

Zoning Text Amendment No.: 20-01
Concerning: Solar Collection System –
AR Zone Standards
Draft No. & Date: 6 – 2/23/21
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 3.1	“Use Table”
Section 3.1.6	“Use Table”
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 of 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 Classification I soils, the Council prohibited facilities on 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:

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

2 **Division 3.1. Use Table**

3 * * *

4 **Section 3.1.6. Use Table**

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

7

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

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

10 * * *

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

12 **Division 3.7. Miscellaneous Uses**

13 * * *

14 **Section 3.7.2. Solar Collection System**

15 **A. Defined**

16 Solar Collection System means an arrangement of panels or other solar
 17 energy devices that provide for the collection, inversion, storage, and
 18 distribution of solar energy for electricity generation, space heating, space
 19 cooling, or water heating. A Solar Collection System includes freestanding
 20 or mounted devices. Solar Collection Systems are facilities that comply
 21 with the requirements of the State’s net metering program under Maryland
 22 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
25 Collection Systems larger than 2 megawatts (AC) are prohibited in the
26 Agricultural 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]]:

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

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

37 [c][[b. Removal of trees or landscaping otherwise required or attached
38 as a condition of approval of any plan, application, or permit for
39 the installation or operation of a Solar Collection System is
40 prohibited.]]

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

44 [e. A freestanding Solar Collection System is allowed only as an
45 accessory use where the system produces a maximum of 120%
46 of on-site energy consumption and must satisfy the same
47 development standards as an accessory structure.]

48 [[c. Except as allowed under Subsection 59.7.3.4.E.5.b, the site
49 must be designated pollinator-friendly under the Maryland
50 Pollinator-Friendly Designation Program.]]

- 51 [[d. Cumulatively, on all AR zoned land, a maximum of 1,800 acres
52 of land may be covered by solar panels.]]
53 a Solar Collection System is allowed where the system
54 produces up to 200% of annual baseline energy use on-site and
55 must satisfy the following requirements:
- 56 i. Solar panels may encroach into a setback as allowed
57 under Section 4.1.7.B.5.c and may exceed the maximum
58 height as allowed under Section 4.1.7.C.3.b.
 - 59 ii. Written authorization from the local utility company
60 must be provided for a Solar Collection System that will
61 be connected to the utility grid.
 - 62 iii. Removal of trees or landscaping otherwise required or
63 attached as a condition of approval of any plan,
64 application, or permit for the installation or operation of a
65 Solar Collection System is prohibited.

66 [[2.]]b. In Rural Residential, Residential, Commercial/Residential,
67 Employment, and Industrial zones, where a Solar Collection System is
68 allowed as a limited use, [it must either satisfy Subsection
69 59.3.7.2.B.1.a through Subsection 59.3.7.2.B.1.e or] it must satisfy the
70 following standards in either [[subsection a or b]] Subsection
71 59.3.7.2.B.2.a or 59.3.7.2.B.2.b:

- 72 [[a. The Solar Collection System must be an accessory use as
73 follows:]]
- 74 i. **Systems producing 120% or less of on-site energy use**
75 The Solar Collection System may be an accessory use
76 under the following standards:

77 (a) the system produces a maximum of 120% of on-site
78 energy ~~[[consumption]]~~ use;

79 ~~[[ii.]](b)~~ encroachments allowed under Section 4.1.7.B.5.C;
80 and

81 ~~[[iii.]](c)~~ a maximum height allowed under 4.1.7.C.3.b.

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

84 The Solar Collection System must satisfy the following standards:

85 [a] ~~[[i.]](a)~~ Site plan approval is required under Section 7.3.4.

86 [b] ~~[[ii.]](b)~~ The site must be a minimum of 3 acres in size.

87 [c] ~~[[iii.]](c)~~ The system may produce a maximum of 2
88 megawatts (AC).

89 [d] ~~[[iv.]](d)~~ All structures must be:

90 [i] ~~[[A.]](1)~~ 20 feet in height or less;

91 [ii] ~~[[B.]](2)~~ located at least 50 feet from any property
92 line; and

93 [iii] ~~[[C.]](3)~~ surrounded by a minimum 6-foot-tall fence.

94 [e] ~~[[v.]](e)~~ If a structure for a Solar Collection System is
95 located in an area visible to an abutting residential use or
96 a road:

97 [i] ~~[[A.]](1)~~ only solar thermal or photovoltaic panels or
98 shingles may be used;

99 [ii] ~~[[B.]](2)~~ the panels or shingles must use textured
100 glass or an anti-reflective coating; and

101 [iii] ~~[[C.]](3)~~ screening that satisfies Section 59.6.5.3.C.8
102 (Option A) on the sides of the facility visible from
103 the residential use or road is required.

104 [f] ~~[[vi.]]~~ (f) The Solar Collection System must be removed within 12
105 months of the date when the use is discontinued or
106 abandoned by the system owner or operator, or upon
107 termination of the useful life of the system. The Solar
108 Collection System will be presumed to be discontinued
109 or abandoned if no electricity is generated by the system
110 for a period of 12 continuous months.

111 [g] ~~[[vii. If licensed by the Public Service Commission, [A] a~~
112 system designed to produce more than 2 megawatts (AC)
113 [may be allowed as a public utility use under Section
114 3.6.7.E] is not restricted by Chapter 59.]]

115 2. A Solar Collection System may be allowed as a Conditional Use in
116 the AR zone if it exceeds a facility rated at more than 200% of on-site
117 energy use and is less than 2 megawatts (AC). Where a Solar
118 Collection System is allowed as a conditional use in the AR zone, it
119 may be permitted by the Hearing Examiner under Section 7.3.1.
120 Conditional Use, and the following standards:

121 a. The Solar Collection System is prohibited:

122 i. on soils classified by the United States Department of
123 Agriculture as either Soil Classification Category I or
124 Category II;

125 ii. in a stream buffer;

126 iii. on wetlands; or

127 iv. on slopes equal to or greater than 15%;

128 b. Scrapping topsoil from the site is prohibited.

129 c. Grading and any soil removal is minimized

- 156 j. Except for pad areas for transformers and electrical equipment,
- 157 the use of concrete is prohibited.
- 158 k. Screening that satisfies Section 59.6.5.3.C.8 (Option A) on the
- 159 sides of the facility within 200 feet of any neighboring house is
- 160 required; however, a fence may not be required or prohibited.
- 161 l. The Hearing Examiner’s decision must consider the
- 162 recommendations of the Office of Agriculture.
- 163 m. The applicant must include a calculation of the total acreage of
- 164 used for the Solar Collection System including any required
- 165 setbacks and all acreage within the fenced or shrubbed area.
- 166 n. The land area approved for the Conditional Use, in addition to
- 167 all other Conditional Use approvals for solar facilities in the AR
- 168 zone , will not exceed 1,800 acres of land.

169 * * *

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

171 **Division 7.3. Regulatory Approvals**

172 * * *

173 **Section 7.3.4. Site Plan**

174 * * *

175 **E. Necessary Findings**

176 * * *

- 177 [[5. For property zoned AR proposed for use as a Solar Collection system:
- 178 a. grading and any soil removal will be minimized; and
- 179 b. the site must be designated pollinator-friendly under the
- 180 Maryland Pollinator-Friendly Designation Program, or any land
- 181 on which the solar generation facility is located that is not

182 designated as pollinator friendly must be planted, managed, and
183 maintained in a manner suitable for grazing farm animals.]]

184 * * *

185 **Sec. 3. Reporting.**

186 The Planning Department must prepare an impact report no later than December
187 31, 2023, with input from the Office of Agriculture as well as community
188 stakeholders. The report must cover topics such as:

- 189 . Assessment of different agricultural practices on land beneath panels
- 190 . Impact from installations on forests, streams, wetlands
- 191 . Impact on diverse communities ability to access farming or remain in
192 farming
- 193 . How the availability of solar has measurably impacted agriculture
194 generally, including any measurable impacts on operations of lease or
195 tenant farmers, including land prices
- 196 . Any measurable impact on “local food” production
- 197 . Any measurable impacts of solar provision on carbon emissions in
198 Montgomery County and the electricity grid generally

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

202

203 **Sec. 4. Effective date.** This ordinance becomes effective 20 days after the date of
204 Council adoption.

205

206 This is a correct copy of Council action.

207

208 _____

209 Selena Mendy Singleton, Esq.
210 Clerk of the Council