The Committee of 100
on the Federal City

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July 25, 2019

Anthony Hood, Chairman
D.C. Zoning Commission
441 4th Street, N.W.
Suite 200-S
Washington, D.C. 20001

Re: Comments on Z.C. Case No. 19-04 Notice of Proposed Rulemaking

Dear Chairman Hood and Members of the Zoning Commission,

On June 28, 2019, the Zoning Commission for the District of Columbia published for public comment proposed changes to existing zoning regulations governing "Community Solar Facilities". The proposal:

- Creates and defines a new term: "Community Solar Facility" (CSF).
- Creates new Use Permissions for CSFs in nearly all zones of the city.
- Allows roof-mounted CSFs of any size as a "matter-of-right" in these zones.
- Allows ground-mounted CSFs as a "matter of right" in these zones so long as they are less than 20' high, take up less than 1.5 acres of aggregate panel face area, meet the yard and height requirements of the zone, and are at least 40' from adjacent streets, alleys, or properties.
- Requires "Special Exception" Board of Zoning Adjustment approval of ground-mounted CSFs in these zones if they are more than 20' high, take up more than 1.5 acres of aggregate panel face area, do not meet the yard and height requirements of the zone, and are less than 40' from adjacent streets, alleys, or properties. Specifies certain tree and landscape requirements for CSFs subject to Special Exception approval in these zones.
- Allows roof- and/or ground-mounted CSFs of any size as a "matter of right" in the PDR (i.e., industrial) zones. Requires BZA approval and certain specified tree and landscape requirements for ground-mounted CSFs in PDR zones if they are located less than 40' from adjacent streets, alleys, or properties.
- Does not apply to the MU-11 and SEFC-4 zones.

Existing zoning regulations generally require that "facilities for renewable energy generation" (i.e., "basic utility uses") be approved by Special Exception by the Board of Zoning Adjustment. This proposed rulemaking contemplates significant changes to this approach. While we appreciate that, since the start of this rulemaking process, the Commission and the Office of Planning have refined the proposal, the Committee of 100 continues to believe the proposal is overly broad and should not be approved without significant changes.

CONCERNS

1) Community Input and the Opportunity to Mitigate Adverse Impacts through a BZA Special Exception Process is Significantly Curtailed

- The proposal would allow matter-of-right installation of large ground-mounted CSF solar arrays in residential and most zones across the city. At present, ground-mounted solar projects in these zones qualify as "utility" use and require Board of Zoning Adjustment Special Exception review and a formal opportunity to mitigate adverse impacts identified by the District of Columbia, Advisory Neighborhood Commissions, or the surrounding community.

- The BZA Special Exception review process offers an essential opportunity to air concerns and for the BZA to mitigate concerns that can reasonably be addressed. The BZA Special Exception review process is not an onerous process; it has served the city well for many years.

- DOEE's Solar for All project at Oxon Run was the District's first large (3.80 panel face acres) ground-mounted community solar project to go through a BZA review process. From start-to-finish, the review process took less than six months. BZA approved the project in less than six months time (including a month's delay requested by the applicant) with one condition requested by the District Department of Transportation to close an existing curb cut and restore the curb and tree box.

2) The Term "Community Solar Facility" is Overly Broad and Ill-Defined.

- This rulemaking was initiated by the District Department of Energy and the Environment for the benefit of its Solar for All program for low-income households. The proposal before us is no longer confined to the DOEE Solar for All program: the proposal applies to all projects meeting the definition of "Community Solar Facility".

- The proposal defines CSFs as solar energy facilities where the monetary value of the electricity generated by the facility is credited to at least two (2) "subscribers". The proposal provides no definition of the term "subscriber". There is nothing to require or ensure that the monetary value of the CSF electricity will benefit low-income households, small local businesses, non-profit organizations or even District of Columbia residents, entities, or individuals at all.

3) The CSF Size and Footprint Allowed is Too Large to be Permitted for Matter-of-Right Use

- The proposal allows matter-of-right installation of 20-foot high ground-mounted CSF solar panels of up to 1.5 acres of aggregate panel face area. And, contrary to the Zoning

Commission's expressed desire, the proposal provides no upper limit on the footprint (i.e., lot size) of ground-mounted CSF arrays.

- There is no question that solar arrays of this potential size will affect abutting neighbors and could affect sensitive park areas. (Presumably this is why the proposal does not apply to the MU-11 and SEFC-4 waterfront zones.)

4) The Buffering and Screening Conditions Required for Special Exception CSFs Are Insufficient

- The proposed tree and landscape conditions only apply to ground-mounted CSFs subject to Special Exception Review and not to those permitted as a matter-of-right.

- The proposed tree and landscape conditions do not require applicants to demonstrate that tree and landscape plantings can reasonably be expected to buffer and screen adjoining and nearby properties.

- The proposal potentially allows approval of ground-mounted solar arrays higher than the prevailing height of surrounding properties.

- The proposed conditions do not take into account that there may be other adverse effects on surrounding neighbors that can and should reasonably be addressed and mitigated through a BZA review process.

RECOMMENDATIONS

1) Defer final action on proposed text amendments in Zoning Commission Case No. 19-04 related to ground-mounted solar arrays. There is no need for a rush to judgment. The one ground-mounted project that seemed to require emergency action was approved by the BZA on June 5, 2019. While the District of Columbia has a great deal of experience related to the deployment of roof-mounted solar, there is little to no experience related to ground-mounted solar. The first act should not be to exempt "community" solar from community input. Some additional time to consider the siting, zoning, and public engagement policy issues associated with ground-mounted solar will behoove public acceptance and the success of this important component of the District's strategy for meeting clean energy goals.

2) Convene a working group that reflects the broad interests of stakeholders (e.g., solar owners, solar developers, and solar and community advocates) to examine and make recommendations pertaining to ground-based solar projects. Early on in DOEE's Solar for All program, DOEE established a Solar for All Task Force. The work of the Task Force centered around rooftop solar. The Committee of 100 recommends that DOEE

convene a similar Task Force to examine and make recommendations related to ground-based solar. Potential topics would include siting, zoning, community engagement, maintenance, and decommissioning. The Task Force could also be charged with examining approaches neighboring jurisdictions have taken on these matters.

3) Ground-mounted community solar projects that are not part of the District's Solar for All program should not be permitted for matter-of-right use. Participation in the Solar for All program is the best way of ensuring that projects will benefit the District of Columbia and its people.

4) Like a Planned Unit Development, a ground-mounted community solar project should not be permitted for matter-of right use unless it results in a project superior to what would result from matter-of-right standards. This should be a standard rule of thumb that applies anytime zoning relief is offered.

5) The definition of "Community Solar Facility" should be refined and narrowed considerably. As proposed, the definition limits CSF facilities to ones not exceeding five (5) megawatts in capacity. This could permit by Special Exception very, very large arrays. By way of example, earlier this year the National Institute of Standards and Technology completed a 5 MWdc solar project at its Gaithersburg, MD campus. That system consists of 15,000 panels covering the equivalent of eleven (11) football fields.

   Furthermore, the proposal requires only two subscribers to qualify as a CSF. Such a small minimum number of required subscribers is at odds with the purpose of these projects which is to serve "communities", DC communities, in particular. The term "subscriber" should be defined and should require that the majority of subscribers be low-income households located in the District of Columbia.

   (It should be noted that, for these zoning purposes, it is not necessary that the CSF definition with respect to capacity and the number of subscribers be the same as Public Service Commission regulations or the District's Renewable Energy Portfolio Standard.)

6) The proposed use conditions for ground-mounted solar should be expanded and strengthened. They should foreclose the possible approval of solar arrays higher than the prevailing height of surrounding properties. They should apply to all ground-mounted solar proximate to public space, residential use, or parks and recreation use. In addition to the requirements proposed (which are good as far as they go), new text should be added to make it clear that, applicants must demonstrate that the mix of trees, shrubs and plants will reasonably buffer and screen adjoining properties. Plantings must be maintained in a healthy growing condition and in a neat and orderly appearance. We appreciate the condition that the Application and landscape plan must be referred to DOEE for review and report. We suggest that DDOT's Urban Forestry Division, where most of the District's tree expertise resides, be added for review and report. Lastly, the

condition now applicable under existing regulations for renewable energy generation facilities continues to be appropriate and should continue to apply, viz. "…other safeguards that the BZA deems necessary for the protection of the neighborhood." Since DC has virtually no experience with ground-mounted community solar, the BZA should continue to have the authority to address issues as they arise and that may vary from location to location.

We appreciate your consideration of these comments.

Sincerely,

Caroline Petti on behalf of the Zoning Subcommittee of the Committee of 100 of the Federal City