



Committee: GO
Staff: Livhu Ndou, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #solar collection, #solar panels, #AR zone, #OZAH fees

AGENDA ITEM #4E
July 27, 2021
Action

SUBJECT

Additions to the Office of Zoning and Administrative Hearings' Comprehensive Fee Schedule

EXPECTED ATTENDEES

Lynn Robeson-Hannan, Director/Hearing Examiner, Office of Zoning and Administrative Hearings (OZAH)

Robert Kronenberg, Deputy Director, Planning Department

Christina Sorrento, Chief, Intake and Regulatory Coordination (IRC) Division, Planning Department

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The Government Operations and Fiscal Policy (GO) Committee unanimously (3-0) recommended approval of this resolution.

DESCRIPTION/ISSUE

- The District Council adopted ZTA 20-01 on February 23, 2021. ZTA 20-01 allows Solar Collection Systems as a conditional use in the AR Zone.
- ZTA 20-01 became effective on March 15, 2021.
- The proposed amended fee schedule adds an application fee for Solar Collection Systems.

SUMMARY OF KEY DISCUSSION POINTS

The proposed fee for Solar Collection Systems is \$8,200. In consultation with the Planning Department, which receives 25% of the fee, the fee proposed is modeled after the existing application fee for "Agricultural Processing".

This report contains:

	<u>Pages</u>
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ZTA 20-01	© 12-23

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Action

MEMORANDUM

July 22, 2021

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Additions to the Office of Zoning and Administrative Hearings' Comprehensive Fee Schedule

PURPOSE: Action

Expected Attendees

Lynn Robeson-Hannan, Director/Hearing Examiner, Office of Zoning and Administrative Hearings (OZAH)
Robert Kronenberg, Deputy Director, Planning Department
Christina Sorrento, Chief, Intake and Regulatory Coordination (IRC) Division, Planning Department

Introduction

The Office of Zoning and Administrative Hearings (OZAH) proposes an amendment to its fee schedule. The proposed amended fee schedule adds an application fee for Solar Collection Systems.

Background

Zoning Text Amendment (ZTA) 20-01, Solar Collection System – AR Zone Standards, was adopted by the County Council on February 23, 2021 and became effective on March 15, 2021. The ordinance requires 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 committee¹ 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. ZTA 20-01 is attached to this packet for reference.

With conditional use approval now required, the OZAH fee schedule must be amended to include an application fee for Solar Collection Systems. OZAH worked with the Planning Department, which receives 25% of the fee, to come up with a reasonable number. The proposed fee is the same as the existing application fee for “Agricultural Processing”, at \$8,200. This flat fee reflects the hourly rates of reviewers for the minimum time necessary to review the application.

Public Hearing

A public hearing was held on April 6, 2021. There were no speakers at the public hearing.

Discussion

“Agricultural Processing” is defined in the Zoning Ordinance, Sec. 3.2.2., as “any operation that transforms, packages, sorts, or grades farm products into goods that are used for intermediate or final consumption, including goods for non-food use, such as the products of forestry. Agricultural Processing includes milk plant, grain elevator, and mulch or compost production and manufacturing, but does not include Slaughterhouse.” Under Section 3.7.2., a “Solar Collection System” is defined as “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.”

While these uses do not seem similar on their face, OZAH and the Planning Department determined that the fee for Agricultural Processing is an appropriate one because Solar Collection Systems will require similar review time. Specifically, sites for solar farms are similarly large. And since the most contested question will likely be screening and buffering around the property’s perimeter, the sites for Solar Collection Systems will be at least as large as those for Agricultural Processing.

GO Committee

The Government Operations and Fiscal Policy (GO) Committee reviewed this addition on July 19, 2021. During the Committee discussion, Planning noted that the proposed fee is on the low end given the costs for review by both OZAH and the Planning Department. OZAH noted that the Council could subsidize the fee if there were concerns that it would discourage applicants, but that such a policy could raise questions regarding why other uses do not get a similar subsidy.

The GO Committee unanimously (3-0) recommended approval of this resolution.

¹ A joint committee worksession was held by the Planning, Housing, and Economic Development (PHED) Committee and the Transportation and Environment (T&E) Committee.

This packet contains:

OZAH Transmittal Memo

Resolution

Proposed Fee Schedule

ZTA 20-01

© 1

© 2-3

© 4-11


© 12-23



MONTGOMERY COUNTY, MARYLAND

March 4, 2021

TO: Pam Dunn, Senior Legislative Analyst
Livhu Ndou, Legislative Analyst

FROM: Lynn Robeson Hannan 
Director, OZAH

RE: Addition to OZAHs Land Use Fee Schedule for Solar Collection Systems

Attached please find a proposed amended fee schedule adding an application fee for Solar Collection Systems. As you know, the District Council recently adopted ZTA 20-01, which allows Solar Collection Systems as a conditional use in the AR Zone. ZTA 20-01 becomes effective on March 15, 2021.

In consultation with the Planning Department (which receives 25% of the fee), the fee proposed is modeled after the existing application fee for “Agricultural Processing”.

As you know, amendments to OZAH’s fees require a public hearing after “reasonable notice” before the County Council. *Montgomery County Zoning Ordinance*, §59.7.6.5.A.

Please let me know if you need anything additional for the District Council’s review.

cc: Selena Singleton, Clerk
Susan Mabie, Administrative Specialist

Resolution No.: _____
Introduced: March 16, 2021
Adopted: _____

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

By: Council President at the Request of the Hearing Examiner

SUBJECT: Additions to the Office of Zoning and Administrative Hearings' Comprehensive Fee Schedule

Background

1. The District Council approved comprehensive revisions to the fee schedule for the Office of Zoning and Administrative Hearings (OZAH) on July 15, 2014 to implement the 2014 Zoning Ordinance (Zoning Text Amendment 13-04), which established new zones and new conditional uses (formerly “special exceptions”).
2. Section 59.6.5.A.1 of the 2014 Zoning Ordinance authorizes the District Council to establish filing fees, following a public hearing on reasonable notice, for matters to be decided by the Hearing Examiner or the District Council.
3. On February 23, 2021, the District Council adopted Ordinance No. 19-14 (ZTA 20-01) allowing certain Solar Collection Systems as a new conditional use. This resolution establishes the conditional use application fee for a Solar Collection System.
4. The Council held a public hearing on this resolution on April 6, 2021.
5. The Government Operations and Fiscal Policy (GO) Committee unanimously recommended approval of this resolution on July 19, 2021.
6. The District Council finds that the attached Fee Schedule for the Office of Zoning and Administrative hearings is consistent with the Montgomery County Code.

ACTION

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

The attached Comprehensive Fee Schedule is revised, effective July 27, 2021, for filing with the Office of Zoning and Administrative Hearings of the listed applications for Local Map Amendments, Development Plan Amendments, Schematic Development Plan Amendments, Floating Zone Plan Amendments, and Conditional Uses and their amendments.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council

**Local Map Amendment, Development Plan Amendment,
Schematic Development Plan Amendment, and Floating Zone
Plan Amendment Fee Schedule**

Zone Classification	Basic Fee for Designated Acreage or Less	Additional Fee Per Acre or Portion of Acre Above Designated Acreage
Residential, One-Family Detached Zones		
<i>AR, Agricultural Reserve (25 acres)</i>	\$790	\$190
<i>R, Rural (5 acres)</i>	790	190
<i>RC, Rural Cluster</i>	870	240
<i>RNC, Rural Neighborhood Cluster (5 acres)</i>	1,080	240
<i>Low-density Resid. & TDR (1 acre)</i>	2,710	490
- <i>RE-2, RE-2C and RE-1</i>	2,700	490
- <i>R-200, Residential--200</i>	4,230	490
<i>Medium-density Resid. & TDR (1 acre)</i>		
- <i>R-90, R-60 and R-40</i>	5,420	490
<i>Residential Detached Floating (RDF)</i>	7,150	620
Residential, One-Family Attached Zones		
<i>TLD, Townhouse Low Density (1 acre)</i>	6,500	490
<i>TMD, Townhouse Medium Density (1 acre)</i>	6,000	450
<i>THD, Townhouse High Density (1 acre)</i>	6,000	450
Residential, Multi-Family Zones		
<i>R-30, R-20, R-10, R-H</i>	6,000	500
<i>Apartment Floating (AF)</i>		
Commercial/Residential Zones		
<i>Commercial Residential Neighborhood (CRN) (1 ac.)</i>	7,800	620
<i>Commercial Residential Town (CRT) (1 acre)</i>	7,800	700
<i>Commercial Residential (CR) (1 acre)</i>	7,800	700
Employment Zones		
<i>General Retail (GR) (1 acre)</i>	7,800	700
<i>Neighborhood Retail (NR) (1 acre)</i>	7,800	700
<i>Life Sciences Center (LSC)</i>	19,670	950
<i>Employment Office (EO)</i>	7,800	700
Industrial Zones		
<i>Light Industrial (IL) (2 acres)</i>	9,540	840
<i>Moderate Industrial (IM) (2 acre)</i>	7,150	650

Zone Classification	Basic Fee for Designated Acreage or Less	Additional Fee Per Acre or Portion of Acre Above Designated Acreage
<i>Heavy Industrial (IH) (1 acre)</i>	\$7,800	\$840
<u>Residential Floating Zones</u>		
<i>Residential Detached Floating Zone (RDF) (2 acres)</i>	11,920	700
<i>Townhouse Floating Zone (TFZ) (1 acre)</i>	6,500	490
<i>Apartment Floating (AF) (2 acres)</i>	10,840	760
<u>Commercial/Residential Floating Zones</u>		
<i>Commercial Residential Neighborhood Floating (CRNF) (1 acre)</i>	7,800	620
<i>Commercial Residential Town Floating (CRTF) (1 acre)</i>	7,800	700
<i>Commercial Residential Floating (CRF) (1 acre)</i>	7,800	700
<u>Employment Floating Zones</u>		
<i>General Retail Floating (GRF) (1 acre)</i>	7,800	700
<i>Neighborhood Retail Floating (NRF)</i>	7,800	700
<i>Employment Office Floating (EOFF)</i>	19,670	950
<i>Life Sciences Center Floating (LSCF)</i>	19,670	950
<u>Industrial Floating Zones</u>		
<i>Light Industrial Floating (ILF) (2 acres)</i>	9,540	840
<i>Moderate Industrial Floating (IMF) (2 acre)</i>	7,150	650
<u>Amendment to Schematic Development Plan (SDPA) approved before October 30, 2014</u>	3,800	
<u>Amendment to Development Plan (DPA) Approved before October 30, 2014</u>		
– <i>Initial Request</i>	4,120	
– <i>Supplemental fee if public hearing is conducted</i>	4,170	
<u>Modifications to SDPAs and DPAs approved before October 30, 2014</u>	2,090	
<u>Major Amendments to Floating Zone Plans</u>	8,290	
<u>Fees for Application Signs</u>	200	
– <i>Refunds for signs returned in usable condition</i>	100	

Conditional Use Fee Schedule

Conditional Use	Filing Fee
<i>Agricultural Auction Facility (§3.2.1)</i>	\$13,110
<i>Agricultural Processing; includes milk plant, grain elevator, mulch and compost production, and agric. mfr. (§3.2.2)</i>	8,200
<i>Equestrian Facility (§3.2.4)</i>	
<i>– In a Residential Zone</i>	820
<i>– In An Agricultural Zone</i>	4,920
<i>Farm Supply, Machinery Sales, Storage, and Service (§3.2.5)</i>	4,920
<i>Nursery (Retail) (§3.2.7.A)</i>	8,200
<i>Nursery (Wholesale)(§3.2.7.B)</i>	8,200
<i>Slaughterhouse (§3.2.8)</i>	9,830
<i>Winery (§3.2.10)</i>	8,200
<i>Farm Airstrip, Helistop (§3.2.11.A)</i>	1,640
<i>Townhouse Living (§3.3.1.D.2.b)</i> or <i>Independent Living Facility for Seniors or Persons with Disabilities (§3.3.2.C)</i>	
<i>– Non-Profit --per unit</i>	160
<i>--minimum</i>	1,310
<i>--maximum</i>	9,830
<i>– Commercial—per unit</i>	160
<i>--minimum</i>	9,830
<i>--maximum</i>	24,620
<i>Personal Living Quarters (over 50 individual living units) (§3.3.2.D)</i>	4,100
<i>Residential Care Facility (9-16 persons)(§3.3.2.E)</i>	
<i>- Non-Profit</i>	1,310
<i>- For-Profit</i>	5,000

Conditional Use	Filing Fee
<i>Residential Care Facility (over 16 persons) (§3.3.2.E)</i>	
– 17-40 persons	
– Non-Profit	\$4,100
– For-Profit	16,390
– Over 40 persons	
– Non-Profit	16,390
– For-Profit	24,620
<i>Attached Accessory Apartment (§3.3.3.B)</i>	300
<i>Detached Accessory Apartment (§3.3.3.C)</i>	300
<i>Home Health Practitioner (Major Impact) (3.3.3.G)</i>	9,830
<i>Home Occupation (Major)(3.3.3.H)</i>	660
<i>Ambulance, Rescue Squad (Private) (§3.4.1)</i>	2,460
<i>Charitable, Philanthropic Institution (§3.4.2)</i>	8,190
<i>Group Day Care (9-12 persons) (includes children, the elderly, and persons with disabilities) (§3.4.4.D)</i>	490
<i>Day Care Center (13-30 persons) (Day care includes children under 17, elderly persons, and persons with disabilities) §3.4.4.</i>	1,190
<i>Day Care Center (over 30 persons)</i>	
– Non-Profit	4,100
– For Profit	4,920
<i>Educational Institution, Private (§3.4.5)</i>	
– Up to 10 students:	
– 11 to 40 students:	1,640
– Over 40 students:	4,100
	8,200
<i>Hospital (§3.4.6)</i>	18,030
<i>Private Club, Service Organization (§3.4.8)</i>	8,200
<i>Swimming Pool (Community) (§3.4.11)</i>	1,640

Conditional Use	Filing Fee
<i>Animal Boarding and Care (§3.5.1.B.1)</i>	
– Up to 10 animals	\$2,460
– Over 10 animals	4,100
<i>Veterinary Office/Hospital (§3.5.1.B.1)</i>	9,830
<i>Cable Communications System (§3.5.2.A)</i>	24,580
<i>Media Broadcast Tower (§3.5.2.B)</i>	24,620
<i>Telecommunications Tower (§3.5.2.C)</i> <i>Per tower or group of applications</i> <i>consolidated for public hearing</i>	16,390
<i>Country Inn (§3.5.3.A)</i>	10,000
<i>Cemetery (§3.5.4.A)</i>	16,390
<i>Crematory (§3.5.4.B.1)</i>	12,000
<i>Funeral Home, Undertaker (excludes</i> <i>crematory) (§3.5.4.C)</i>	9,830
<i>Landscape Contractor (§3.5.5)</i>	8,200
<i>Bed and Breakfast (§3.5.6.B)</i>	660
<i>Clinic (up to 4 medical practitioners)</i> <i>providing outpatient care (§3.5.7.A)</i>	9,830
<i>Clinic (more than 4 medical practitioners)</i> <i>§(3.5.7.B)</i>	9,830
<i>Office (§3.5.8.B)</i>	9,830
<i>Surface Parking for Commercial Uses in an</i> <i>Historic District (§3.5.9.D)</i>	
– Per space	660
– Maximum	1,310
<i>Campground (§3.5.10.B)</i>	16,390
<i>Conference Center (§3.5.10.C)</i>	24,580
<i>Golf Course, Country Club</i>	16,390

Conditional Use	Filing Fee
<i>Recreation and Entertainment Facility, Indoor (Capacity up to 1,000 persons)(§3.5.10.F): includes sport facilities, theaters, and dance clubs, but excludes indoor shooting ranges and health clubs and facilities.</i>	\$16,390
<i>Recreation and Entertainment Facility, Outdoor (Capacity up to 1,000 persons)(§3.5.10.G): includes driving range, group picnic, catering and recreation facilities; excludes indoor and shooting ranges and country club/golf courses</i>	16,390
<i>Recreation and Entertainment Facility, Major (Capacity over 1,000 persons)</i>	18,030
<i>Shooting Range (Indoor) (3.5.10.I)</i>	8,200
<i>Shooting Range (Outdoor) (§3.5.10.J)</i>	8,200
<i>Combination Retail</i>	
<i>– Per square foot</i>	9.80
<i>Retail/Service Establishment (120,001 square feet and over) §3.5.11.B)</i>	
<i>– Per Square Foot</i>	9.80
<i>Rural Antique Shop (§3.5.11.C)</i>	2,460
<i>Rural Country Market (§3.5.11.D)</i>	820
<i>Light Vehicle Sales and Rental (Outdoor) (§3.5.12.C)</i>	9,830
<i>Automobile Storage Lot (§3.5.13.A)</i>	4,920
<i>Car Wash (§3.5.13.B)</i>	9,830
<i>Filling Station (§3.5.13.C)</i>	16,390
<i>Repair (Major) (§3.5.13.D): Includes general vehicle repair and service, such as engine and transmission replacement or rebuild, body, and paint shops; does not include repair or services for commercial vehicles or heavy equipment</i>	9,830
<i>Repair (Minor) (§3.5.13.F):</i>	9,830

Conditional Use	Filing Fee
<i>Amateur Radio Facility (over 65 feet in height) (§3.5.14.B): any structure used for personal, non-commercial radio communications licensed by the Federal Communications Commission over 65 feet in height.</i>	\$20,320
<i>Drive-Thru (§3.5.14.E)</i>	16,390
<i>Helistop (§3.5.14.F): a designated area, either at ground level or elevated on a structure, used for the landing and takeoff of helicopters. Helistop includes a small fuel tank for a ground level facility and minor support facilities such as a small sheltered waiting or loading area, a small administrative office, and one permanent tie-down space. Helistop does not include major support facilities</i>	4,920
<i>Mining, Excavation (§3.6.5)</i>	16,390
<i>Helipad, Heliport (§3.6.6.B.2): A designated area that is used on a regular basis for the landing and take-off of rotorcraft. It includes support facilities such as refueling services, maintenance and cargo loading areas, tie-downs and hangars, administration offices and other appropriate terminal facilities.</i>	18,030
<i>Pipeline (above ground) (§3.6.7.C)</i>	24,620
<i>Public Utility Structure (§3.6.7.E)</i>	20,290
<i>Hazardous Material Storage (§3.6.8.B)</i>	16,390
<i>Self-Storage (§3.6.8.D)</i>	8,190
<i>Landfill, Incinerator, or Transfer Station (§3.6.9.A)</i>	16,390
<i>Solar Collection System (§3.7.2.B.2)</i>	8,200
<p><i>Conditional Use Amendments, Transfers and Extensions</i></p> <ul style="list-style-type: none"> <li data-bbox="240 1686 678 1717">– <i>Transfers or Extensions of Time</i> <li data-bbox="240 1759 521 1791">– <i>Minor Amendments</i> <ul style="list-style-type: none"> <li data-bbox="305 1822 683 1854">○ <i>Without a Public Hearing</i> 	<p style="text-align: right;">240</p> <p style="text-align: right;">10% of the prevailing fee with a minimum of \$540</p>

Conditional Use	Filing Fee
<ul style="list-style-type: none"> - <i>Major Amendments</i> <ul style="list-style-type: none"> o <i>Without new construction</i> o <i>With new construction</i> 	<p style="text-align: center;">25% of the prevailing application fee for the conditional use</p> <p style="text-align: center;">50% of the prevailing application Fee for the conditional use</p>
<p><i>Signs</i></p> <ul style="list-style-type: none"> - <i>Deposit</i> - <i>Refund upon return of sign</i> 	<p style="text-align: right;">\$200</p> <p style="text-align: right;">100</p>

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**

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:

<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:

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

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	<u>L/C</u>	L	L	L	
* * *						

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

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 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.]]

194 * * *

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.

211

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

214

215 This is a correct copy of Council action.

216

217

218 Selena Mendy Singleton, Esq.
219 Clerk of the Council