Current State of the Law for Homeowners Wishing to Install Rooftop Solar

A recent North Carolina Supreme Court case clarified protections homeowners enjoy under North Carolina’s “solar access law,” N.C. Gen. Stat. § 22B-20. SELC filed a “friend of the court” [brief](https://www.ncappellatecourts.org/show-file.php?document_id=289378) in the case on behalf of the North Carolina Sustainable Energy Association. The purpose of the solar access law is to encourage and protect affordable access to rooftop solar. G.S. § 22B-20(a). To that end, the law invalidates “any deed restriction, covenant, or similar binding agreement that runs with the land that would prohibit, or have the effect of prohibiting, the installation of a solar collector” created after October 1, 2007. G.S. § 22B-20(b).

There are two exceptions in the solar access law. First, it allows restrictions on the “location” or “screening” of solar collectors so long as they do not prevent the “reasonable use” of the solar collector. G.S. §22B-20(c). The law does not define “reasonable use,” but the term implies that homeowners must be able to install solar on the most effective roof face (i.e., south). Second, the law allows deed restrictions that prohibit the location of solar collectors that are both “visible by a person on the ground” and are facing an area of public access. G.S. § 22B-20(d). For the past 15 years, HOAs commonly interpreted this exception so broadly that it swallowed the rule. However, the recent North Carolina Supreme Court case clarified that the solar access law requires this type of prohibition to be explicit in order to be effective. An HOA may not prohibit street-facing solar on the basis of a deed restriction that simply gives it broad approval authority over improvements to homeowners’ properties.

As a result, all homeowners with deed restrictions that began after October 1, 2007, should be free to install solar collectors wherever they are most effective--including facing public areas--as long as their property is not subject to an explicit restriction on street-facing solar.

Case Background

The homeowners in [Belmont Ass’n v. Farwig](https://appellate.nccourts.org/opinions/?c=1&pdf=41507) installed solar panels on their roof on the slope facing the street (south). Moving the solar panels to the roof slope facing away from the street (north) would dramatically reduce the energy generated by the panels. The homeowners’ HOA objected based on a “Declaration of Protective Covenants” that allowed an “Architectural Review Committee” to deny improvements to homes for essentially subjective “aesthetic” reasons. The HOA began fining the homeowners and ultimately took them to court.

The North Carolina Supreme Court held that in order to qualify for solar access law’s exception allowing prohibitions on street-facing solar, the language of G.S. § 22B-20(d) requires that the prohibition must be explicitly stated in the relevant deed restriction. Because the deed restriction that applied to the Farwigs’ property did not explicitly prohibit street-facing solar (it did not mention the word “solar”), their HOA did not have the authority to prevent them from installing solar on their home’s south-facing roof. Nor could the HOA rely on the exception in G.S. § 22B-20(c), allowing restrictions relating to location or screening, because those must still allow the homeowner to make “reasonable use” of solar. Because the HOA prohibited street-facing solar but the deed restriction did not mention—let alone prohibit—solar, the Court upheld the homeowners’ right to install solar panels.