

*Clerk's Note: This Ordinance is amended to correct technical errors in formatting. Subsection number formats in lines 146, 148, and 150 are amended; and Ordinance Sec. numbers 3, 4, and 5 are corrected.*

**CORRECTED**

Ordinance No.: 19-14

Zoning Text Amendment No.: 20-01

Concerning: Solar Collection System –  
AR Zone Standards

Draft No. & Date: 6 – 2/18/21

Introduced: January 21, 2020

Public Hearing: March 3, 2020

Adopted: February 23, 2021

Effective: March 15, 2021

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsors: Councilmember Riemer and Council Vice President Hucker  
Co-Sponsor: Councilmember Rice

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- revise the Solar Collection System use standards to allow larger facilities in the AR zone;
- amend the provisions for Solar Collection Systems in other zones; and
- amend the provisions for site plan approval in the AR zone.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

<u>Division 3.1.</u>	<u>“Use Table”</u>
<u>Section 3.1.6.</u>	<u>“Use Table”</u>
Division 3.7.	“Miscellaneous Uses”
Section 3.7.2.	“Solar Collection System”
Division 7.3.	“Regulatory Approvals”
Section 7.3.4.	“Site Plan”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

## OPINION

ZTA 20-01, Lead Sponsors Councilmember Riemer and Council Vice President Hucker and Co-Sponsor Councilmember Rice, was introduced on January 21, 2020. ZTA 20-01 would revise the Solar Collection System use standards to allow larger facilities in the Agricultural Reserve (AR) zone.

In its report to the Council, the Montgomery County Planning Board and Planning staff recommend the following (differences from the Planning staff recommendations are noted):

- Discourage (Planning staff would prohibit) solar on prime agricultural soils.
- Prohibit solar on 15% slopes (Planning staff would say 8%) or on highly-erodible soils.
- Add all agrivoltaic crop production to the list of plants that can be grown under solar facilities.
- Prohibit solar on soils that are seasonally flooded.
- Delete the fencing requirement.
- Protect scenic views (Planning staff would prohibit disturbance) through site plan review.

The Council conducted a public hearing on March 3, 2020. The testimony did not reflect any grand consensus. One constituency said it was premature to allow industrial uses in the AR zone, at least until other options have been researched. Other testimony supported an immediate reduction in carbon emissions to minimize climate change. A number of amendments to ZTA 20-01 were recommended. A full summary of public hearing testimony may be found in the October 13, 2020 memorandum to Council.

The Council referred the text amendment to the Planning, Housing, and Economic Development (PHED) Committee and the Transportation and Environment Committee (meeting together as the “joint committee”) for review and recommendation.

On July 22, 2020 and then amended on January 14, 2021, the Planning, Housing, and Economic Development Committee and the Transportation and Environment Committee (4-1, Councilmember Friedson opposed) recommended approval of ZTA 20-01 with the following amendments (changes made on January 14 are indicated in bold):

- 1) Restrict the limited use solar facilities to Maryland's net metering program, **including all COMAR references.**
- 2) Expand the definition of AR zoned accessory solar facilities from 120% of on-site use to 200%.
- 3) **Delete the code's current provision for facilities larger than 2MW and prohibit such facilities in the AR zone.**
- 4) Prohibit solar facilities in stream buffers and wetlands.
- 5) Prohibit solar facilities on slopes steeper than 15%.
- 6) Specifically prohibit stripping topsoil from the site.
- 7) Expand the required plants under solar panels to include all agrivoltaic plants and to ensure that the land under the solar facilities is used for agricultural purposes.
- 8) Specify necessary findings concerning forest conservation and tree protection.
- 9) State the site plan requirement for stormwater management.
- 10) Add a requirement to minimize tree loss, consistent with forest conservation.
- 11) Limit the use of concrete to electrical and transformer pads.
- 12) Require screening within 200 feet of a neighboring house, with an opportunity for the Planning Board to waive the planting requirement.
- 13) Delete the requirement for fencing.
- 14) Prohibit limited use solar facilities on Soil Classification I soils.
- 15) Amend the total acreage monitoring responsibility from DPS to Planning staff **to specify that it must include any required setbacks and all acreage within the fenced or shrubbed area of the solar facility.**

The joint committee believes the changes would require agricultural uses under the panels and would assure a better fit into the environmental fabric of the area zoned AR. The increased opportunity for solar facilities would help meet new State and County clean energy goals.

After worksessions considering the recommendations of the joint committee and all testimony received, on October 13, 2020, January 26, 2021, and February 23, 2021 the Council revised the amendments made by the joint committee. The Council required Conditional Use approval for solar facilities larger than 200% of on-site energy use but less than 2 megawatts (AC) instead of site plan approval. In doing so, it retained the joint committee proposed standards for site plan review but made them standards for Conditional Use approval with one exception. In addition to a prohibition of these facilities on Soil Classification I soils, the Council prohibited facilities on Soil Classification II soils.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 20-01 will be approved as amended.

#### *ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. DIVISION 59-3.1 is amended as follows:**

**Division 3.1. Use Table**

\* \* \*

**Section 3.1.6. Use Table**

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential			
		AR	R	RC	RNC	
* * *						* * *
<b>MISCELLANEOUS</b>						
Noncommercial Kennel	3.7.1	P	P	P	P	
Solar Collection System	3.7.2	L/C	L	L	L	
* * *						

**Key: P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed**

\* \* \*

**Sec. 2. DIVISION 59-3.7 is amended as follows:**

**Division 3.7. Miscellaneous Uses**

\* \* \*

**Section 3.7.2. Solar Collection System**

**A. Defined**

Solar Collection System means an arrangement of panels or other solar energy devices that provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating. A Solar Collection System includes freestanding or mounted devices. Solar Collection Systems are facilities that comply with the requirements of the State’s net metering program under Maryland Code §7-306, COMAR 20.50.10, and COMAR 20.62, including Community

23 Solar Energy Generating Systems, Aggregate Net Energy Metering Systems,  
24 and projects limited to a percentage of on-site energy use. A Solar Collection  
25 System larger than 2 megawatts (AC) is prohibited in the Agricultural  
26 Reserve Zone.

27 **B. Use Standards**

28 1. Where a Solar Collection System is allowed as a limited use, it must  
29 satisfy the following standards:

30 [[1]]a. In the Agricultural Reserve zone, [[all of the standards in  
31 Subsection 3.7.2.B.2 and the following standards apply:]] a  
32 Solar Collection System is allowed where the system produces  
33 up to 200% of annual baseline energy use on-site and must  
34 satisfy the following requirements:

- 35 i. Solar panels may encroach into a setback as allowed  
36 under Section 4.1.7.B.5.c and may exceed the maximum  
37 height as allowed under Section 4.1.7.C.3.b.
- 38 ii. Written authorization from the local utility company  
39 must be provided for a Solar Collection System that will  
40 be connected to the utility grid.
- 41 iii. Removal of trees or landscaping otherwise required or  
42 attached as a condition of approval of any plan,  
43 application, or permit for the installation or operation of a  
44 Solar Collection System is prohibited.

45 [a. A Solar Collection System must be an accessory use as defined  
46 in Section 3.1.3.]

47 [b][[a. Written authorization from the local utility company must be  
48 provided for a Solar Collection System that will be connected  
49 to the utility grid.]]

- 50 [c][[b. Removal of trees or landscaping otherwise required or attached  
51 as a condition of approval of any plan, application, or permit for  
52 the installation or operation of a Solar Collection System is  
53 prohibited.]]
- 54 [d. Solar panels may encroach into a setback as allowed under  
55 Section 4.1.7.B.5.c and may exceed the maximum height as  
56 allowed under Section 4.1.7.C.3.b.]
- 57 [e. A freestanding Solar Collection System is allowed only as an  
58 accessory use where the system produces a maximum of 120%  
59 of on-site energy consumption and must satisfy the same  
60 development standards as an accessory structure.]
- 61 [[c. Except as allowed under Subsection 59.7.3.4.E.5.b, the site  
62 must be designated pollinator-friendly under the Maryland  
63 Pollinator-Friendly Designation Program.]]
- 64 [[d. Cumulatively, on all AR zoned land, a maximum of 1,800 acres  
65 of land may be covered by solar panels.]]
- 66 [[2]]b. In Rural Residential, Residential,  
67 Commercial/Residential, Employment, and Industrial zones,  
68 where a Solar Collection System is allowed as a limited use, [it  
69 must either satisfy Subsection 59.3.7.2.B.1.a through  
70 Subsection 59.3.7.2.B.1.e or] it must satisfy the following  
71 standards in either [[subsection a or b]] Subsection  
72 59.3.7.2.B.2.a or 59.3.7.2.B.2.b:
- 73 [[a. The Solar Collection System must be an accessory use as  
74 follows:]]
- 75 **i. Systems producing 120% or less of on-site energy use**

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The Solar Collection System may be an accessory use under the following standards:

- (a) the system produces a maximum of 120% of on-site energy ~~[[consumption]] use;~~
- ~~[[ii.]](b) [[encroachment]] solar panels may encroach into a setback as allowed under Section 4.1.7.B.5.C; and~~
- ~~[[iii.]](c) the panels may exceed the ~~[[a]] maximum height allowed under 4.1.7.C.3.b.~~~~

**[[b]]ii. Systems Producing more than 120% of on-site energy use**

The Solar Collection System must satisfy the following standards:

- ~~[[a]]~~[[i.]](a)~~ Site plan approval is required under Section 7.3.4.~~
- ~~[[b]]~~[[ii.]](b)~~ The site must be a minimum of 3 acres in size.~~
- ~~[[c]]~~[[iii.]](c)~~ The system may produce a maximum of 2 megawatts (AC).~~
- ~~[[d]]~~[[iv.]](d)~~ All structures must be:
  - ~~[[i]]~~[[A.]](1)~~ 20 feet in height or less;~~
  - ~~[[ii]]~~[[B.]](2)~~ located at least 50 feet from any property line; and~~
  - ~~[[iii]]~~[[C.]](3)~~ surrounded by a minimum 6-foot-tall fence.~~~~

101 [e][v.](e) If a structure for a Solar Collection System  
102 is located in an area visible to an abutting  
103 residential use or a road:

104 [i][A.](1) only solar thermal or photovoltaic  
105 panels or shingles may be used;

106 [ii][B.](2) the panels or shingles must use  
107 textured glass or an anti-reflective coating;

108 and

109 [iii][C.](3) screening that satisfies Section  
110 59.6.5.3.C.8 (Option A) on the sides of the  
111 facility visible from the residential use or  
112 road is required.

113 [f][vi.](f) The Solar Collection System must be  
114 removed within 12 months of the date when the  
115 use is discontinued or abandoned by the system  
116 owner or operator, or upon termination of the  
117 useful life of the system. The Solar Collection  
118 System will be presumed to be discontinued or  
119 abandoned if no electricity is generated by the  
120 system for a period of 12 continuous months.

121 [g][vii. If licensed by the Public Service Commission, [A] a  
122 system designed to produce more than 2 megawatts (AC)  
123 [may be allowed as a public utility use under Section  
124 3.6.7.E] is not restricted by Chapter 59.]]

125 2. A Solar Collection System may be allowed as a Conditional Use in  
126 the AR zone if it exceeds a facility rated at more than 200% of on-site  
127 energy use and is less than 2 megawatts (AC). Where a Solar



- 128 Collection System is allowed as a conditional use in the AR zone, it may be  
129 permitted by the Hearing Examiner under Section 7.3.1. Conditional  
130 Use and the following standards:
- 131 a. The Solar Collection System is prohibited:
- 132 i. on soils classified by the United States Department of  
133 Agriculture as either Soil Classification Category I or  
134 Category II;
- 135 ii. in a stream buffer;
- 136 iii. on wetlands; or
- 137 iv. on slopes equal to or greater than 15%.
- 138 b. Scraping topsoil from the site is prohibited.
- 139 c. Grading and any soil removal are minimized.
- 140 d. The solar collection system is compliant with the requirements  
141 of the State’s net metering program under Maryland Code §7-  
142 306, COMAR 20.50.10, and COMAR 20.62.
- 143 e. The area under the solar facility must be actively used for  
144 farming or agricultural purposes by satisfying one or more of  
145 the following requirements:
- 146 [[i)]i. designated pollinator-friendly under the Maryland  
147 Pollinator-Friendly Designation Program;
- 148 [[ii)]ii. planted, managed, maintained, and used for  
149 grazing farm animals; or
- 150 [[iii)]iii. planted, managed, maintained, and used for any  
151 other agrivoltaic plant material.
- 152 f. The applicant must provide evidence that the local utility  
153 company will allow the Solar Collection System to be  
154 connected to the utility grid.

- 155 g. The applicant must provide evidence that the application was  
156 submitted to the Office of Agriculture.
- 157 h. Removal of trees or landscaping otherwise required or attached  
158 as a condition of approval of any plan, application, or permit for  
159 the installation or operation of a Solar Collection System is  
160 prohibited.
- 161 i. Any tree in or on a floodplain, stream buffer, steep slope,  
162 critical habitat, contiguous forest, or historic site, and any  
163 champion tree or other exceptionally large tree is left  
164 undisturbed unless a disturbance is allowed under Section 22A-  
165 12(b)(1).
- 166 j. Except for pad areas for transformers and electrical equipment,  
167 the use of concrete is prohibited.
- 168 k. Screening that satisfies Section 59.6.5.3.C.8 (Option A) on the  
169 sides of the facility within 200 feet of any neighboring house is  
170 required; however, a fence may not be required or prohibited.
- 171 l. The Hearing Examiner's decision must consider the  
172 recommendations of the Office of Agriculture.
- 173 m. The applicant must include a calculation of the total acreage  
174 used for the Solar Collection System, including any required  
175 setbacks and all acreage within the fenced or shrubbed area.
- 176 n. The land area approved for the Conditional Use, in addition to  
177 all other Conditional Use approvals for solar facilities in the AR  
178 zone, will not exceed 1,800 acres of land.

179 \* \* \*

180 **Sec. [[2]]3. DIVISION 59-7.3 is amended as follows:**

181 **Division 7.3. Regulatory Approvals**

182 \* \* \*

183 **Section 7.3.4. Site Plan**

184 \* \* \*

185 **E. Necessary Findings**

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187 [[5. For property zoned AR proposed for use as a Solar Collection system:

188 a. grading and any soil removal will be minimized; and

189 b. the site must be designated pollinator-friendly under the

190 Maryland Pollinator-Friendly Designation Program, or any land

191 on which the solar generation facility is located that is not

192 designated as pollinator friendly must be planted, managed, and

193 maintained in a manner suitable for grazing farm animals.]]

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195 **Sec. ~~[[3]]~~4. Reporting.** The Planning Department must prepare an impact

196 report no later than December 31, 2023, with input from the Office of Agriculture

197 as well as community stakeholders. The report must cover topics such as:

- 198 • assessment of different agricultural practices on land beneath panels;
- 199 • impact from installations on forests, streams, wetlands;
- 200 • impact on the ability of diverse communities to access farming or
- 201 remain in farming;
- 202 • how the availability of solar has measurably impacted agriculture
- 203 generally, including any measurable impacts on operations of lease or
- 204 tenant farmers, including land prices;
- 205 • any measurable impact on “local food” production;
- 206 • any measurable impacts of solar provision on carbon emissions in
- 207 Montgomery County and the electricity grid generally.

208 The impact report must recommend to the County Council whether the solar ZTA  
209 program should be continued, expanded, or discontinued based directly on any  
210 measurable and substantive impacts discovered in the report.

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212 **Sec. ~~[[4]]~~5. Effective date.** This ordinance becomes effective 20 days after  
213 the date of Council adoption.

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215 This is a correct copy of Council action.

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218 Selena Mendy Singleton, Esq.

219 Clerk of the Council