



Committee PHED
Staff: Jeff Zyontz, Senior Legislative Analyst
Purpose: To receive testimony – no vote expected
Keywords: #solar collection, #solar panels, #AR zone

AGENDA ITEM #14
March 3, 2020
Public Hearing

SUBJECT

ZTA 20-01, Solar Collection System – AR Zone Standards

EXPECTED ATTENDEES

NA

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

NA

DESCRIPTION/ISSUE

ZTA 20-01 would revise the Solar Collection System use standards to allow larger facilities in the Agricultural Reserve (AR) zone. The total amount of collection systems on all parcels would be limited to 1,800 acres. Any collection system constructed under the proposed text amendment must be designated pollinator-friendly under the Maryland Pollinator-Friendly Designation Program or planted with crops suitable for grazing. Larger facilities require site plan approval.

SUMMARY OF KEY DISCUSSION POINTS

Solar panels are only allowed in the AR zone as an accessory use; the Zoning Ordinance defines that as a facility that produces no more than 120% of on-site electrical needs. ZTA 20-01 would expand the opportunities for solar power. An uncodified provision of the ZTA would require the Department of Permitting Services to annually report on the number of total acres used for Solar Collection Systems.

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Public Hearing

MEMORANDUM

February 27, 2020

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 20-01, Solar Collection System – AR Zone Standards

PURPOSE: Receive testimony on ZTA 20-01

Zoning Text Amendment (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. The total amount of collection systems on all parcels would be limited to 1,800 acres. Any collection system constructed under the proposed text amendment in the AR zone must be designated pollinator-friendly under the Maryland Pollinator-Friendly Designation Program.

Solar panels are currently allowed in the AR zone as an accessory use; the Zoning Ordinance defines that as a facility that produces no more than 120% of on-site electrical needs. ZTA 20-01 would expand the opportunities for solar power. It would allow solar facilities as a principal use with a Planning Board-approved site plan.

Facilities in the AR zone that exceed accessory use standards must obtain site plan approval. The site plan approval for solar facilities in the AR zone would allow for either a designation of pollinator-friendly under the Maryland Pollinator-Friendly Designation Program or be planted, managed, and maintained in a manner suitable for grazing farm animals. In either case, site plan approval would require that grading and soil removal be minimized.

An uncodified provision of the ZTA would require the Department of Permitting Services to annually report on the number of total acres used for Solar Collection Systems. The purpose of this reporting would be to alert the Council on the difference between the acreage used for solar in the AR and the 1,800-acre limit.

The Maryland Court of Appeals ruled that, under State law, the County's zoning and subdivision regulations are preempted by the Maryland Public Service Commission (PSC) for large solar facilities. The Court's decision in Board of County Commissioners of Washington County v. Perennial Solar means that the PSC has the final say on the location of solar projects that require a Certificate of Public

Convenience and Necessity from the PSC. This certificate requirement applies to projects of at least 2 megawatts (roughly 10 acres) in size. In the absence of a change in State law, the County is powerless to regulate large solar facilities. The PSC must consider local zoning but, as in the situation that provoked the Court's decision, the PSC may overrule zoning. ZTA 20-01 applies to solar facilities that produce less than 2 megawatts.

A Planning, Housing, and Economic Development worksession on ZTA 20-01 will be scheduled at a later date.

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Zoning Text Amendment No.: 20-01
Concerning: Solar Collection System –
AR Zone Standards
Draft No. & Date: 5 – 1/21/20
Introduced: January 21, 2020
Public Hearing:
Adopted:
Effective:

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

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

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:

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.*

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:

1 **Sec. 1. DIVISION 59-3.7 is amended as follows:**

2 **Division 3.7. Miscellaneous Uses**

3 * * *

4 **Section 3.7.2. Solar Collection System**

5 **A. Defined**

6 Solar Collection System means an arrangement of panels or other solar
7 energy devices that provide for the collection, inversion, storage, and
8 distribution of solar energy for electricity generation, space heating, space
9 cooling, or water heating. A Solar Collection System includes freestanding
10 or mounted devices.

11 **B. Use Standards**

12 Where a Solar Collection System is allowed as a limited use, it must satisfy
13 the following standards:

14 1. In the Agricultural Reserve zone, all of the standards in Subsection
15 3.7.2.B.2 and the following standards apply:

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

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

21 [c]b. Removal of trees or landscaping otherwise required or attached
22 as a condition of approval of any plan, application, or permit for
23 the installation or operation of a Solar Collection System is
24 prohibited.

25 [d. Solar panels may encroach into a setback as allowed under
26 Section 4.1.7.B.5.c and may exceed the maximum height as
27 allowed under Section 4.1.7.C.3.b.]

- 28 [e. A freestanding Solar Collection System is allowed only as an
- 29 accessory use where the system produces a maximum of 120%
- 30 of on-site energy consumption and must satisfy the same
- 31 development standards as an accessory structure.]
- 32 c. Except as allowed under Subsection 59.7.3.4.E.5.b, the site
- 33 must be designated pollinator-friendly under the Maryland
- 34 Pollinator-Friendly Designation Program.
- 35 d. Cumulatively, on all AR zoned land, a maximum of 1,800 acres
- 36 of land may be covered by solar panels.

37 2. In Rural Residential, Residential, Commercial/Residential,

38 Employment, and Industrial zones, where a Solar Collection System is

39 allowed as a limited use, [it must either satisfy Subsection

40 59.3.7.2.B.1.a through Subsection 59.3.7.2.B.1.e or] it must satisfy the

41 following standards in either subsection a or b:

- 42 a. The Solar Collection System must be an accessory use as
- 43 follows:
 - 44 i. the system produces a maximum of 120% of on-site
 - 45 energy consumption;
 - 46 ii. encroachment allowed under Section 4.1.7.B.5.C; and
 - 47 iii. a maximum height allowed under 4.1.7.C.3.b.
- 48 b. The Solar Collection System must satisfy the following
- 49 standards:
 - 50 [a] i. Site plan approval is required under Section 7.3.4.
 - 51 [b] ii. The site must be a minimum of 3 acres in size.
 - 52 [c] iii. The system may produce a maximum of 2 megawatts
 - 53 (AC).
 - 54 [d] iv. All structures must be:

- 55 [i] A. 20 feet in height or less;
- 56 [ii] B. located at least 50 feet from any property line; and
- 57 [iii] C. surrounded by a minimum 6-foot-tall fence.
- 58 [e] v. If a structure for a Solar Collection System is located in
- 59 an area visible to an abutting residential use or a road:
- 60 [i] A. only solar thermal or photovoltaic panels or
- 61 shingles may be used;
- 62 [ii] B. the panels or shingles must use textured glass or an
- 63 anti-reflective coating; and
- 64 [iii] C. screening that satisfies Section 59.6.5.3.C.8
- 65 (Option A) on the sides of the facility visible from
- 66 the residential use or road is required.
- 67 [f] vi. The Solar Collection System must be removed within 12
- 68 months of the date when the use is discontinued or
- 69 abandoned by the system owner or operator, or upon
- 70 termination of the useful life of the system. The Solar
- 71 Collection System will be presumed to be discontinued
- 72 or abandoned if no electricity is generated by the system
- 73 for a period of 12 continuous months.
- 74 [g] vii. If licensed by the Public Service Commission, [A] a
- 75 system designed to produce more than 2 megawatts (AC)
- 76 [may be allowed as a public utility use under Section
- 77 3.6.7.E] is not restricted by Chapter 59.

78 * * *

79 **Sec. 2. DIVISION 59-7.3 is amended as follows:**

80 **Division 7.3. Regulatory Approvals**

81 * * *

82 **Section 7.3.4. Site Plan**

83 * * *

84 **E. Necessary Findings**

85 * * *

- 86 5. For property zoned AR proposed for use as a Solar Collection system:
- 87 a. grading and any soil removal will be minimized; and
- 88 b. the site must be designated pollinator-friendly under the
- 89 Maryland Pollinator-Friendly Designation Program, or any land
- 90 on which the solar generation facility is located that is not
- 91 designated as pollinator friendly must be planted, managed, and
- 92 maintained in a manner suitable for grazing farm animals.

93 * * *

94 **Sec. 3. Reporting.** On April 1, 2021 and annually thereafter, the

95 Department of Permitting Services must report to the County Council the total

96 acreage of Solar Collection System permits in the Agricultural Reserve approved

97 by the Department since the effective date of ZTA 20-01.

98 **Sec. 4. Effective date.** This ordinance becomes effective 20 days after the

99 date of Council adoption.

100

101 This is a correct copy of Council action.

102

103 _____

104 Selena Mendy Singleton, Esq.

105 Clerk of the Council