

EXECUTIVE ORDER NO.: 01-2016

EFFECTIVE DATE: January 15, 2016

Temporary Hold on Considering Certain Applications for Solar Projects

Frederick County recently has received a number of applications for large solar energy facilities. Under the Frederick County Zoning Ordinance, these solar arrays require special exception or site plan approvals.

More specifically, the Frederick County Zoning Ordinance provides that a “nongovernmental utility” is a “principal permitted use as a special exception with site development plan approval” in the RC (Resource Conservation), A (Agricultural), VC (Village Center) Zones and also in six Residential Zones (R1, R3, R5, R8, R12 and R16). Frederick County Code, § 1-19-5.310.

A “nongovernmental utility” is also a “principal permitted use subject to site development plan approval” in the GC (General Commercial), LI (Limited Industrial) and GI (General Industrial) Zones. § 1-19-5.310.

“Nongovernmental utility” is defined in the Zoning Ordinance as: “Any utility not owned by a governmental entity. Including a transmission and distribution substation for supplying electric service served by transmission lines of less than 500 kv.” § 1-19-11.100.

“Utility” is defined in the Zoning Ordinance to specifically include “facilities for the production of electricity through solar collection . . . .” § 1-19-11.100.

The Zoning Ordinance, therefore, requires special exception approval and site plan approval for these solar facilities in the RC, A, VC and the six Residential Zones.

Site plan approval is required for these facilities in the GC, LI, and GI Zones.

Frederick County supports the construction of solar energy projects, including solar panel arrays and rooftop projects.

Among other things, solar energy:

- Helps to create distributed electricity generation which will lead to greater local grid resiliency and security;
- Provides business opportunities for installation and investment and can reduce electricity prices for buyers;

- Produces clean renewable energy and reduces air and water pollution caused by the burning of traditional fossil fuels; and,
- Reduces greenhouse gases that cause climate change.

While Frederick County supports solar energy, the size of the solar facilities seeking approval in Frederick County is unprecedented.

For example, the County has received four applications in the previous six months for solar arrays ranging from 55 acres to 220 acres.

These solar arrays are much larger than the typical types of solar facilities previously reviewed in Frederick County and were not anticipated when the land use regulations were considered and adopted as provided in the Zoning Ordinance.

These large solar arrays may have different or more intensive land use impacts than the smaller solar arrays.

Among the issues the County may wish to consider are:

- Which zoning districts are appropriate for these solar facilities?
- What impacts do these solar facilities have on adjoining or nearby properties?
- Is there a maximum number of solar arrays to be allowed in the County or within certain areas of the County?
- Should solar arrays be allowed within priority preservation areas, Maryland Historic Trust eligible areas or other sensitive areas?
- Should removal of the solar facilities be required if they are abandoned or no longer useful?
- Are there prime agricultural soils where these solar facilities would not be an appropriate use?

The County Executive believes that further County study of these larger solar arrays is justified and necessary before any additional solar array applications are considered.

This County study is anticipated to take approximately six months.

Input will be sought from interested parties and particularly from the Frederick County Agricultural Preservation Advisory Board.

A six month temporary hold on the consideration of these applications serves the health, safety and general welfare of Frederick County.

A solar project that already has applied for a special exception for a nongovernmental utility for a solar facility before January 15, 2016 (the effective date of this Executive Order) may proceed at its own risk.

Under Maryland law, the laws in effect at the time of the building permit would apply to a building permit application.

A property owner's interests in a building permit only "vest" if at least two criteria are satisfied:

1. the property owner is proceeding under a validly issued permit;
2. good faith, visible construction under the permit has begun.

Until this good faith, visible construction has begun, any changes in the County zoning law would apply to the project (even though the special exception had previously been approved).

Any property owner proceeds under a special exception with the risk that changes in the zoning laws could impact the project.

This temporary hold does not apply to government projects. Ordinarily, a government project would not qualify as a "nongovernmental utility", so this temporary hold by its very terms would not apply. However, certain solar projects on government owned land that a private entity might construct under contract with the government conceivably might qualify as a "nongovernmental utility." This temporary hold is not intended to apply to such government project with private entities, so this Executive Order specifically states that it does not apply to them.

The County Executive, after careful consideration of the land use issues involved and while emphasizing the importance of solar energy in Frederick County, issues this Executive Order.

NOW, THEREFORE, I, JAN H. GARDNER, COUNTY EXECUTIVE OF FREDERICK COUNTY, MARYLAND, PURSUANT TO THE AUTHORITY VESTED IN ME BY THE CHARTER OF FREDERICK COUNTY, MARYLAND, AND THE LAWS OF MARYLAND, HEREBY ISSUE THIS EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY.

TEMPORARY HOLD ON CONSIDERING CERTAIN  
APPLICATIONS FOR SOLAR PROJECTS

The Frederick County Planning and Permitting Division staff is directed to temporarily discontinue processing, reviewing or considering any application for a special exception or site plan approval for a "nongovernmental utility" to construct solar facilities.

This temporary hold does not apply to:

- a special exception application that was filed with the County before January 15, 2016;

- a solar project on federal, state or local government owned land that produces energy for government use;
- community solar projects of up to ten acres.

This Executive Order is issued this 15<sup>th</sup> day of January, 2016, effective immediately, and shall terminate on July 15, 2016, unless changed by further Executive Order.

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Douglas D. Browning  
Chief Administrative Officer

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Jan H. Gardner  
Frederick County Executive