The Committee of 100
on the Federal City

www.committeeof100.net

Testimony
of
Caroline Petti
Zoning Commission of the District of Columbia
Case No. 19-04 Proposed Text Amendments
April 1, 2019

Thank you for the opportunity to comment on the Office of Planning's proposed text amendments to the Zoning Regulations.

You'll recall that this process began as an emergency rulemaking to address the Department of Energy and Environment's concerns about delays associated with an unexpected determination by the Zoning Administrator that Community Solar Facilities fall within the "basic utilities" use category thereby requiring a BZA Special Exception review. DOEE was concerned that the delays associated with BZA reviews could jeopardize the funding for its Solar for All projects and the ability to timely comply with DC clean energy goals. Accordingly, at a public meeting on February 11, 2019, the Zoning Commission authorized the immediate publication of a Notice of Proposed Rulemaking to address DOEE's concerns.

On February 22, 2019, proposed text amendments were issued for public comment in the D.C. Register. The proposed amendments would permit "Community Renewable Energy Facilities" … "financially funded in whole or in part by the Department of Energy and Environment" as a matter-of-right use in all but two zones. A month later, on March 22, 2019, OP issued a Public Hearing Report with a whole new definition for "Community Solar Facility". Among other things, it no longer specifies that a community solar facility be one that is funded in whole or in part by the Department of Energy and Environment.

The OP proposal is so expansively drafted that, if approved, it would allow acres and acres of huge solar energy systems (i.e., thousands of panels) to be erected as a matter-of-right almost anywhere in the city subject only to the yard and height development standards of the underlying zone. In residential neighborhoods this could mean panels as high as 35-40 feet tall.

By any stretch of the imagination, arrays of solar panels this vast and this large will likely have a dramatic effect on abutting neighbors. And, I'm not just talking rare hypotheticals. A very large community solar array has recently been proposed for a tract of private property in Ward 5's Woodridge neighborhood. A BZA application for this proposal has been submitted and is now pending (Case No. 19927). The Applicant is proposing to erect 5,000 7-foot high solar panels across about 5 acres of what is now grassy open space in an R-1-B neighborhood. Their proposal appears to meet OP's revised definition of a "Community Solar Facility". Adjacent property owners are expressing concerns about proper screening, aesthetics, noise, heat and glare, and the general effect of such a large-scale facility on their property values. These

ZONING COMMISSION
District of Columbia
CASE NO.19-04
EXHIBIT NO.25

issues should not go unheard. If possible, they should be mitigated. That's why we have a BZA review process. Yet, if OP's proposal is approved, this project and others like it even larger, would proceed matter-of-right without any BZA review or community input.

The BZA review process is not an onerous one. Almost all but the most egregious proposals are approved outright; others are approved with mitigating conditions. It's the process we have for enabling stakeholders to participate. It's the process we have for airing concerns and mitigating adverse impacts. It's the process we have for properly balancing and reconciling competing land-use interest. It's a process that's served this city for years.

In summary, I would like to offer the following thoughts and recommendations:

- Zoning requirements for "basic utility" uses have been on the books for many years. In residential zones, "facilities for renewable energy generation" must be approved by Special Exception by the Board of Zoning Adjustment.
- The BZA Special Exception review process offers an essential opportunity for adjacent property owners to air concerns and for the BZA to mitigate those concerns. The BZA Special Exception review process is not an onerous process; it has served the city well for many years.
- At least two applications for BZA Special Exception approval of ground solar array facilities (e.g., Case No. 19927, Case No. 19971) are now pending. These should proceed through the normal course.
- The Office of Planning's proposal to exempt Community Solar Facilities from BZA review is ill-considered and risks undermining public support for community solar. Under OP's proposal, acres and acres of huge (e.g., 40 feet-high) solar panels could be erected almost anywhere without any opportunity for review or public input. Expediency and reduced costs are no excuse for circumventing due process.
- If a true "Solar for All" emergency exists, it should be accommodated with very narrow regulatory action. Otherwise, the existing BZA Special Exception review of facilities for renewable energy generation should continue to apply. If there are problems with the BZA approach, the Office of Planning should develop a zoning alternative that properly accounts for the interests of all affected parties, not just ones who desire expediency and reduced costs for their projects.
- If additional zoning relief is desired, the Office of Planning should consider an approach where zoning relief is only offered in exchange for superior benefits that wouldn't otherwise accrue. For example, crediting the monetary value of electricity generated by a Community Solar Facilities only to low-income residents or requiring greater environmental sustainability like a natural groundcover for aesthetic value and stormwater management or as a pollinator meadow.

Questions for the Office of Planning:

These questions are salient to evaluating the impact and appropriateness of OP's proposal, but they are not addressed in the preamble text accompanying the proposal:

1) On March 22, the Office of Planning issued a Public Hearing Report for Case 19-04. This report offers a proposed definition of "Community Solar Facility" that is significantly different than the one that appeared for comment in the February 22, 2019 DC Register. The latest definition no longer requires that a community solar facility be a system financially funded in whole or in part by the Department of Energy and Environment. This condition assured the city more control over community solar projects exempt (under the OP proposed text amendment) from BZA review. Why was this condition eliminated?

2) What is the rationale for limiting the new CSF use category to five megawatts in capacity? Can OP or DOEE provide an estimate of how many acres of how many panels that might entail?

3) What is the rationale for limiting the new CSF use category to CSFs where the monetary value of the electricity is credited to at least two subscribers? What are the implications of requiring more than two subscribers?

4) OP's proposed text amendment, and the BZA exemption it offers, applies in every zone but MU-11 and SEFC-4. What is the rationale for this? Would community solar installations in those zones continue to be regulated as "Basic Utilities" requiring Special Exception BZA review?

5) Why does OP's proposal subject CSFs only to the yard and height standards of the underlying zone? Why shouldn't other zoning development standards of the underlying zone (e.g., minimum lot width, minimum lot area, pervious surface requirements, etc.) apply?