gravel access road" that leads from the relevant property to adjacent land and then to Main Street.

In my opinion, if the 1280 Main Street property actually abuts Main Street (which is not shown on the plans) and has both access and frontage on Main Street, then those facts should be considered when the applications are evaluated.

In my opinion, if the 1280 Main Street property does not abut Main Street or have sufficient frontage on Main Street, but has a right of access to reach Main Street over another party's property, then the zoning provisions that regulate access should be reviewed to determine whether a use must use the legal frontage for the lot on which the use is located for access; and, in addition, if it is not required that access

be taken over the legal frontage for the property involved, then the zoning provisions next would need to be evaluated to determine whether a use on one property may access over another party's property to achieve access to the nearest way, which would require an evaluate of principal and accessory use provisions.

If there are additional facts you wish to have evaluated, please let me know.

Regards,

Ilana M. Quirk, Esq.

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From: Ilana Quirk

Sent: Thursday, January 26, 2017 3:00 PM

To: mgiampietro@millis.net

Cc: Suzanne Kennedy (skennedy@millis.net); Mark R. Reich

Subject: 1280 Main Street - Solar Use Proposed for Split Parcel in a Residential District and an Industrial District

Hello,

TOWN OF MILLIS
2017 SPRING ANNUAL TOWN MEETING
PETITION FOR RE-ZONING OF PROPERTY

TO: The Citizens of the Town of Millis
And the Honorable Board of Selectmen

February 21, 2017

WHEREAS, the undersigned is the owner of property located at 1280 Main Street, shown on Assessor's Map 22 as Lot 27, described in that certain Certificate of Title No. 147890 filed with the Land Registration Office for the Norfolk County Registry of Deeds in Registration Book 740, Page 90 and consisting of approximately 23.8 acres of land;

WHEREAS, said property is presently located in a split zoning district resulting in the property be zoned in part as "Industrial-I-P 2" and in part as "Residential R-S";

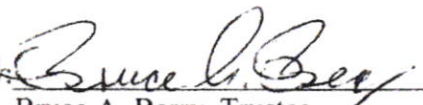
WHEREAS, said Industrial-I-P-2 zone permits large scale ground-mounted solar photovoltaic installations;

WHEREAS, said large scale ground-mounted solar photovoltaic installations are prohibited in residential zones, including Residential R-S districts, and all other zoning districts except for Industrial zones;

WHEREAS, the undersigned desires to have the zoning district boundary which splits the property into the two zoning districts altered so that the entire property is located within one zoning district, the Industrial I-P-2 zone, as the best use of the property is for industrial purposes, including the use of the property for the installation of a solar facility.

THEREFORE, the undersigned respectfully petitions that the Town vote, pursuant to M.G.L c. 40A and the Town of Millis Zoning Bylaw, to amend the official Zoning Map of the Town of Millis, Massachusetts dated June 8, 1959 and last amended on November 2, 2015 and as incorporated in Section III (c) the Zoning By-Law of the Town of Millis dated May 14, 1975 and last amended on May 9, 2016, so as to re-zone the property located at 1280 Main Street, shown on Assessor's Map 22 as Lot 27, described in a Certificate of Title No. 147890 filed with the Land Registration Office for the Norfolk County Registry of Deeds in Registration Book 740, Page 90 and consisting of approximately 23.8 acres of land so that the entire property is located within the Industrial I-P-2 zoning district.

Respectfully submitted,
J&B Realty Trust, Petitioner

By: 
Bruce A. Berry, Trustee

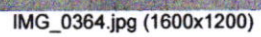
TOWN OF MILLIS

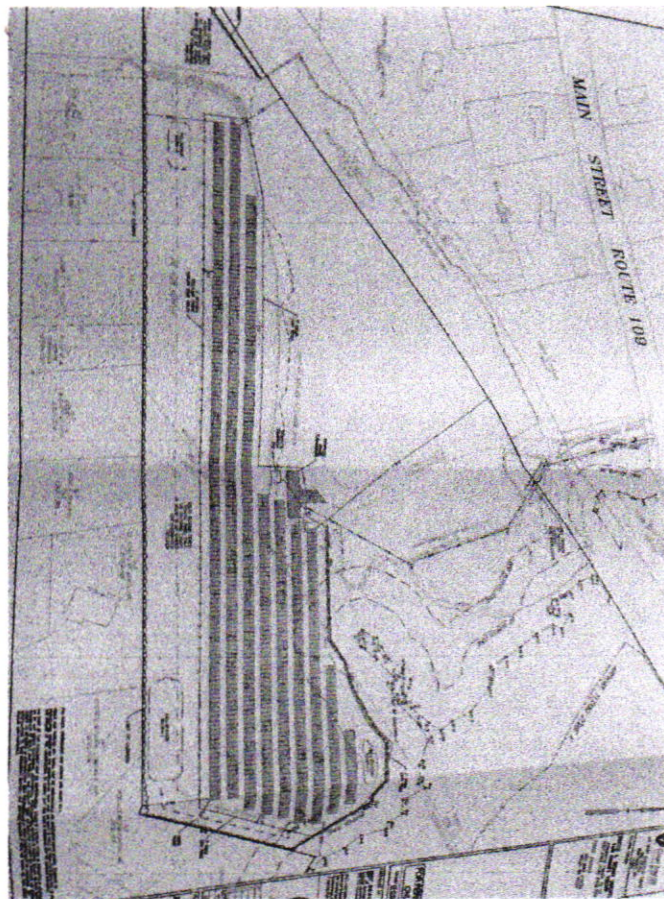
2017 SPRING ANNUAL TOWN MEETING

PETITION FOR RE-ZONING OF PROPERTY

Registered Voters

Printed Name	Signature	Address
Brian R. Marino	B. Marino	202 Union St
KEVIN KIRCH	K. Kirch	176 Pleasant St
Jodieanne Kirch	J. Kirch	176 Pleasant St
Randell M Tucker	R. M. Tucker	326 Village St
Matthew A. Foster	M. A. Foster	5 Clark Rd
Ben Pettis	B. Pettis	104 Greens St
Lawrence C. Hawker	L. C. Hawker	94 Village St
Kerry Corsiglia	K. Corsiglia	343 Plain St
John Howard	J. Howard	343 Plain St
Kristen Lannan	K. Lannan	6 Cedar St
Leslee Hodgman	L. Hodgman	21 Cedar St
Jan Hodgman	J. Hodgman	21 Cedar St
Bill Sawyer	B. Sawyer	24 Cedar St
Nancy Sawyer	N. Sawyer	24 Cedar Street
Bruce H. Barry	B. H. Barry	25 Cedar Street





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