

Local Law 2020-02
Proposed Amendments to
Town of Ellicottville Zoning Law
Adopted by Town Board March 18, 2020

Proposed Amendments to Article 2 - Definitions

Array: Any number of electrically connected solar panels providing a single electrical output.

Building-Integrated Solar Energy System: A combination of solar panels and solar energy equipment integrated into any building envelope system such as semitransparent skylight systems, roofing materials, or shading over windows, which produce electricity for onsite consumption.

Building- or Roof-Mounted Solar Energy System: A solar energy system in which solar panels are mounted on any legally permitted building or structure that produces electricity for onsite or offsite consumption.

Farmland of Statewide Importance: Land, designated as “Farmland of Statewide Importance” in the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS)’s Soil Survey Geographic Database on Web Soil Survey, that is of State-wide importance for the production of food, feed, fiber, forage, and oilseed crops as determined by the appropriate State agency or agencies. Farmland of Statewide Importance may include tracts of land that have been designated for agriculture by State law.

Glare: To shine or reflect with a harsh, bright light.

Ground-mounted: Solar energy system component(s) mounted on a structure, pole, or series of poles constructed specifically to support the system and not attached to any other structure.

New York State Unified Solar Permit (application): The New York State Unified Solar Permit application as adopted by the Town of Ellicottville February 15, 2017.

Non-Participating Residence: Residences and Residential Structures on the same parcel where a Tier 3 solar energy system is proposed, or existing Tier 3 solar energy system is located.

Prime Farmland: Land, designated as “Prime Farmland” in the U.S. Department of Agriculture NRCS’s Soil Survey Geographic Database on Web Soil Survey, that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is also available for these land uses.

Repower: Modification, upgrade or replacement of solar panel arrays and/or ancillary equipment at a previously approved Tier 3 Solar Energy System.

Solar Energy System: The components and subsystems required to convert solar energy into electric energy suitable for use, consisting of one or more building- and/or ground-mounted solar

photovoltaic cells, modules, panels or arrays, and solar-related equipment. The term includes, but is not limited to, solar panels and solar energy equipment. The area of a solar energy system includes all the land inside the perimeter of the solar energy system, which extends to any interconnection equipment. A solar energy system is classified as a Tier 1, Tier 2, or Tier 3 solar energy system as follows:

Tier 1 or Small-Scale Solar Energy Systems: Roof-Mounted solar energy systems and/or Building-Integrated solar energy systems of less than 25 kW capacity that use the electricity generated from solar panels primarily for onsite consumption.

Tier 2 Solar Energy Systems: Ground-Mounted solar energy systems that use the electricity generated from solar panels primarily for onsite consumption, and have a total surface area of all solar panels on the property of up to 2,000 square feet, and generate up to 110% of the electricity consumed on the site over the previous 12 months, and have the capacity to produce less than 25 kW of energy.

Tier 3 or Utility-Scale Energy Systems: Solar energy systems that are not included in either Tier 1 or Tier 2 solar energy systems. Tier 3 or Utility-Scale Energy Systems produce electricity primarily for off-site consumption or sale and have the capacity to produce less than 25 MW of energy.

Solar Panel: A photovoltaic device capable of collecting and converting solar energy into electricity.

Solar Storage Battery: A device that stores solar energy and makes it available in an electrical form. Battery Storage Systems shall only be allowed as an accessory use or accessory structure as part of an approved Solar Energy System. Stand-alone Battery Storage System as principal uses on any parcel shall not be permitted.

Town: Town of Ellicottville.

Proposed Amendments to Article 3, Section 3.8 – Schedule of Requirements – Land Use Table:

LAND USE TABLE

<u>USE – DESCRIPTION</u>	<u>C</u>	<u>A-R</u>	<u>LD</u>	<u>MD</u>	<u>HD</u>	<u>GC</u>	<u>I</u>
<u>Miscellaneous Uses</u>							
Tier 1 (Small-Scale) Solar Energy Systems	P	P	P	P	P	P	P
Tier 2 Solar Energy Systems	S	P	P	S	S	S	S
Tier 3 (Utility-Scale) Solar Energy Systems	N	S*	S*	N	N	N	N

**Tier 3 Solar Energy Systems in the Low Density-Residential District and Agricultural-Residential District are limited to areas outside the Sewer District and Water District.*

Proposed Amendments to Article 12, add new Section 12.17 – Solar Energy Systems:

A. Intent and Purpose.

The Town of Ellicottville recognizes that solar energy is an abundant, renewable, and non-polluting energy resource and that its conversion to electricity can reduce dependence on nonrenewable energy resources and decrease air and water pollution that result from the use of conventional energy sources. The Town Comprehensive Plan recommends that because the development of solar energy systems may potentially impact the Town, future development of utility scale solar farms should be carefully regulated. Therefore, the Town has determined that comprehensive regulations regarding the development of solar energy systems are necessary to protect the interests of the Town, its residents, and its businesses.

This Section on solar energy systems is intended to ensure that development of such systems will have minimal impact on neighboring properties and to protect the health, safety, and welfare of residents of the Town.

B. Applicability and Authority.

The provisions of this Section are applicable to Tier 1, Tier 2, and Tier 3 solar energy systems that have the capacity to produce less than 25 MW of energy and as defined in Section 2.2-Definitions. Any solar energy system erected, constructed, modified, or operated in the Town of Ellicottville, after the effective date of this amendment, shall be in compliance with this Section.

All solar energy systems under 25 MW must be reviewed and approved in accordance with the provisions of this Section and under the procedures of Article 6-Special Use Permits, Article 7-Site Plan Review, and Article 8-Administration and Enforcement. The Planning Board is authorized to review and approve, approve with modifications, or disapprove Special Use Permits and Site Plans for Tier 2 and Tier 3 solar energy systems pursuant to the Town of Ellicottville Zoning Law. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed solar energy system.

Repowering previously approved Tier 2 and Tier 3 solar energy systems shall be subject to the same Special Use Permit and Site Plan approval process as required for the initial approval if: a) output is increased; b) the footprint of the developed area of the solar energy system (and/or ancillary equipment or facilities) are increased; c) if the height of solar panels is increased, or d) if battery energy storage system is added, modified or enlarged as an accessory use to an existing Tier 2 and Tier 3 solar energy system.

Solar energy systems producing 25 MW or more are permitted by the Board of Electric Generation Siting and the Environment (Siting Board) under Article 10 of the New York State Public Service Law. The Siting Board is responsible for issuing Certificates of

Environmental Compatibility and Public Need, authorizing the construction and operation of major electric generating facilities (including solar energy systems producing 25 MW or more).

C. Permitting Requirements for Tier 1 - Small-Scale Solar.

- (1) Tier 1 - Small-Scale solar installations are permitted in all districts as an accessory use and subject to the following conditions and standards:
- (2) Building and Zoning Permits shall be required for installation of all building-mounted solar energy systems in accordance with Article 8 Section 8.2 of this Code, and in accordance with the New York State Unified Solar Permit Application form as adopted by the Town. Tier 1 systems shall comply with any and all relevant Town, State and national codes, including, but not limited to the National Electrical Code. Building-Integrated solar energy systems shall be fully shown on the plans submitted with the Building Permit application for the building containing the system.
- (3) Minimum application requirements for Tier 1 Small-Scale solar energy systems:
 - a. All application content listed in Section 8.2.B and the New York State Unified Solar Permit Application, unless the Code Enforcement Officer determines on a case-by-case basis that specific application content is not applicable.
 - b. Building Plans and Manufacture's product information and specifications.
- (4) Roof-Mounted Tier 1 – Small-Scale solar energy systems shall incorporate, except when proven infeasible, the following design requirements:
 - a. All Roof-Mounted solar energy systems shall be subject to the maximum height regulations specified for principal and accessory buildings within the underlying zoning district.
 - b. Solar panels on pitched roofs shall be mounted parallel to the roof surface with a maximum distance of 8 inches between the roof surface and the bottom edge of the solar panel.
 - c. Solar panels on pitched roofs shall not extend higher than the highest point of the roof surface on which they are mounted or attached.
 - d. Solar panels must be completely contained within the limits of the building roof or wall. All ancillary equipment and components of the solar energy system shall be located within the rear yard only and are subject to setbacks for accessory structures.
 - e. The top of solar panels installed on flat roofs shall not extend more than 42 inches above the flat surface of the roof, or exceed the maximum building height for the district within which it is located. Roof-top installed solar panels shall be located at a minimum of 6 feet inside the edges of the perimeter of a flat roof.

- (5) Glare: All Tier 1 solar panels shall have anti-reflective coating(s).

D. Permitting Requirements for Tier 2 Solar Energy Systems.

- (1) Tier 2 solar energy systems shall only be allowed as accessory structures in the zoning districts as provided in Article 3, Section 3.8 - Land Use Tables and subject to the following conditions and standards:
- (2) Building and Zoning Permits shall be required for installation of all building-mounted solar energy systems in accordance with Article 8 Section 8.2 of this Code and in accordance with the New York State Unified Solar Permit Application form and procedures as adopted by the Town. Tier 2 systems shall comply with any and all relevant Town, State, and national codes, including, but not limited to the National Electrical Code.
- (3) Minimum application requirements for Tier 2 solar energy systems:
 - a. All application content listed in Section 8.2.B and the New York State Unified Solar Permit Application, unless the Code Enforcement Officer or Planning Board determines on a case-by-case basis that specific application content is not applicable.
 - b. Site Plan, Building Plans, and Manufacture's product information and specifications.
 - c. Applicable application content required in Section 6.3.B and Section 7.4.B.
- (4) Setbacks: Tier 2 solar energy systems shall be subject to the setback regulations specified for accessory structures within the underlying zoning district.
- (5) In the AR, LD, MD, and HD Residential Districts, Tier 2 solar energy systems shall only be installed in the side or rear yards and not in the front yard, between the front line of a structure and the front property line.
- (6) All Tier 2 solar energy systems shall have their views minimized from public roadways and adjacent properties to the extent reasonably practicable, utilizing landscape screening or buffering installed at the solar energy system or at the property line.
- (7) Tier 2 solar energy systems shall comply with the following height limitations measured from the highest natural grade below each solar panel to the highest point on each solar panel:
 - a. Ten (10) feet maximum in C, LD, MD and HD Districts.
 - b. Fifteen (15) feet maximum in the A-R, GC and I Districts.
- (8) Glare: All Tier 2 solar panels shall have anti-reflective coating(s).

E. Permitting Requirements for Tier 3 - Utility Scale Solar Energy Systems.

- (1) All Tier 3 solar energy systems are permitted through the issuance of a Special Use Permit and Site Plan approval in accordance with the provisions of this Section and under the procedures of Article 6-Special Use Permits and Article 7-Site Plan Review.

Applications shall document how the proposed Tier 3 solar energy system will:

- a. Minimize and mitigate potential impacts of the solar energy system on surrounding residential land uses and protect the general rural character of the Town.
 - b. Minimize and mitigate the potential impacts of solar energy systems on the Town's environmental resources such as: important agricultural lands, woodlands, wetlands/streams, and other protected resources.
 - c. Show how the solar energy system is consistent with the Town Comprehensive Plan.
- (2) Tier 3 solar energy systems shall only be allowed as Primary Uses in the zoning districts as provided in Article 3, Section 3.8 - Land Use Tables and subject to the following conditions and standards:
- (3) Lot Size: Tier 3 solar energy systems shall be subject to the lot requirements specified for principal uses and principal structures within the underlying zoning district or the following, whichever is more restrictive:
- a. Minimum lot size or lease area for Tier 3 solar energy systems shall be 10 acres.
 - b. Minimum lot width for a parcel or lease area for a Tier 3 solar energy systems shall be 500 feet.
 - c. Open Space requirements of the underlying district shall apply to the leased area for a solar energy system.
- (4) Setbacks: Tier 3 solar energy systems shall be subject to the setback regulations specified for principal structures within the underlying zoning district or the following, whichever is more restrictive:
- a. Front: All components of Tier 3 solar energy systems shall be a minimum of 100 feet from the front property line or road right-of-way or boundary of the Conservation District, whichever is greater.
 - b. Rear: All components of Tier 3 solar energy systems shall be a minimum of 100 feet from the rear property line or boundary of another residential district, whichever is greater.
 - c. Side: All components of Tier 3 solar energy systems shall be a minimum of 200 feet from the side property line or from boundary of another residential

- district (HD, MD or LD) or from the Conservation District, whichever is greater.
- d. A minimum of a 500-foot setback shall be provided between any existing offsite non-participating residential structures (residences) and Tier 3 solar energy system facilities (structures, equipment, solar panel arrays, battery storage systems).
 - e. A maximum height of fifteen (15) feet measured from the highest natural grade below each solar panel to the highest point on each solar panel.
- (5) Agricultural Resources: All Tier 3 solar energy systems, including those located in an area consisting of Prime Farmland or Farmland of Statewide Importance shall be required to seed with native perennial vegetation, and maintain vegetated, a minimum of 100% of the total area that is disturbed for the construction of the solar energy system, including the area below the solar panel arrays, with the exception of buildings and roadways.
- (6) Avoidance of Steep Slopes: Wooded slopes and steep slopes are part of the natural resources that define Ellicottville's character and attractiveness. Those resources should be protected from permanent alteration by minimizing clearing and development on steep slopes for Tier 3 solar energy systems. Tier 3 solar energy systems (including access roads, structures, equipment, solar panel arrays, battery storage systems) shall not be permitted on property having slopes steeper than 15%.
- (7) Underground Requirements: All on-site utility lines shall be placed underground except for the main service connection at the utility company's easement or right-of-way, and any new interconnection equipment.
- (8) Layout and Orientation: Tier 3 solar energy systems should be designed in a manner that minimizes clearing and avoids grading. The orientation and layout of solar panel arrays shall follow the natural contours of the landscape. Cut and fill shall be avoided to the maximum extent possible. Vehicular paths within the site shall be designed to minimize the extent of impervious materials and soil compaction. Access and vehicular drives should follow the edges of existing agricultural fields.
- (9) Signage:
- a. No signage or graphic content shall be displayed on the solar energy systems except the manufacturer's name, equipment specification information, safety information, and 24-hour emergency contact information, and as required by the New York State Unified Solar Permit. Said information shall be depicted within a total sign area of no more than 6 square feet.
 - b. As required by National Electrical Code, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A

clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.

- (10) Fencing: All mechanical buildings and equipment, including but not limited to substations, transformers or any structure used for storage batteries, shall be enclosed by a fence not to exceed 6 feet in height or 7 feet in height if required by the National Electric Code, and a locking gate to prevent unauthorized access. Fencing may surround the solar panel array(s), but the entire lease area or property shall not be fenced.
- (11) Glare: All solar panels shall have anti-reflective coating(s).
- (12) Lighting: Solar energy systems shall not be lit except to provide minimal lighting required for safety and operational purposes. Such lighting shall be reasonably shielded and downcast from abutting properties and designed in accordance with the provisions of Article 12, Section 12.2-Outdoor Lighting Standards.
- (13) Tree-cutting: Location of a Tier 3 solar energy system in wooded areas should be avoided. No more than 10% of a project or lease area shall be cleared of existing trees, excluding brush clearing.
- (14) Screening and Visibility: Tier 3 solar energy systems shall have views minimized from adjacent properties to the extent reasonably practicable using vegetative buffers, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area.

Applicants shall be required to submit a screening and landscaping plan, stamped and signed by a New York State licensed landscape architect, showing adequate measures to screen the solar energy system through landscaping or other means so that the views of solar panels and other solar energy system buildings and equipment shall be minimized as reasonably practical from roadways and neighboring properties. The screening and landscaping plan shall include the locations, elevations, height, plant species, and/or materials that will comprise the vegetative buffer or landscaping used to screen and/or mitigate any adverse aesthetic impacts of the solar energy system.

A Visual Impact Assessment (VIA) shall be provided to determine the potential visual impacts of the proposed solar energy system on public roadways and adjacent properties. At a minimum, a viewshed analysis map and line-of-sight profile analysis shall be provided. A rendering or photo-simulation of the solar energy system shall also be provided as part of a complete application. The view(s) provided shall be from the closest public road(s) and closest existing (non-participating) residence(s). Depending upon the scope and potential significance of the visual impacts, additional impact analyses may be required by the Planning Board in order to determine the effectiveness of the proposed buffers and/or

setbacks. The VIA shall be prepared according to the NYS policy for Assessing and Mitigating Visual Impacts (DEP-00-02) as applicable to the setting and location.

(15) Safety:

- a. If storage batteries are included as part of the solar energy system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Uniform Fire Prevention and Building Code. When in use, solar storage batteries shall meet the requirements of any applicable fire prevention and building code and when no longer used, they shall be disposed of in accordance with the laws and regulations of the Town and any applicable federal, state, or county laws or regulations.
- b. Solar energy systems shall be maintained in good working order and in accordance with industry standards. Site access shall be provided and maintained, including snow removal, at a level acceptable to the local fire department and ambulance service.

(16) Site Plan: Any Tier 3 Utility-Scale solar energy system requiring a Special Use Permit shall also require Site Plan Review in accordance with Article 7, Section 7.4. In addition to all the applicable items in Article 7, Section 7.4.B-Application Content, any site plan application for a Tier 3 solar energy system shall also include the following information:

- a. Survey: Project site boundaries (if part of a larger parcel, include a map of the larger parcel and the location of the area to be acquired or leased for the project). A copy of an up-to-date property survey must be provided.
- b. Site Plan: Proposed Site Plan depicting proposed changes to the landscape of the site, location of lease lines, location and orientation of all the arrays, battery storage, supporting equipment and structures, access from public highway, means of interconnection to the existing electric grid, vehicular paths, grading, limits of vegetation clearing, limits of tree cutting, exterior lighting, fencing, and plantings and vegetative screening. As well as any additional information relevant to the proposed project as determined by the Town Code Enforcement Officer and/or Planning Board.
- c. An electrical diagram detailing the solar energy system layout, solar collector installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
- d. Preliminary equipment specification sheets that document all proposed solar panels, significant components, mounting systems, and inverters that are proposed. Final equipment specification sheets shall be submitted prior to the issuance of building permit.
- e. Property Operation and Maintenance Plan. Such plan shall describe continuing photovoltaic maintenance and property upkeep, such as mowing and trimming.

- f. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, as applicable, and to such standards as may be established by the Planning Board.
- g. Prior to the issuance of the building permit or final approval by the Planning Board, but not required as part of the application, engineering documents must be signed and sealed by a New York State Licensed Professional Engineer.

(17) Decommissioning and Site Restoration Plan:

- a. Tier 3- Utility Scale solar energy systems that have been abandoned and/or not producing electricity for a period of 1 year shall be removed at the solar farm owners' and/or operators' expense, which may come from any security made with the Town as set forth in this Article.
- b. A decommissioning and site restoration plan signed by the owner and/or operator of the solar energy system shall be submitted by the applicant. To ensure the proper removal of Tier 3 – Utility-Scale solar energy systems, the decommissioning plan shall include details regarding the removal of all infrastructure, including the removal of concrete and/or steel to a depth of four feet, and the remediation of soil and vegetation back to its original state prior to construction. A soil decompaction plan shall also be provided for Tier 3 systems proposed in any agricultural location. A cost estimate detailing the projected cost of executing the decommissioning plan shall be prepared by a professional engineer or contractor. Cost estimates shall take inflation into account. In the case of a lease, the cost of decommissioning shall be borne by the entity or corporation that is leasing the property in question and not the landowner. The plan shall include a description of the form of surety the applicant intends to use.

(18) Security: As a condition of Special Use Permit approval, the Planning Board shall require the Applicant to execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Counsel to the Town as to the form, content and manner of execution, in an amount sufficient to ensure the faithful performance of the removal of the solar energy system and the restoration of the site subsequent to such removal, in accordance with the approved Decommissioning and Site Restoration Plan. All bond requirements shall be fully funded before a Building Permit is issued. The applicant and his/her successors shall maintain the required bond funds for the duration of the Special Use Permit.

(19) State Environmental Quality Review (SEQR): The Town of Ellicottville considers Tier 1 or small-scale solar energy systems including building-integrated solar components to be SEQR Type II actions and therefore, exempt from all SEQR requirements, excluding the submission of a Short Environmental Assessment Form.

Tier 2 and Tier 3 solar energy systems that meet thresholds contained in the SEQR regulations are considered more likely than others to have a significant adverse impact may be considered Type I actions and shall require a Full Environmental Assessment Form and undergo a SEQR Coordinated Review. The need for an Environmental Impact Statement shall be determined by the Planning Board on a case-by-case basis during the SEQR Coordinated Review, based on the potential for a project to result in significant adverse environmental impacts.

- (20) **Review and Inspection Fees:** Review and inspection fees for all solar energy systems shall be established by the Town Board by resolution. The Town shall require any applicant to enter into an escrow agreement to pay the engineering, planning, legal, and inspection costs of all application reviews and site inspections, including the review required under SEQR. Nothing in this article shall be read as limiting the ability of the Town to enter into host community agreement(s) with the Applicant to compensate the Town for expenses or impacts on the community.

- (21) **Host Agreement:** An agreement between an Applicant for a Tier 3 solar energy system and the Town of Ellicottville, similar to a Payment in Lieu of Taxes (PILOT) agreement, shall identify the special costs to the Town of hosting a Tier 3 solar energy system and provide a means by which the Applicant will provide periodic payments for such costs. The Host Agreement shall be submitted to the Town Board at the same time as the Special Use Permit application and shall be in place before a Building Permit will be issued.

- (22) **Payments in Lieu of Taxes (PILOT):** The Planning Board shall not issue a Special Use Permit or approve a Site Plan for a Tier 3 solar energy system unless and until the Town has made an agreement with the developers on a PILOT.