



Bill No. 24-10

Concerning: Design Criteria for Commercial Solar

Introduced May 21, 2024

Revised: _____ Draft No. _____

Enacted: _____

Effective: _____

Expires: August 19, 2024

Frederick County Code, Chapter 1-19

Section(s) 5.310, 8.800 & 10.700

COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

By: Council Member M.C. Keegan-Ayer

AN ACT to: Remove Section 1-19-10.700 (Solar Facility, Commercial Floating Zone District) and provide new design criteria for Commercial Solar Facilities in the Agricultural Zoning District.

Date Council Approved: _____ Date Transmitted to Executive: _____

Executive: _____ Date Received: _____

Approved: _____ Date: _____

Vetoed: _____ Date: _____

Date returned to Council by County Executive with no action: _____

By amending:

Frederick County Code, 1-19 Section(s) 5.310, 8.800 & 10.700

Other: _____

Boldface
Underlining
[Single boldface brackets]
* * *

Heading or defined term.
Added to existing law.
Deleted from existing law.
Existing law unaffected by bill.

Bill No. 24-10

2 The County Council of Frederick County, Maryland, finds it necessary and appropriate to
3 amend the Frederick County Code to provide design criteria for Commercial Solar Facilities to be
4 constructed on property zoned Agricultural (AG).

5 NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF
6 FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby,
7 amended as shown on the attached Exhibit 1.

8 AND BE IT FURTHER ENACTED that the amendments shown on Exhibit 1 will be
9 effective for building permits issued on or after the effective date of this Bill.

10
11
12
13
14
15
16

Exhibit 1

§ 1-19-5.310. USE TABLE.

Uses	RC	A	R1	R3	R5	R8	R12	R16	VC	MX	GC	ORI	LI	GI
<i>Governmental and Nongovernmental Utilities</i>														
Arena or stadium											PS		PS	PS
College or university			PS	PS	PS	PS	PS	PS	PS	PS	PS			
Public school		PS	PS	PS	PS	PS	PS	PS	PS	PS	T	PS	T	
Nongovernmental utility	E	E	E	E	E	E	E	E		PS		PS	PS	PS
Nongovernmental electric substation													E	E
Solar facility, commercial		<u>PS</u>											PS	PS

1-19-8.800. COMMERCIAL SOLAR FACILITIES IN THE AGRICULTURAL ZONING DISTRICT

The following specific design criteria will apply to a Commercial Solar Facility to be constructed in the Agricultural zoning district pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the Public Service Commission.

(A) Commercial Solar Facilities are not permitted within designated Priority Preservation Areas, designated Rural Legacy Areas, or on land preservation easements held in perpetuity, or on properties in receipt of financial incentives to maintain historic character through County or State programs.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

(B) The Type I site plan application must be prepared in accordance with Division 3 - Site Plan Review - of this Chapter and include all information required by MD Code, Public Utilities Article, Sections 7-207 and 7-208 for a CPCN application.

(1) The site plan application must be submitted by the applicant to the County and at least one multi-agency review cycle must be completed prior to the applicant submitting an application to the Public Service Commission for a CPCN.

(2) The site plan will be scheduled for a Planning Commission public hearing after the Applicant provides a copy of the CPCN to the County and all agency comments are addressed.

(3) The owner of a property that is zoned Agricultural (AG) and approved for the installation of a Commercial Solar Facility in accordance with this section must ensure that any portion of the property not placed into solar energy production will continue to be used for active or passive agricultural production, and purposes that are compatible with simultaneous solar production: by way of example and not limitation, such production and purposes include owner or tenant pasture production for grazing or harvest, crop production, beekeeping or timber production. Areas that are not used for agricultural production must be left as open space or, where streams or floodplain exist, as environmental buffers.

(C) Setbacks for solar energy generating panels and accessories will be measured from the nearest solar panel/structure.

(D) Setbacks for solar energy generating panels and accessories will be:

(1) 50 feet from all property lines;

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

(2) 100 feet from any residential structure; and

(3) 50 feet from proposed or established road right of way lines as determined by the Master Highway Plan.

(E) All solar energy generating panels and accessories are to be sited down slope from ridge lines, toward the interior of the parcel, lot, or tract, whenever possible.

(F) Landscaping and screening.

(1) In addition to §1-19.6.400, the following landscaping, screening, and buffering requirements must be met.

- (a) A landscaped buffer must be provided along all property lines or along the exterior boundary of the solar array. The buffer must be designed to provide four-season visual screening of the solar facility and include multi-layered, staggered rows of overstory and understory trees and shrubs that are a mix of evergreen and deciduous vegetation, with an emphasis on species that are native to Frederick County.
- (b) Applicant must submit a landscape, buffering, and screening plan as part of the site plan application addressing the requirements and timing of plantings. Screening and buffering must be installed as early in the development process as possible and prior to activation of the solar facility. Screening and buffering requirements must be installed in accordance with the approved site plan.
- (c) The overstory trees within a landscape screen or buffer must be a minimum of 6 feet in height with a minimum caliper of 2 inches at the time of planting. The minimum size of understory trees and shrubs at the time of planting must be 3 gallon or larger. Trees and shrubs larger than the minimum sizes listed above will be required where the minimum planting sizes will not provide adequate screening or buffering within 2 years. Vegetation used to establish a

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

visual screen must not be trimmed so as to stunt upward and outward growth or to otherwise limit the effectiveness of the visual screen.

- (d) A berm or fence may be used in combination with vegetation to satisfy the screening requirement where deemed appropriate by County Staff and the Planning Commission. Fences must be made of quality materials and enhance rather than detract from the beautification of the site. Berms and fences must be designed to avoid long, undifferentiated facades and long, plain sections by including a combination of the following design elements: variations in height, step-backs or recesses, changes in material, patterns, textures, colors, or use of accent materials.
- (e) If security fencing is proposed, vegetative screening must be placed between the fence and the public view. Fencing must be made of high-quality materials. Chain-link and similar woven metal or plastic fencing must not be used. No barbed or razor wire may be used on the security fencing around the solar panels and accessories.
- (f) If forest or hedgerows exist where screening or buffering is required, it must be preserved to the maximum extent practicable and supplemented with new plantings where necessary to provide the desired screening or buffering.
- (g) All landscaping, screening, and buffering must be maintained in living condition.

(2) The Planning Commission may approve a modification to the landscaping, buffering, and screening standards where an alternate landscaping, buffering, and screening plan is proposed that meets the purpose and intent of these design requirements.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

(G) Lighting. If lighting is proposed, then a lighting plan must be submitted in accordance with §1-19-6.500. Lighting will provide the lowest level of illumination practicable to reduce impact on adjoining properties.

(H) Removal and Restoration of the Property.

(1) The property owner will provide a decommissioning and restoration plan as part of the site plan submission unless a decommissioning and restoration plan is included in the Public Service Commission's conditions of CPCN approval.

(2) The property owner will ensure the removal and disposal of all of the solar energy generating panels and accessories and the restoration of the site to its prior condition, by posting an acceptable monetary guarantee with the County on forms provided by the office of the Zoning Administrator. The guarantee must be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal and disposal of the solar facility, plus a 15% contingency, (“Guarantee Amount”). The financial guarantee must be provided prior to the issuance of a building permit or grading permit, whichever is applied for first. Notice must be provided to the Zoning Administrator within 30 days of the sale or transfer of the lease and a new financial guarantee must be provided by the new lease holder. If a guarantee for the cost of removal and disposal of the solar panels and accessories and the restoration of the property is required by and provided to a state entity, the Zoning Administrator may accept documentation of the posting of the guarantee with the state entity as satisfaction of this requirement.

(3) When the commercial solar facility ceases to generate electricity, does not input electricity into the electric grid for 6 months, or the lease for the site expires, the site plan approval will terminate automatically and without notice from the County.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

(4) Removal of the solar energy generating panels and accessories will begin within 90 days after termination of the site plan approval, and restoration of the property to the condition that existed prior to the installation of the solar energy generating panels and accessories will be completed within six months of the start of solar panel removal.

(5) Restoration will include the removal from the property of all above-ground facilities, as well as all underground footings, supports, wires, materials, fences, and berms.

(I) Notice to County. The property owner or owner of the solar energy generating panels and accessories must provide notice to the Zoning Administrator when the lease for the site expires, and when the commercial solar facility ceases to generate electricity or does not input electricity into the grid for 60 days or longer, unless due to routine maintenance activity.

.....

DIVISION 7. ~~[SOLAR FACILITY, COMMERCIAL FLOATING ZONE DISTRICT]~~ RESERVED

~~§ 1-19-10.700. SOLAR FACILITY – COMMERCIAL FLOATING ZONE DISTRICT.~~

(A) ~~Solar facility, Commercial shall be a floating zone which may be established within the Agricultural zone having the corresponding Comprehensive Plan land use designation. Commercial Solar facilities can play an important role by providing alternative energy sources, however because of their size, scale and intensity these commercial facilities may create adverse impacts on nearby properties and the adversely affect the rural and scenic characteristics of agricultural areas. Review and siting of these facilities through a floating zone process will maintain the purpose and protect the character of agricultural areas.~~

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

(B) Size and location.

(1) The tract or tracts of land eligible to receive the Solar Facility Commercial District must be zoned Agriculture and have a Comprehensive Plan land use designation of agricultural/rural.

(2) The tract or tracts of land which is the subject of the floating zone application may not be contiguous to a community growth boundary as designated on the County Comprehensive Plan. (For purposes of this subsection, a property separated from a community growth boundary by a transportation or utility right of way (whether fee simple or lesser interest) is deemed to be contiguous as if such right of way did not exist.)

(3) The tract or tracts of land which is the subject of the floating zone application shall have a minimum size of 10 acres and shall not exceed 750 acres.

(4) The tract or tracts of land which is the subject of the floating zone application may not be encumbered by an Agricultural Preservation Easement, located within a Priority Preservation Area (PPA) or a Rural Legacy Area (RL) in the County Comprehensive Plan, or be located within two (2) miles of the centerline of the right of way of U.S. Route 15, outside the Frederick City limits from the Pennsylvania border to the Virginia border, that Route having been designated as part of the Journey Through Hallowed Ground National Heritage Area. If the tract or tracts of land subject to the floating zone application are within 2 miles of the centerline of U.S. Route 15, the application may be conditionally accepted and the applicant will have the burden to establish that the proposed project will not be visible from U.S. Route 15.

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

(C) Approval criteria.

(1) Approval or disapproval of an application for a Solar Facility Commercial Floating Zone shall be determined through evaluation of the impact of the proposed project upon the adjacent and nearby properties and whether the project will be compatible with, and have no adverse effects on, surrounding properties and a viewscapes from public parks and roadways.

(2) The applicant shall establish that the site is the optimal location for a commercial solar project due to its proximity to facilities to connect the project to the grid, and that the natural features of the site and the location minimize the visual impact of the project on surrounding properties and those traveling on public roadways.

(3) The applicant shall establish that the proposed project will be compatible with the existing and customary uses on adjoining and neighboring properties and in the Agriculture zone in terms of size, scale, style and intensity.

(4) The applicant shall establish that the project will not be located on prime farmland soils as identified in the USDA Soil Survey for Frederick County.

(5) The proposed project, including all areas of disturbance, shall not exceed the lesser of 10% of the tract's or tracts' tillable acreage or 75 acres in size.

(6) A 25 foot deep buffering and screening area shall be provided along common property lines between the Solar Facility and all adjoining residentially zoned property and along all adjacent roadways. The buffering and screening area may include a combination of berms, predominantly evergreen species at least 5 feet in height at the time of planting, or fencing to be determined by the County Council based on characteristics of both the

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

~~solar facility location and the surrounding neighborhood. The County Council may increase the 25 foot buffering and screening area depth based on characteristics of both the solar facility location and the surrounding neighborhood. The buffering and screening area may be located within the setback areas.~~

- ~~(7) Applicants must satisfy all Forest Resource Ordinance requirements and environmental regulations set forth in Article IX of the Zoning Ordinance (Chapter 1-19.)~~
- ~~(8) The applicant must comply with all applicable federal and state regulations, including but not limited to obtaining a certificate of public convenience and necessity from the Public Service Commission if required, and in the removal and disposal of the solar facility and all of its components.~~
- ~~(9) All solar facilities and panel disconnects must be mapped and registered with the Frederick County Division of Fire and Rescue Services.~~
- ~~(10) If for a period of 6 months, the solar facility ceases to generate electricity or is disconnected from the electric grid, the approval will terminate. The property owner shall remove the solar facility within 90 days after termination. The property owner shall ensure the solar facility removal and disposal by posting an acceptable monetary guarantee with the County on forms provided by the office of the Zoning Administrator. The guarantee shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal and disposal of the solar facility, plus a 15% contingency. If a guarantee for the cost of removal and disposal of the solar facility is required by and provided to a state entity, the Zoning Administrator may accept documentation of the posting of the guarantee with the state entity as satisfaction of this requirement.~~

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

(11) If approval of the application is granted it may include conditions and restrictions deemed necessary to fulfill these criteria and to protect the intent of the agricultural/rural land use designation.

(D) *Application and approval.*

(1) Prior to submitting an application for the floating zone, the applicant shall publicize the proposed application using a block advertisement of a size acceptable to staff including a map showing the site and a one mile radius. The applicant shall hold a meeting in the area of the proposed facility to provide information to the members of the surrounding community regarding potential impacts of the project. Written notice of the meeting shall be provided to all abutting property owners and any homeowners/ community associations within a one mile radius of the property. Minutes of the meeting and a list of attendees shall be submitted with the floating zone application.

(2) Phase I justification and floating zone reclassification application and procedures will be the same as established in §§ 1-19.3.110.1 through 1-19.3.110.6.

(3) Phase II approval shall follow the site development plan process. If the tract or tracts of land are granted floating zone approval they may not be further subdivided.

(E) *Application.*

(1) The application submitted must include 15 copies of each of the following:

- (a) A map of the applicant's entire holding at a convenient scale.
- (b) A vicinity map at a scale of 1 inch equals 2,000 feet or more to the inch, indicating the location of the property with respect to surrounding property and

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

streets. The map will show all streets and highways within 2,000 feet of the applicant's property.

(e) An environmental features map of the property showing the existing surface of the land and the location of soil types and natural features such as streams, rock outcrops and wooded areas, at a minimum of 5 foot contour intervals, unless otherwise specified.

(d) A generalized overall land use plan at 1" = 100 scale, showing the type, location, acreage and density of all proposed land uses as well as the general street layout and circulation pattern.

(e) A concept plan at 1" = 50 scale showing; the location of the proposed use, size and height of all existing and proposed buildings; the location of all roads, parking lots, loading areas and access and egress drives.

(f) A phasing schedule describing the timing and sequence of development.

(g) A "glint and glare" analysis of the proposed solar facility identifying the angle and height of reflection throughout the year, and the impacts upon nearby residences, roadways, and airports.

(2) The applicant shall submit a justification statement addressing each of the approval criteria as well as the following:

(a) Relationship of uses within the project and with existing uses in the neighborhood;

(b) The timing of the construction of the project as it relates to the provision of facilities and services;

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10

(c) A statement identifying all incidental accessory uses and activities associated with the primary use of the property including hours of operation, frequency of activity, and average number in attendance.

(Bill No. 17-07, 5-16-2017)]

Underlining indicates matter added to existing law.

[Single boldface brackets] indicates matter deleted from existing law.

*** - indicates existing law unaffected by bill.

Bill No. 24-10