

SUMMARY OF HOWARD COUNTY SOLAR ZONING REGULATIONS WITH QUESTIONS

SECTION 103.0 – DEFINITIONS

Solar Collector: A device, structure or a part of a device or structure for which the primary purpose is to transform solar radiant energy into electrical energy.

Solar Collector, Accessory: A building mounted or ground mounted solar collector which is an accessory use to a principal use and is used for the primary purpose of generating electrical power to be consumed primarily by the principal use. A ground mounted accessory solar collector may be located on a different lot than the principal use.

Solar Facility, Commercial: A series of ground mounted solar collectors used to generate photovoltaic power, where less than 50% of the power generated is consumed by the principal use on the site.

OCS Question: What about solar canopies over parking?

DPZ Response: We classify these as accessory use. I think a definition should be added to address these.

ACCESSORY SOLAR COLLECTORS

Accessory solar collectors are listed as an accessory use in most zoning districts. This means at least 50% of the solar energy must be used on-site or by the site owner.

Includes the following districts:

- B-1 (Business: Local)
- B-2 (Business: General)
- BR (Business: Rural)
- CAC (Corridor Activity Center)
- CCT (Community Center Transition)
- CE (Corridor Employment)
- CEF (Community Enhancement Floating) If shown on Concept Plan
- HC (Historic: Commercial)
- HO (Historic: Office)
- I (Institutional)
- M-1 (Manufacturing: Light)
- M-2 (Manufacturing: Heavy)
- MXD (Mixed Use) by reference to base zoning districts
- NT (New Town) by reference on the FDP
- PEC (Planned Employment Center)

- PGCC (Planned Golf Course Community)
- POR (Planned Office Research)
- PSC (Planned Senior Community)
- R-12 (Residential: Single)
- R-20 (Residential: Single)
- R-A-15 (Residential: Apartments)
- R-APT (Residential: Apartments)
- RC (Rural Conservation)*
- R-ED (Residential: Environmental Development)
- R-MH (Residential: Mobile Home)
- RR (Rural Residential)*
- R-SC (Residential – Single Cluster)
- R-SI (Residential: Senior Institutional)
- R-VH (Residential: Village Housing)
- TNC (Traditional Neighborhood Center)

*Commercial solar facilities also permitted in RC and RR as a conditional use, if they meet all of the criteria in Section 131.0 – Conditional Uses.

Zoning districts that don't allow accessory solar collectors as an accessory use include:

- OT (Office Transition)
- R-H-ED (Residential: Historic – Environmental District)
- SC (Shopping Center)

OCS Comment: It makes sense that R-H-ED wouldn't allow solar as an accessory use because this includes residential homes on the national register of historic places, which have restrictions that may not permit solar. However, could we consider allowing solar as accessory use in OT and SC?

OCS Question: Would it be possible to change rooftop solar to a Use Permitted as a Matter of Right instead of as an accessory use to streamline zoning?

DPZ Response: Yes

What are zoning burdens of accessory use vs. use permitted by right?

DPZ Response: An accessory use must be incidental to a use permitted by right. Therefore, it can't exist on its own.

OCS Comment: Parking canopies and ground mount (unless the ground mount is small) seem to best fit as accessory use or conditional use, but rooftop solar doesn't disturb additional ground or replace other uses, so could perhaps become permitted by right.

COMMERCIAL SOLAR FACILITIES

Commercial Solar Facilities currently are allowed only in RC (Rural Conservation) and RR (Rural Residential).

OCS Question: Could we expand conditional use options for Commercial Solar Facilities to other districts. Which ones would be most appropriate?

DPZ Response: We have received inquiries about Commercial Solar Facilities in M-1 and M-2.

OCS Comment: We also may want to expand Commercial Solar Facilities to include rooftop and parking canopies, not just ground mount solar.

SECTION 131.0: - Conditional Uses

52. Solar Facility, Commercial

A Conditional Use may be granted in the RC or RR District for a commercial solar facility, provided that:

- a. The maximum size of a solar facility shall be 75 acres notwithstanding the size of the parcel. The parcel on which the commercial solar facility is proposed must be a minimum of 10 acres in size.
- b. All structures and uses must meet a minimum 50 foot setback from all property lines.
- c. No structure or use may be more than 20 feet in height.
- d. A 'Type D' landscaping buffer must be provided around the perimeter of the proposed commercial solar facility unless the Hearing Authority determines that an alternative buffer is sufficient.
- e. All security fencing must be located between the landscaping buffer and the commercial solar facility.
- f. The systems shall comply with all applicable local, state, and federal laws and provisions.
- g. A commercial solar facility that is no longer used shall be removed from the site within one year of the date that the use ceases.
- h. The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the commercial solar facility. The applicant shall provide the Hearing Authority with details regarding maintenance and access for the site.
- i. A solar collector or combination of solar collectors shall be designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard. The petitioner shall include a glare study with the Conditional Use petition.

- j. The applicant shall agree to register all solar collectors with the Department of Fire and Rescue Services. The registration shall include a map of the solar facility noting the location of the solar collectors and the panel disconnect.
- k. Tree removal shall be minimized and reforestation shall be done in accordance with Section 16.1026 of the Howard County Code.
- l. Scenic Views
 - (1) The applicant shall demonstrate that the solar facility does not harm the scenic characteristics of the view of or from:
 - A. A public park;
 - B. A national or state designated scenic byway;
 - C. A road listed in the Scenic Roads Inventory adopted under Section 16.1403 of the Howard County Code; or
 - D. A historic structure as defined in Section 16.601 of the Howard County Code.
 - (2) Visual Impact Analysis Required to Demonstrate Minimal Impact to or from Scenic Views
 - A. The Conditional Use petition shall include a visual impact analysis mapping all viewshed impacts and any proposed mitigation. This analysis shall include mapped visual impact assessments of all important or critical viewpoints or elevations from which the solar facility can be seen from a fixed vantage point. For purposes of this subsection, A viewshed is a topographically defined area including all critical observation points from which the solar facility is viewed.
 - B. If the visual impact assessment as mapped particularly interferes with and compromises critical observation points within the viewshed that warrant viewshed protection, the petitioner shall mitigate the view through additional landscaping or other forms of mitigation, including reconfiguration of the solar panels, or as may be required by the Hearing Authority.
 - C. Fencing along road frontage or the perimeters of the commercial solar facility site where the fencing would be visible shall be constructed of a material and design consistent with the character of the roadway or area.
 - D. The petition shall include a landscape plan.
- m. The Howard County Agricultural Land Preservation Board shall review any Conditional Use petition which proposes to build a new commercial solar facility on parcels which are in the Agricultural Land Preservation Program prior to approval by the Hearing Authority in the following manner:
 - (1) Prior to scheduling and convening a presubmission community meeting pursuant to Howard County Zoning Regulations Section 131.0.f.1, the petitioner shall submit a proposed Conditional Use Plan for a commercial solar facility on a parcel or parcels in the Agricultural Land Preservation Program to the Howard County Agricultural Land Preservation Board for advisory review as to whether the siting of the commercial solar facility on the parcel or parcels supports the primary agricultural purpose of the easement property or is an ancillary business which supports the economic viability of the farm.
 - (2) The materials submitted for review shall include, at a minimum, a copy of the Agricultural Land Preservation Program easement, a copy of the Howard County Soil Conservation and Water Quality Plan, and a copy of the proposed Conditional Use Plan.
 - (3) The Board's advisory review shall be in writing.
 - (4) The petitioner shall make the Board's advisory review available at the presubmission community meeting.

- (5) The Department of Planning and Zoning's Technical Staff Report on the petition shall include an evaluation of and a recommendation on the Board's advisory review of the petition and shall include as attachments the Board's advisory review and a copy of the Agricultural Preservation Easement.
- n. Subject to Section 106 of these regulations, the property on which an approved commercial solar facility is located is eligible to be a sending parcel provided that one density right is retained for the conditional use until the commercial solar facility is removed.

REAL PROPERTY TAX CREDITS AND CLEAN ENERGY LOAN PROGRAM

OCS Comment: High performance buildings tax credit is expired. C-PACE is active.

More research is need to determine if the rest of these are active or expired.

Sec. 20.128A. - Qualifying energy conservation devices.

(a) *Definitions:*

- (1) In this section, the following terms have the meanings indicated:
- (2) **Solar energy device** means an energy conserving device that:
 - (i) Uses solar energy to heat or cool a structure, to provide hot water for use in the structure or to generate electricity to be used in the structure; and
 - (ii) Meets national safety and performance standards set by a nationally recognized testing laboratory for that kind of device.
- (3) *Geothermal energy device* means an energy conserving device that:
 - (i) Uses geothermal energy to heat or cool a structure, to provide hot water for use in the structure or to generate electricity to be used in the structure; and
 - (ii) Meets national safety and performance standards set by a nationally recognized testing laboratory for that kind of device.

(b) *Credit Authorized.* In accordance with section 9-203 of the tax-property article of the Annotated Code of Maryland and the provisions of this section, the owner of real property may receive a property tax credit against the County property tax imposed on a residential structure that utilizes a solar energy device or geothermal energy device.

(c) *Amount of Credit.* The tax credit allowed under this section is the lesser of:

- (1) Fifty percent of the eligible costs; or
- (2) Five thousand dollars for a heating system or \$1,500.00 for a hot water supply system.

(d) *Eligible Costs.* Eligible costs are those that are incurred:

- (1) Within the 12 months before the initial application for the credit; and
- (2) For the solar energy device or geothermal energy device, including any part, component, or accessory equipment necessary to operate the device, and reasonable costs associated with installing the device.

(e) *Annual Limit on Amount of Credits Granted:*

- (1) During a fiscal year, the total of all tax credits granted under this section shall not exceed \$500,000.00.
- (2) Credits shall be granted in the order in which the Department of Finance receives the complete applications under subsection (f) of this section.

- (3) A complete application that, if granted, would cause the limit set forth in paragraph (1) of this subsection to be exceeded, shall be granted in the next fiscal year or years and in the order received.

(f) *Application of the Credit:*

- (1) The amount of the credit applied in a tax year may not exceed the amount of the County property tax imposed on the property in that tax year.
- (2) Any amount of the credit not taken in the tax year in which the application is granted may be carried over for an additional two years.
- (3) When a tax credit is carried over under this subsection, the full amount of the tax credit shall be deducted from the total annual limit set forth in subsection (e) of this section in the year in which the application is granted.

(g) *Application for the Credit:*

- (1) An applicant for a tax credit under this section shall submit an application to the Director of Finance on or before the date that the Director sets.
- (2) An application shall:
 - (i) Be on the form that the Director requires;
 - (ii) Demonstrate that the taxpayer is entitled to the credit; and
 - (iii) Include a certification from the Department of Inspections, Licenses and Permits stating that the device for which the credit is sought:
 1. Is a solar energy device or a geothermal energy device; and
 2. Has been properly installed.

- (h) *Effective Date.* The credit authorized by this section applies to tax years beginning after June 30, 2007.

(Ord. No. 67, 2006, § 1; C.B. 9, 2007, § 1; C.B. 21, 2011, § 1)

Editor's note— Section 2 of C.B. 21-2011 set out uncodified provisions that state that the credit authorized by section 20.128A shall not be granted for applications received after May 25, 2011 unless the property owner: (1) On or before May 25, 2011, enters into a contract for eligible costs, as that term is defined in section 20.128A; (2) Applies for the credit on or before April 1, 2012; and (3) Is determined by the Department of Finance to be eligible to receive the credit. At the request of the County the provisions of C.B 67, 2006 have been renumbered from section 20.128 to 20.128A to avoid conflicts in section numbering.

State Law reference— Tax credit qualifying energy devices authorized, Ann. Code of Md., Tax-Property article, § 9-203.

Sec. 20.129B. - Property tax credit for high performance buildings.

(a) *Definitions.* In this section, the following terms have the meanings indicated:

- (1) High performance building means a building that:
 - (i) Achieves at least a silver rating according to the U.S. Green Building Council's LEED (Leadership in Energy and Environmental Design) rating system;
 - (ii) Is a residential building that achieves at least a silver certification level of the National Green Building Standard ICC-700;

- (iii) Achieves at least a comparable rating according to design standards that the Director of the Department of Inspections, Licenses and Permits may adopt by regulation as equivalent to a silver rating in the LEED rating system; or
 - (iv) Meets comparable green building guidelines or standards approved by the State.
 - (2) LEED rating system shall have the meaning set forth in section 3.1002 of this Code.
 - (3) R-2 or R-3 building has the meaning ascribed to that term under the Howard County Building Code.
- (b) *Credit Established.* In accordance with section 9-242 of the tax-property article of the Annotated Code of Maryland, the owner of a high performance building or an R-2 or R-3 building that qualifies under subsection (d) of this section may receive a property tax credit against County property taxes imposed on the high performance building.
- (c) *Amount and Duration of Credit for Certification in LEED Core and Shell or New Construction Rating Systems.* For a high performance building that is certified in the LEED 2009 rating system for core and shell or a comparable rating system that the Director of Inspections, Licenses and Permits may adopt by regulation:
 - (1) The amount of the tax credit is a percentage of the total County property tax assessed on the high performance building as follows:
 - (i) LEED certified silver—25 percent;
 - (ii) LEED certified gold—50 percent;
 - (iii) LEED certified platinum—75 percent; and
 - (2) The tax credit authorized by this subsection continues for five years.
- (d) *Amount and duration of credit for high performance R-2 and R-3 buildings.*
 - (1) This subsection applies to an R-2 or R-3 building that:
 - (i) Achieves at least a silver rating under the LEED for Homes Rating System or a comparable rating system that the Director of Inspections, Licenses and Permits may adopt by regulation; and
 - (ii) Is a high performance building.
 - (2) The tax credit under this subsection for a building that has a LEED platinum or equivalent rating is a percentage of the total County Property Tax Credit assessed on the building as follows:
 - (i) First year: 100 percent;
 - (ii) Second year: 75 percent;
 - (iii) Third year: 50 percent; and
 - (iv) Fourth year: 25 percent.
 - (3) The tax credit under this subsection for a building that has a LEED gold or equivalent rating is a percentage of the total County property tax credit assessed on the building as follows:
 - (i) First year: 90 percent;
 - (ii) Second year: 68 percent;
 - (iii) Third year: 45 percent; and
 - (iv) Fourth year: 23 percent.
 - (4) The tax credit under this subsection for a building that has a LEED silver or equivalent rating is a percentage of the total County property tax credit assessed on the building as follows:

- (i) First year: 75 percent;
 - (ii) Second year: 56 percent;
 - (iii) Third year: 38 percent; and
 - (iv) Fourth year: 19 percent.
- (5) (i) In one fiscal year, the tax credit under this subsection may not exceed \$5,000.00 per building; provided, however, that each owner occupied unit is allowed a credit not to exceed \$5,000.00.
- (ii) Excess credits shall not be carried over to future years.
- (e) *Amount and Duration of Credit for Certification in Existing Building Rating System.* For a high performance building that is certified in the LEED 2009 rating system for existing buildings or a comparable rating system that the Director of Inspections, Licenses and Permits may adopt by regulation:
- (1) The amount of the tax credit is a percentage of the total County property tax assessed on the high performance building as follows:
 - (i) LEED certified silver—Ten percent;
 - (ii) LEED certified gold—25 percent;
 - (iii) LEED certified platinum—50 percent; and
 - (2) The tax credit authorized by this subsection continues for three years.
- (f) *Prohibition.* A property owner who is granted a credit under one subsection of this section may not be granted a credit under any other subsection of this section for the same property during the same fiscal year.
- (g) *Credit Runs with the Property.* A tax credit granted under this section runs with the property and a change in ownership does not result in the lapse of the tax credit.
- (h) *Application.* To receive the tax credit, a property owner shall submit an application to the Department of Finance:
- (1) On the form that the Department of Finance requires;
 - (2) That is accompanied by proof that the property meets the definition of a "high performance building"; and
 - (3) On or before the date that the Department of Finance sets.
- (i) *Report.* Subject to section 22.1000 of the County Code, on or before October 31 of each year, the Director of Finance shall submit a report to the County Council and the County Executive on tax credits granted under this section in the prior fiscal year that includes:
- (1) A list of all credits granted and the monetary amount of each credit granted under this section;
 - (2) The levels of certification obtained by recipients of the credit; and
 - (3) An estimated total fiscal impact for the current fiscal year and for nine ensuing fiscal years.
- (j) *Administration.* The Department of Finance may adopt guidelines, regulations, or procedures to administer this section.
- (k) *Effective Date.* The tax credit authorized by subsection (d) of this section applies to tax years beginning after June 30, 2012, and shall terminate and be of no effect after June 30, 2023, provided that:
- (1) A property owner shall receive the full four years of the credit if:
 - (i) The property meets the eligibility requirements of this section; and

- (ii) The property owner applies for the credit on or before April 1, 2022; and
- (2) The last credit issued shall be issued no later than in the fiscal year ending June 30, 2026.

(C.B. 49, 2007, § 2; C.B. 47, 2009, § 2; C.B. 55, 2011, § 1; C.B. 5, 2016, § 1; C.B. 34, 2017, § 1; C.B. 43, 2018, § 1)

Editor's note— Council bill 49 of 2007 amended the Code by adding provisions designated as § 20.130. In order to avoid conflicts in section numbering the editor has redesignated the provisions of this Council bill as § 20-129B.

State Law reference— Tax credits for high performance buildings, Ann. Code of Md., Tax-Property article, § 9-242.

Sec. 20.119. - Green building energy conservation devices.

- (a) *Definition.* A qualifying energy conservation device means an energy conserving device that receives a leadership in energy and environmental design (LEED) credit, including, but not limited to, a solar energy or geothermal energy device, that is utilized by a structure certified by the U.S. Green Buildings Council as LEED certified, at any level specified in subsection (c) of this section.
- (b) *Establishment of Tax Credit; Eligibility:*
 - (1) In accordance with section 9-203 of the tax-property article, Annotated Code of Maryland, and the provisions of this section, there is a tax credit against the County real property tax imposed on a structure that is LEED-certified, at a level specified in subsection (c) of this section, for a qualifying energy conservation device used to heat or cool the structure or to provide hot water for use in the structure.
 - (2) A property owner is eligible to receive a credit under this section only if they do not qualify to receive a credit for a high performance building under section 20.129B of this Code.
- (c) *Amount of Credit:*
 - (1) The amount of tax credit may not exceed the assessed property tax on the structure.
 - (2) Eligible costs are those that are:
 - (a) Incurred within the last 36 months of the initial application for the credit; and
 - (b) Incurred for the device, including any necessary part, component or accessory equipment of the device, and any necessary labor to construct or install the device.
 - (3) The full amount of the tax credit allowed may be given each tax year for the duration of the credit. The tax credit allowed is a percentage of the eligible costs, based upon the classification of the structure, as follows:
 - (a) LEED certified - 14 percent
 - (b) LEED certified silver - 16 percent
 - (c) LEED certified gold - 18 percent
 - (d) LEED certified platinum level - 20 percent.
- (d) *Duration of Tax Credit.* The duration of this credit is three consecutive tax years.
- (e) *Application for Tax Credit.* An application for a tax credit under this section shall be submitted to the Director of Finance on or before April 1 of the tax year in which the credit is requested to begin. Applications shall be on forms prepared and furnished by the Director. The forms shall include, at a

minimum, certification that all costs applied for a tax credit are eligible costs under this section, and verification of LEED certification of the building and LEED credit awarded for the qualifying energy conservation device. If a tax credit application is approved by the Director, the credit may be applied in compliance with this section for the duration of the credit without reapplying.

(C.B. 54, 2002, § 1; C.B. 49, 2007, § 1)

State Law reference— Tax credits for high performance buildings, Ann. Code of Md., Tax-Property article, § 9-242.

Sec. 20.1203. - Qualifying improvements and costs.

- (a) *Qualifying Improvements* . The following improvements, either new or replacement, qualify as energy efficiency projects or renewable energy projects under the Clean Energy Loan Program:
- (1) Solar energy equipment;
 - (2) Geothermal energy devices;
 - (3) Wind energy systems;
 - (4) Water conservation devices not required by law;
 - (5) Any construction, renovation, or retrofitting of commercial property to reduce energy consumption, including, high efficiency lighting and building systems, heating ventilation air conditioning (HVAC) upgrades, high efficiency boilers and furnaces, high efficiency hot water heating systems, combustion and burner upgrades, fuel switching, heat recovery and steam traps, building shell or envelope improvements, fenestration improvements, building energy management systems, and process equipment upgrades; and
 - (6) Any other improvement approved by the County as qualifying as an energy efficiency project or renewable energy project.
- (b) *Qualifying Costs* . A Clean Energy Loan may be used to pay for all costs incurred by a property owner for the following costs in connection with the qualifying improvements:
- (1) The cost of the energy audit;
 - (2) Feasibility studies and reports;
 - (3) The design, installation, and construction of the qualifying improvements;
 - (4) Commissioning;
 - (5) Energy savings or performance guaranty or insurance; and
 - (6) Closing costs of the loan.

(C.B. 4, 2016, § 1)