

Stop the Proposal for an Effective Ban on Community Solar in Montgomery County



A so-called “Conditional Use” idea for Community Solar in Montgomery County Is not a compromise - It’s a DEAD END for Community Solar

A memo from the MoCo Sierra Club and the Chesapeake Climate Action Network

Summary: Despite more than a year of careful analysis, compromise, and inclusion of strong environmental and agricultural protections, opponents of limited Community Solar in Montgomery County have now begun to push the idea of “Conditional Use” permitting. This idea is not a compromise, and it is not a reasonable policy solution in an era of rapid climate change. It is in reality a DEAD END for Community Solar development in Montgomery County, even when that energy is dedicated to low-income household users. Community Solar in the Agricultural Reserve will provide low-cost solar power to over 50,000 families. They’re small projects by solar standards, but too big to be built on any roof or parking lot. Without the ability to have Community Solar on less than 2% of land in the Ag Reserve, County residents won’t have access to the low-cost clean energy that Community Solar provides elsewhere.

As the ZTA is now written, it gives the County’s Planning Board a large set of specific conditions and requirements that must be met to gain project approval. But, as the memo below reveals, so-called “Conditional Use” zoning would effectively stop Community Solar by basically eliminating the County Planning Board, which has supported limited solar development, from the final solar project approval process. “Conditional Use” would subject solar projects to time-consuming and expensive additional requirements and to the SUBJECTIVE will of an unidentified Hearing Examiner who could basically terminate proposed solar projects for almost any reason. In effect, even a limited amount of solar production reserved for low-income households would be banned unless the additional “conditions” are met, and then still be exposed to the uncertain and potentially arbitrary decision of an Examiner whose connection to the County is not specified. "Conditional Use" was formerly called "Special Exception," and that's what it's for - one-off, individual exceptions to zoning rules. No wonder reputable community solar developers in our region - and well as the Sierra Club and the Chesapeake Climate Action Network - have rejected this last-minute attempt to effectively ban Community Solar from our county.

The ZTA sets a high bar for solar projects, including the requirement to include pollinator-friendly planting or other agricultural practices. After a year of shared work, we have a compromise Solar ZTA

20-01 that passed in a joint committee of the Montgomery County Council last week. The full Council must now approve ZTA 20-01 and reject “conditional use” as a DEAD END for solar.

More details:

Conditional Use vs. Limited Use: For the following reasons, we strongly oppose the proposal to require development of solar projects of 2MW (AC) and less in the Agricultural Reserve to be a Conditional Use, rather than a Limited Use under the ZTA as written. Reasons:

- The ZTA as amended already establishes the specific conditions required for solar projects in the Ag Reserve – Previous amendments made by the PHED Committee itself, and the further recommendations agreed upon by the Farm Solar Workgroup (see “Joint Recommendations”) have established a substantial set of environmental and agricultural protections, some of which exceed those applied to other projects in the county. They also establish an intentional positive and interactive relationship between these limited size solar projects and farming. These conditions apply to all proposed projects; Conditional Use review is only appropriate where every proposed action is unique and requires individual assessment, making each project what was formerly designated as a “Special Exception.” We do not believe this to be the intention of the Council, and we do not recommend this.
- The Conditional Use process subjugates the role of the County’s Planning Department – Under the present “Limited Use” approach of the ZTA, the planning Board is required to apply all the conditionality included in the ZTA Site Plan review criteria, as well as all other mandatory criteria (state and county environmental protections, engineering and safety assessments, etc.), and make an objective determination of compliance with those conditions. The Planning Board is also tasked with assessing consistency of all proposals with relevant aspects of the county’s Master Plans.

Under Conditional Use, the Planning Department is still required to carry out its review of project proposals. However, rather than ruling on proposals based on the Site Plan review, the Planning Board’s role is instead to pass on the proposal to a separate Commissioner, requiring the additional time, plan and drawing submissions, and process described below. The approval decision resides with the Commissioner, not the Planning Dept. This approval decision may go beyond the conditions specified in zoning, to subjective factors as perceived by the Commissioner. Approval of a project is open to appeal by any potentially interested party, resulting in further delay and uncertainty. The Planning Dept. does not play a role in these further steps in the process.

- The Master Plan does NOT require projects to be subject to Conditional Use – Despite the assertions of the proponents of Conditional Use that the Master Plan for Preservation of Agriculture and Rural Open Space is law, that zoning must be subjugate to that law, and therefore any use other than agriculture in the AR must be made Conditional, this is not true. The Master Plan is not law (ref.: Maryland Dept. of Planning, “Comprehensive Plans,” <https://planning.maryland.gov/Pages/OurWork/compplans/requirements.aspx>). However, under county code, Site Plan approval by the Planning Dept. requires that a proposed project “*substantially conforms with the recommendations of the applicable Master Plan and any guidelines approved by the Planning Board that implement the applicable plan.*” In fact, in their official assessments of February, 2020, both Planning Board staff and ultimately the Planning Board itself, both found that “*the limited area recommended for inclusion for potential development of Solar Collection Systems in the AR zone (1,800 acres or approximately two*

percent of the total 93,000 acres of the Agricultural Reserve) represents a small enough area of the Agricultural Reserve to not significantly compromise the Master Plan for Preservation of Agricultural and Rural Open Space's designation of farm land and agriculture as the preferred land use in the Agricultural Reserve." The Planning Board also supported conditions to "reduce the impacts of solar collection as a principal use in the AR zone," including "requirements that the ground underneath the panels have pollinator-friendly plants or is suitable for grazing or crop production, that soil and tree removal is minimized, and that a limitation be placed on the amount of agricultural land that can be developed as a Solar Collection System." Notably, all these requirements are now incorporated in ZTA 20.01 as amended.

Notably also, the Planning staff assessment memo specifically refers to ZTA 20.01 as providing "**limited use** standards for solar as a principal use in the Agricultural Reserve zone."

(The proponents of Conditional Use zoning under ZTA 20.01 have publicly stated that they are unhappy that the Planning Board took these positions supporting the ZTA. We therefore note that the proposal to go from Limited Use to Conditional Use is effectively a mechanism to take authority away from the Planning Board, whose opinion those proponents don't support.)

- Conditional Use review adds substantial time, administrative and technical burden, cost, and uncertainty to the project review process - This added burden, and the associated uncertainty (since uncertainty is the bane of successful commerce), have derailed solar projects in other parts of the state. The actual steps in the complex and intensive review and approval process that Community Solar projects already have to go through, and the added burden of the Conditional Use process, are detailed here:

The Site Development Plan (SDP) process, which is required for development of a solar project as Limited Use, is already a 24-30 month permitting process. The SDP process is quite rigorous and stringent requirements are placed on the applicant's project as dictated by the applicable and relevant County codes and guidelines of the various departments that have authority to review. Steps in the Community Solar and SDP development process include:

- MD Public Service Commission (PSC)
 - Submit filing to PSC for project to be placed on the "PSC Approved Project List"
 - The PSC Approved Project List is sent to the Electric Distribution Company (EDC)
 - Once we receive confirmation the project has been approved (deemed eligible to participate in the Community Solar program), we can submit an interconnection application request to EDC
 - Interconnection Application
 - Receive Conditional Approval to interconnect and explanation of required facility upgrades
- Community Solar Energy Generating System (CSEGS) Project Program Application
 - Submit application to receive program capacity allocation to utility
 - Receive confirmation (or waitlist or denial) of program capacity allocation
- Site due diligence tasks/site investigation
 - If receive program capacity, begin studies (Phase I Environmental Assessment, wetlands review, geotechnical characteristics, etc.).
- Discretionary Permitting Process (DPS)
 - MNCPPC – timeframe for [Site Development Plan](#) review and approval depending on site complexity, County and State staff review schedule
 - Mandatory Community Meeting
 - Submit Site Development Plan for review and approval including:
 - NRI/FSD Forest Conservation Plan
 - Landscape Plan
 - Others as applicable to specific site

- [Design Review Committee](#) (must take place w/in 3 weeks of SDP application being accepted)
- Planning Board Hearing scheduled/held (this Hearing must take place within 120 days of intake acceptance)
 - If SDP approved -
 - Resolution is mailed
 - 30-day appeal period
 - Begin Certified Site Plan review & approval process (4-5 month process)
 - Once CSP is signed can apply for construction permits
- Dept. of Permitting Services requirements
 - Stormwater/Erosion & Sediment Control
 - Roadway entrance/Public Right of Way
 - Others as applicable to specific site
 - Approvals dependent of receiving signed CSP
- Construction permit process will follow Certified Site Plan approval and approval of the above DPS plan reviews (allow 2-3 months)
 - Submit application and post related bonds to ensure performance of work is in compliance w/ CSP

Generally, with these steps it will be at least two years before a project gets actually built. Although according to Community Solar program rules projects have to achieve commercial operation within 24 months, many community solar projects have already had to request a year extension (which costs \$100,000) due to delays in permitting.

The same steps would be required under Conditional Use, except that under Limited Use the applicant has certainty before starting the process that the project will likely be approved if application and project design are compliant with all applicable requirements and guidelines as defined by zoning and other requirements.

That is not the case for Conditional Use, where the project will be reviewed on a case-by-case basis only after a significant amount of additional application preparation work has been completed. The [Conditional Use](#) process requires a hearing prior to actually submitting the SDP for review but requires that the [components listed](#) under SDP and DPS be submitted, reviewed and approved to accompany the Conditional Use application. Conditional Use applications may take anywhere from 4-6 months from the time of intake acceptance - after completion of the SDP and DPS components - to be approved or denied. Then the applicant is assigned a hearing date which requires significant investment for applicant to prepare a compelling case as to why (in this case) solar should be allowed on a particular site. So, the Conditional Use process adds several months to project approval (the state cannot afford more delays in getting projects approved to comply with CSEGS PSC program rules) and requires a significant amount of money in preparation with NO certainty or even a high confidence level that the project will be approved. And if approved, the decision can be appealed for any reason, which can add another 6-24 months and mounting legal fees.

It has been brought to our attention by a Montgomery County resident who was listening in to each of the Workgroup meetings, that one sector of the agricultural economy was actually “run out of the county” due to Conditional Use (formerly Special Exception) costs: a local meat processor was used as an example, with the result that since Gladhill Meats closed, there have been no processors for “local meat.” Montgomery County farmers now send live animals to Frederick or other counties in Maryland and Pennsylvania because of the overly restrictive rules. Instead of encouraging all agriculture related business, the Conditional Use process discourages it.

- Our M-NCPPC partner county does not require conditional use or Special Exceptions for solar on agricultural land – Prince George’s County has a substantially similar balance between urban, suburban, and agricultural zones and has a similar amount of farmland (about 60,000 acres). All of the ground-mounted Community Solar projects in the Maryland Pepco service area are located in Prince George’s County, although many subscribers to these projects live in Montgomery County. As confirmed by Derick Berlage, Chief of Countywide Planning in Prince George’s County, the M-NCPPC Mandatory Referral review is the only planning approval process required for solar facilities in that county. (The county also reports that solar development on agricultural land there has had no effect on sale or rental cost of farmland.)

Attachment – Confirmation of Prince George’s County’s solar zoning approach

From: [Berlage, Derick](#)

Sent: Tuesday, January 5, 2021 3:16 PM

To: [Alfred Bartlett, Sierra Club](#)

Subject: Re: A quick question on solar and the MNCPPC process

Special exception/conditional use not required. In Prince George's, mandatory referral is the only planning approval required for these facilities.
