



MEMORANDUM

To: Development Review and Regulations Committee

From: M. Tyler Klein, AICP, Senior Planner *MTK*

Subject: July 25, 2019 Meeting and Agenda

Date: July 17, 2019

The Frederick County Development Review and Regulations Committee (DRRC) will be meeting on Thursday July 25, 2019 at 7:00 p.m. in the **first-floor conference room (purple room)** of the County Administration Building, 107 North Kent Street, Winchester, Virginia. The DRRC will discuss the following agenda items:

AGENDA

- 1) **Public Utilities including utility-scale solar power generating facilities.** Discussion of a request by County Staff to include a definition for “Public Utilities” that includes utility-scale solar power generating facilities and solar power generating facility decommissioning requirements in the Fredrick County Zoning Ordinance *Supplemental Use Regulations* as required under the Code of Virginia.
- 2) **Other.**

Please contact this office if you will not be able to attend the meeting. Thank you.

Access to this building is limited during the evening hours. Therefore, it will be necessary to enter the building through the rear door of the four-story wing. I would encourage committee members and interested citizens to park in the County parking lot located behind the new addition or in the joint Judicial Center parking lot and follow the sidewalk to the back door of the four-story wing.

MTK/pd

Attachments

Item #1: Public Utilities Including Utility-Scale Solar Power Generating Facilities

Following the June 27, 2019 DRRC Meeting discussion, and resulting clarification on wind power generating facilities, Staff is looking to affirm the changes outlined below regarding “Public Utilities” is now ready to go forward to the Planning Commission for discussion.

Based on recent amendments to the Code of Virginia, staff and the DRRC proposes amendments to Chapter 165 – Zoning Ordinance to include:

1. A definition for “Public Utilities” that includes utility-scale solar power energy generating facilities; and
2. Additional supplement use regulations (performance standards) for specific uses that requires utility-scale solar generating energy facilities to make arrangements, including financial security, for decommissioning consistent with/as required by the Code of Virginia.

At the June DRRC meeting, the DRRC raised concern with the new definition for “Public Utilities” and if it would include wind power generating facilities (i.e. wind turbines). After additional consultation with the County Attorney the proposed definition may be interpreted to include wind power generating facilities. However, height restrictions for individual zoning districts would otherwise prohibit such facilities as wind turbines typically exceed the maximum height allowed for any district and would not fall under any existing height exemptions (such as “windmills”) that would allow them to be constructed.

Background

The General Assembly amended the Code of Virginia (§15.2-22.41.2) to include decommissioning of solar energy facilities effective July 1, 2019. Previously, the County Attorney and staff provided a determination that was shared with the Board of Supervisors on July 2018, stating that utility-scale solar power generating energy facilities would qualify as a “public utility” type-facility and would otherwise be allowed by-right in the County’s RA Zoning District (and other zoning districts where public utilities are permitted by-right).

During 2018 the Board of Supervisors (BOS) considered a stand-alone Zoning Ordinance text amendment to add a definition and specific supplemental use regulations only for “Solar (Photovoltaic) Energy Facilities.” This amendment was not moved forward, and Staff and the County Attorney issued a determination (outlined above) regarding the inclusion of solar facilities under the existing allowance for “Public Utilities”. Should the BOS desire to enable utility-scale solar power generating facilities only through a Conditional Use Permit (CUP), rather than the proposed permitted use, public utilities including utility-scale solar power generating facilities, the original amendment may be reconsidered in-lieu of this amendment to the definition and supplemental use regulations for “Public Utilities”.

**Attachments: Proposed Changes to Frederick County Zoning Ordinance
Code of Virginia §15.2-2241.2 effective July 1, 2019**

**ARTICLE I
GENERAL PROVISIONS; AMENDMENTS; AND CONDITIONAL USE PERMITS**

Part 101 – General Provisions

§ 165-101.02 Definitions and word usage.

Public Utilities

Power generating facilities, booster or relay stations, transformer substations, transmission lines and towers, pipes, meters and other facilities (including utility-scale solar power generating facilities), and sewer and water facilities including sewer and water transmission lines. Such facilities may be owned by public utilities, public agencies, or those operators with a “Certificate of Public Convenience.”

**ARTICLE II
SUPPLEMENTARY USE REGULATIONS; PARKING; BUFFERS; AND REGULATIONS FOR SPECIFIC USES**

Part 204 – Additional Regulations for Specific Uses

§ 165-204.26. Public Utilities *Distribution Facility*

1. Public utilities. Lot requirements for lots used by political subdivisions, municipal corporations, the Virginia Department of Transportation, the Frederick-Winchester Service Authority, or the Frederick County Sanitation Authority for public utility purposes shall be as follows:

- A. In all zoning districts, the Zoning Administrator shall have the authority to determine the minimum lot size necessary for such public utilities and the appropriate setbacks for such lots used for public utility purposes.
- B. Such lots shall be exempt from the individual on-site sewage disposal system requirements.
- C. Such lots may be accessed by private access easements; any such easement shall be a minimum of 15 feet in width.

2. Public Utilities - Utility-Scale Solar Power Generating Facilities. Any owner, lessee, or developer of real property for the purposes of solar power energy generation shall enter into a written agreement, prior to site plan approval, with Frederick County to decommission solar energy equipment, facilities, or devices pursuant to the terms and conditions of § 15.2-2241.2(B) of the Code of Virginia.

**ARTICLE IV
AGRICULTURAL AND RESIDENTIAL DISTRICTS**

Part 401 – RA Rural Areas District

§ 165-401.02. Permitted Uses

~~Q. Public utility generating, booster, or relay stations, transformer substations, transmission lines and towers, pipes, meters and other facilities, railroad facilities and sewer and water facilities, and lines owned by public facilities, railroad companies or public agencies. ***Public Utilities***~~

Part 402 – RP Residential Performance District

§ 165-402.02. Permitted Uses

B. Structures and land shall be used for one of the following uses:

~~(6) Utility distribution facilities necessary to serve residential uses, including, but not limited to, poles, lines, distribution transformers, pipes, and meters. ***Public Utilities excluding utility-scale solar power energy generating facilities.***~~

Part 403 – Mobile Home Community District

§ 165-403.02. Permitted Uses

~~H. Public utilities including poles, lines, distribution transformers, pipes and meters, water and sewer facilities and lines. ***Public Utilities excluding utility-scale solar power energy generating facilities.***~~

**ARTICLE V
PLANNED DEVELOPMENT DISTRICTS**

Part 502 – R5 Residential Recreational Community District

§165-502.04. Permitted uses.

~~P. Public sewer and water facilities and lines. ***Public Utilities excluding utility-scale solar power energy generating facilities.***~~

**ARTICLE VI
BUSINESS AND INDUSTRIAL ZONING DISTRICTS**

Part 602 – B1 Neighborhood Business District

§165-602.02. Allowed Uses.

~~Public utility distribution facility~~ **Public Utilities**

Part 603 – B2 General Business District

§165-603.02. Allowed Uses.

~~Public utility distribution facility~~ **Public Utilities**

Part 604 – B3 Industrial Transition District

§165-604.02. Allowed Uses.

~~Public utility distribution facility~~ **Public Utilities**

Part 606 – M1 Light Industrial District

§165-606.02. Allowed Uses.

~~Public utility distribution facility~~ **Public Utilities**

Part 608 – EM Extractive Manufacturing District

§165-608.02. Permitted Uses.

~~**K. Public utilities, including poles, lines, distribution transformers, pipes, meters, and sewer facilities.**~~
Public Utilities.

Part 609 – HE Higher Education District

§165-609.02. Permitted uses.

~~**B. Utilities necessary to serve allowed uses, including poles, lines, distribution transformers, pipes and meters.**~~ **Public Utilities excluding utility-scale solar power energy generating facilities.**

CHAPTER 743

An Act to amend the Code of Virginia by adding a section numbered **15.2-2241.2**, relating to rezoning and site plan approval; decommissioning solar energy equipment, facilities, or devices.

[H 2621]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered **15.2-2241.2** as follows:

§15.2-2241.2. *Bonding provisions for decommissioning of solar energy equipment, facilities, or devices.*

A. *As used in this section, unless the context requires a different meaning:*

"Decommission" means the removal and proper disposal of solar energy equipment, facilities, or devices on real property that has been determined by the locality to be subject to §15.2-2232 and therefore subject to this section. "Decommission" includes the reasonable restoration of the real property upon which such solar equipment, facilities, or devices are located, including (i) soil stabilization and (ii) revegetation of the ground cover of the real property disturbed by the installation of such equipment, facilities, or devices.

"Solar energy equipment, facilities, or devices" means any personal property designed and used primarily for the purpose of collecting, generating, or transferring electric energy from sunlight.

B. *As part of the local legislative approval process or as a condition of approval of a site plan, **any locality shall require** an owner, lessee, or developer of real property subject to this section to enter into a written agreement to decommission solar energy equipment, facilities, or devices upon the following terms and conditions: (i) if the party that enters into such written agreement with the locality defaults in the obligation to decommission such equipment, facilities, or devices in the timeframe set out in such agreement, the locality has the right to enter the real property of the record title owner of such property without further consent of such owner and to engage in decommissioning and (ii) such owner, lessee, or developer provides financial assurance of such performance to the locality in the form of certified funds, cash escrow, bond, letter of credit, or parent guarantee, based upon an estimate of a professional engineer licensed in the Commonwealth, who is engaged by the applicant, with experience in preparing decommissioning estimates and approved by the locality; such estimate shall not exceed the total of the projected cost of decommissioning, which may include the net salvage value of such equipment, facilities, or devices, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.*

CHAPTER 744

An Act to amend the Code of Virginia by adding a section numbered **15.2-2241.2**, relating to rezoning and site plan approval; decommissioning solar energy equipment, facilities, or devices.

[S 1091]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered **15.2-2241.2** as follows:

§15.2-2241.2. *Bonding provisions for decommissioning of solar energy equipment, facilities, or devices.*

A. *As used in this section, unless the context requires a different meaning:*

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"Decommission" includes the reasonable restoration of the real property upon which such solar equipment, facilities, or devices are located, including (i) soil stabilization and (ii) revegetation of the ground cover of the real property disturbed by the installation of such equipment, facilities, or devices.

"Solar energy equipment, facilities, or devices" means any personal property designed and used primarily for the purpose of collecting, generating, or transferring electric energy from sunlight.

B. *As part of the local legislative approval process or as a condition of approval of a site plan, a locality shall require an owner, lessee, or developer of real property subject to this section to enter into a written agreement to decommission solar energy equipment, facilities, or devices upon the following terms and conditions: (i) if the party that enters into such written agreement with the locality defaults in the obligation to decommission such equipment, facilities, or devices in the timeframe set out in such agreement, the locality has the right to enter the real property of the record title owner of such property without further consent of such owner and to engage in decommissioning, and (ii) such owner, lessee, or developer provides financial assurance of such performance to the locality in the form of certified funds, cash escrow, bond, letter of credit, or parent guarantee, based upon an estimate of a professional engineer licensed in the Commonwealth, who is engaged by the applicant, with experience in preparing decommissioning estimates and approved by the locality; such estimate shall not exceed the total of the projected cost of decommissioning, which may include the net salvage value of such equipment, facilities, or devices, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.*