



Zoning Text Amendment (ZTA) No. 18-08, Site Plan Amendment – Solar Collection Systems

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Description

Zoning Text Amendment (ZTA) 18-08 would allow solar collection systems without an amendment to a previously-approved site plan under certain circumstances; and generally amend the provisions for a permit that is exempt from conformance to an approved site plan. Under ZTA 18-08, a solar collection system on any pre-existing impervious surface would be allowed without amending a previously-approved site plan. In addition, as an accessory use, solar collection systems may also be allowed on sites with non-residential uses without a site plan amendment. In such circumstances, any minimum open space requirements must be retained, excluding the area used for the solar collection system.

Summary

Staff believes that there is merit to the goal of further encouraging commercial property owners to adopt solar by reducing potential delays and lowering the costs. However, we are concerned that a transparent means for implementing the applicable limited use provisions (as an accessory use or principle use) would be lost by eliminating the site plan amendment process when installing a Solar Collection System on a property encumbered by a certified site plan. Staff believes that a better approach could be for an applicant to apply for a minor site plan amendment. Under this process, a Solar Collection System may be approved by the Planning Director without a public hearing if no objection to the application is received within 15 days after the application notice is sent. In any case, the process is less cumbersome than the major amendment process.

Background/Analysis

On May 15, 2018 (effective on June 4, 2018), the Council passed Zoning Text Amendment No. 18-01 to expand the use of community solar in Rural Residential, Residential, Commercial/Residential, Employment, and Industrial zones. ZTA 18-08 was introduced as a follow-up to ZTA 18-01 to further encourage commercial property owners to adopt solar by reducing potential delays and lowering the costs. ZTA 18-08 attempts to accomplish these goals by exempting accessory use solar projects from the costly and lengthy site plan process under certain circumstances. According to the sponsor, often, the cost of the site plan process can outweigh the benefits of adding solar panels to a property. This ZTA only applies to properties zoned for commercial, employment, industrial and mixed-use without residential.

Provisions as Adopted Under ZTA 18-01

As defined under Section 59.3.7.2.A, 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.

A Solar Collection System is allowed as a limited use in all zones and must satisfy a number of standards as modified in previously adopted ZTA 18-01.

ZTA 18-01 continued the limited use provision requiring that a Solar Collection System located in the Agricultural Reserve zone be an accessory use but did not require a Solar Collection System proposed in other zones to be an accessory use. In Rural Residential, Residential, Commercial/Residential, Employment and Industrial zones, where a Solar Collection System is allowed as a limited use, the ZTA allowed the use as an accessory use or as a principle use. As an accessory use, the applicable standards as established under the Agricultural Reserve zone apply. As a principle use, the following limited use standards apply:

- Site plan approval is required
- The site must be a minimum of 3 acres in size
- The system may produce a maximum of 2 megawatts (AC)
- All structures must be: 20 feet in height or less; at least 50 feet from any property line; and surrounded by a minimum 6-foot-tall fence.
- If located in an area visible to an abutting residential use or a road: only solar thermal or photovoltaic panels or shingles may be used; the panels or shingles must use textured glass or an anti-reflective coating; and screening that satisfies Section 59.6.5.3.C.8 (Option A) on the sides of the facility visible from the residential use or road is required (minimum depth of screening must be between 30 and 50 feet and must include a 6 foot in height fence or wall).
- The Solar Collection System must be removed within 12 months of the date when the use is discontinued or abandoned by the system owner or operator, or upon termination of the useful life of the system.
- A system designed to produce more than 2 megawatts (AC) may be allowed as a public utility use. *(It should be noted that a public utility structure requires approval through the conditional use process.)*

Proposed Provisions of ZTA 18-08

As proposed, ZTA 18-08 modifies the provisions for Site Plan Subsequent Action (*Section 7.3.4.G.2.- Permits Exempt from Conformance to Approved Site Plans*) for a Solar Collection System as discussed below.

Currently, under Section 7.3.4.G.2., on any property covered by an approved site plan, DPS may issue a sediment control permit or building permit without finding of conformance to the approved site plan to: construct a handicapped accessibility improvement; construct a bikeshare facility; install outdoor

lighting with full cut-off fixtures; repair an existing structure to any extent allowed by the certified site plan; or replace an existing structure to no more than the same footprint and height approved.

ZTA 18-08 proposes to include two additional provisions to this section including:

- The installation of a solar collection system over any pre-existing impervious surface, including structures; and
- The installation of an accessory solar collection system in any Commercial/Residential, Employment, or Industrial zone, if the minimum open space area required by the zone is satisfied after the solar collection system is excluded from the open space area and the site includes only non-residential uses.

Staff believes that there is merit to the goal of further encouraging commercial property owners to adopt solar by reducing potential delays and lowering the costs. One way to accomplish this objective is by exempting from the site plan amendment process the installation of a Solar Collection System proposed over any pre-existing impervious surface or the installation of an accessory solar collection system in non-residential zones while continuing to satisfy the open space requirements of the zone. However, staff believes that all other applicable provisions for establishing a Solar Collection System as a limited use should still apply, (***as a principle use***: maximum height restrictions (20 feet), setback requirements from any property line (50 feet minimum), a fencing requirement (6-feet minimum height), additional screening and anti-reflective material measures for Solar Collection Systems located in an area visible to an abutting residential use or road; ***as an accessory use***: authorization from local utility for connection to the utility grid, prohibition of the removal of trees or landscaping otherwise required or attached as a condition of approval of any plan, application, or permit; solar panels may encroach into a setback as allowed under Section 4.1.7.B.5.c and may exceed the maximum height as allowed under Section 4.1.7.C.3.b; and a freestanding Solar Collection System is allowed only as an accessory use where the system produces a maximum of 120% of on-site energy consumption). ***Therefore, we are concerned that a transparent means for implementing these provisions would be lost by eliminating the site plan amendment process when installing a Solar Collection System on a property encumbered by a certified site plan. Staff believes that a better approach for shortening the process could be use of the minor site plan amendment procedure. Under this process, a Solar Collection System may be approved by the Planning Director without a public hearing if no objection to the application is received within 15 days after the application notice is sent. In any case, the process is less cumbersome than the major amendment process.***

Attachments

1. ZTA No. 18-08 as introduced

ATTACHMENT 1

Zoning Text Amendment No.: 18-08
Concerning: Site Plan Amendment –
Solar Collection Systems
Draft No. & Date: 4 – 7/10/18
Introduced: July 17, 2018
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**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 Sponsor: Councilmember Hucker

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow solar collection systems without an amendment to a previously-approved site plan under certain circumstances; and
- generally amend the provisions for a permit that is exempt from conformance to an approved site plan

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

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 59-7.3 is amended as follows:**

2 **Division 7.3. Regulatory Approvals**

3 * * *

4 **Section 7.3.4. Site Plan**

5 * * *

6 **G. Subsequent Actions**

7 1. Conforming Permits

8 For any development requiring site plan approval, DPS must not issue
9 a sediment control permit, building permit, or use-and-occupancy
10 permit for any building, structure, or improvement unless:

- 11 a. the Planning Board has approved a site plan;
- 12 b. a bond has been approved under Section 7.3.4.K.3; and
- 13 c. such building, structure, or improvement satisfies the certified
14 site plan and conditions of approval.

15 2. Permits Exempt from Conformance to Approved Site Plans

- 16 a. On any property covered by an approved site plan, DPS may
17 issue a sediment control permit or building permit without
18 finding of conformance to the approved site plan to:
 - 19 i. construct a handicapped accessibility improvement;
 - 20 ii. construct a bikeshare facility;
 - 21 iii. install outdoor lighting with full cut-off fixtures;
 - 22 iv. repair an existing structure to any extent allowed by the
23 certified site plan; [or]
 - 24 v. replace an existing structure to no more than the same
25 footprint and height approved[.];
 - 26 vi. install a solar collection system over any pre-existing
27 impervious surface, including structures; or

28 vii. install an accessory solar collection system in any
29 Commercial/Residential, Employment, or Industrial
30 zone, if the minimum open space area required by the
31 zone is satisfied after the solar collection system is
32 excluded from the open space area and the site includes
33 only non-residential uses.

34 * * *

35 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the
36 date of Council adoption.

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38 This is a correct copy of Council action.

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41 Megan Davis Limarzi, Esq.
42 Clerk of the Council