**Caroline Town Board Meeting Minutes of May 3, 2023**

The Town Board Agenda Meeting was held in person and electronically via zoom teleconference on May 3, 2023, beginning at 7:05 p.m. and was hosted by Town Supervisor Mark Witmer

**Attendance**:

Supervisor Mark Witmer

Councilmember Cal Snow

Councilmember Tim Murray

Councilmember Kate Kelley-Mackenzie (zoom)

Councilmember Katherine Goldberg

**Recording Secretary**:

Jessie Townsend, Town Clerk

**Public Attendance:**  **25** members of the public in-person, **18** members of the public via zoom

Supr. Witmer opened with the Pledge to the Flag.

## Public Hearing on a Local Law to Extend the Moratorium until February 1, 2024

Supr. Witmer opened the Public Hearing at 7:06 p.m.

*Kim Whetzel* – Concerned about extending again. As a large landowner in the town, this ongoing pause poses a threat to his plans during retirement. Encourages the Town Board to proceed quickly or abandon it completely.

*John Fracchia* – Spoke in support of the extension noting that the Moratorium is still necessary and encouraged the Board to move forward thoughtfully on the zoning law and decide one way or another.

*Michele Brown* – Served on the Zoning Commission and urged the Board to extend the Moratorium. By not doing so, would be a discredit to the time and money spent over the past 2 years on this process.

*Renate Ferro* – Spoke in support of the Moratorium noting it gives the Board time and space needed for a thoughtful process. She also spoke in favor of zoning, adding that whether you support the law or don’t support the law, time is required to contemplate the final decision.

*Barbara Knuth* – Served on both the Land Use Task Force and the Zoning Commission. She supports extending the Moratorium. Noted the importance of taking the time to listen to public input.

*John Morse* – Reminded the Board that they have a petition with over 1200+ signatures that asks them not to extend the Moratorium.

*Michael Brown* – Supports the draft zoning law and encourages the Board to extend the Moratorium as there has been no evidence of hardship or negative impact since it has been in place.

*Ellen Harrison* – Supports extending the Moratorium while the Board does its work on the draft zoning law, just as the Commission took their time. Shared concern of a possible flood of building applications that would come forward in anticipation of a zoning law.

*Chad Novelli –* Served on the Planning Board and helped craft the Comp Plan. He supports the Moratorium adding that making it this far in the process and not extending it would be a disservice to the town.

*Pete Hoyt* – Questioned the stated goals for the longstanding Moratorium in that it addresses projects that trigger Site Plan Review but does not prevent residential building sprawl.

*Holly Magee* – Opposed the extension of the Moratorium. Speakers that spoke in support of the extension have personal connections to the Board.

*Robin Fisher-Cisne* – Spoke in favor of the extension and zoning. Without zoning, large corporations will take over the Town and will drive small local businesses out.

*Kira and Rose* – Spoke in favor of the extension and supports responsible zoning. Shared her experience of living in a small, un-zoned farming community that was hurt when a large factory was built in the center of it.

Supr. Witmer closed the Public Hearing at 7:31 p.m.

## Privilege-of-the-Floor

*RC Quick* – Asked the Board to consider the 1200+ petitioners that asked to hold the zoning process until after January 1st. Spoke in opposition to zoning and added that the Board is not representing the majority of residents. Encouraged them to allow the voters to make the final decision on zoning rather than having 3 individuals on the Board decide its fate.

*Barbara Baird Holowka* – Had attended some Zoning Commission meetings and has read through the complex draft law. She supports responsible zoning that will guide preserving the environment, water quality, local businesses, and character.

*John Morse* – Dissatisfied with comments made by Dan Klein at the March Agenda Meeting. Read remarks made by Dan on a Facebook group page, where he tried to clarify his comments. To him, this only demonstrates how zoning helps the privileged and is not diverse.

*Bill Podulka* – Served on the Zoning Commission and has heard a lot of misstatements of the law. Noted that we are a community and the importance of having rules that help protect each other. Supports the allowance of doing what you want on your property, as long as it doesn’t negatively impact others. Offered strong support to continue drafting the zoning law.

*Ellen Harrison* – Noted the importance of the water resources overlay to protect waterways. Shared concern for scenarios in which the buffer is taken away which would result in jeopardizing the protection of clean water.

*Judy Rothenberg* – Supports the current draft zoning law. Values natural beauty and the protection of farming and agricultural enterprises. Has observed enormous residential and business growth in our community and this has brought more traffic, specifically truck traffic and high-speed traffic.

*Irene Weiser* – Noted that it is a painful time for our town, similar to the time during the fracking ban. Enacting zoning will be painful for some but is the right thing to do. Need to protect our agricultural land, water resources, and prevent sprawl. Supports the zoning proposal and urges the Board to do so too.

*Bruce Murray* – Serves/Served the Planning Board, the Review Board, and the Zoning Commission. Encouraged the Board to review the water overlay and assess whether it is needed or not. Attended the Tompkins County’s Open House on the new FEMA maps and was disheartened to see a Representative present for purchasing Flood Insurance. He was also upset that the maps are not available to view at the Town Hall as stated on the website. Concerned that the Board chose to start reviewing the draft law at the water resources overlay and not beginning at page 1.

*Holly Magee* – Opposes zoning. She is particularly concerned about the hardships that the water overlay will cause for many residents, specifically those in Slaterville Springs whose properties border the creek and are completely covered in the overlay. Zoning only helps protect the elite and hurts the middle and under-privileged class residents.

*Cyrus* – Supports zoning and thanked the Zoning Commission for their dedication to this work. Zoning is put in place to protect all residents. Encouraged the Board to enact zoning.

*Pete Hoyt* – Firmly believes the Board should not hold a vote on zoning until after the fall election. This is the only way for the residents to be included in the final decision. Disagrees with the Planning Consultant’s decision of bringing a boilerplate document to the Commission rather than beginning with what the ideas and wants of the community.

*Dan Klein* – Disagrees with the comments made that zoning is for the elite only and finds it to be rather the opposite, it’s equal to all as it sets the same rules for everyone. Regarding his comments made at the April 5 meeting, Dan provided a statement (Attachment #1)

*Tonya Van Camp* – Attended the Open House on FEMA maps. Found obvious differences in the water resources overlay map compared to the FEMA maps. Urged the Board carefully evaluate the water overlay map and consider correlating it with the FEMA map.

Supervisor Witmer noted that information on both the old and new FEMA flood maps can be found on the town website or here: [Flood Insurance Rate Map (FIRM) Tools | Tompkins County NY](https://tompkinscountyny.gov/flood-info/FIRMTools).

Clm. Goldberg also wanted to help clarify some confusion as to why the FEMA map looks very different to the maps in the draft zoning law and that’s because there are three components of the water resources overlay. In addition to the flood zones, there are wetlands and riparian buffers.

*John Fracchia* – Thanked everyone for engaging in these difficult decisions. Urged the Board to consider the work of the Commission and continue to hear thoughts and concerns from the community. Noted that the past six elections voters have spoken by electing candidates that voiced environmental concerns and protection and they also deserve to be heard.

## Committee Reports

**Hwy. Supt., Bob Spencer, Highway Report** – Junk clean-up week concluded on Saturday. They disposed a total of 26.85 tons of garbage and collected 15 tons of scrap metal. In total, this left a cost of $468.00 in disposal fees. Waiting for a permit to begin a project on Beaver Creek Rd. Lastly, he and the Board discussed his proposal to order and purchase a new One-Ton truck. The discussion included clarification of the options/add-on’s listed on the purchase order, and further, board members voiced their desire to have as much of this information as possible well in advance of the request being made for authorization of the purchase. This will allow them to be diligent in the expenditure of town funds and will help everyone stay on track of the Capital Equipment Planning.

**Resolution 79 of 2023. Authorize Purchase of a One-Ton Truck**

**Motion by: Murray Second: Witmer**

The Caroline Town Board hereby agrees to authorize the Superintendent of Highway to order the Dodge Ram 4500 from Robert Green Chevrolet.

**Motion carried.**

**Ayes: Witmer, Snow, Murray, Goldberg, Kelley-Mackenzie**

**Nays: None**

**Dan Klein, County Legislator Report** – Tompkins County Community Recovery Fund – The County just voted to give $42,000 to the Caroline After School Program. Beginning to look at the County budget, last year the levy stayed flat with no increase, numbers now are showing a high 5.5% tax levy increase. They will be working to get that number down. Broadband – There are 1200 addresses in the County that do not have broadband. To get fiber to those houses, the estimated cost is $7 million. The County is hiring a grant writer and will continue to work to receive federal and state funds to help with the cost.

**Clm. Katherine Goldberg,** Ag Committee– Next meeting will be held next Thursday, May 11th at the Old Town Hall beginning at 7pm.

**Clm. Murray, Zoning draft –** The Zoning Commission sent the draft to NYS Ag and Markets and received word back from them today and they made recommendations to a few definitions and farmer housing, but overall raised no flags.

## Discussion and Vote of the Land Use Moratorium Extension

## After considering amending the name of the law, the Board agreed to leave it as is. Clm. Goldberg recommended striking Section 4/B/iv*. Changing Agricultural Landscape & Strategies for Addressing* as she explained that this language was not intended to be a justification for a Moratorium, adding the tools listed therein are not being considered at this time.

## Resolution 80 of 2023. Vote on Land Use Moratorium Law Amendment

**Motion By: Witmer Second: Murray**

Resolved, the Caroline Town Board amends the law only to eliminate paragraph iv in Section 4-B of the proposed Moratorium Extension.

**Motion carried.**

**Ayes: Witmer, Snow, Murray, Goldberg, Kelley-Mackenzie**

**Nays: None**

## Resolution 81 of 2023. Vote on Land Use Moratorium Law Amendment

**Motion By: Witmer Second: Murray**

Resolved, the Caroline Town Board hereby agrees to the extension of the Land Use Moratorium until February 1, 2024.

**Motion carried.**

**Ayes: Witmer, Murray, Goldberg, Kelley-Mackenzie**

**Nays: Snow**

## Discussion of Water Resources and Flooding Overlay District in draft Zoning Law

Supr. Witmer presented 3 maps, a 1986 FEMA Floodplains map, a map of the Wetland Buffers, and the proposed Riparian Stream Buffers. The Board reviewed and compared the 3 maps but wants to direct their focus on the riparian buffer, which will be regulated by the Town and offers additional oversight to areas where regulations have been set by State and Federal agencies. Some concerns were raised regarding how the buffer would impact residents, particularly in denser areas along Six Mile Creek in the Slaterville and Brooktondale hamlets.

Clm. Murray raised the question of whether it’s necessary to set up additional board meetings solely dedicated to discussing zoning. With much work to be done, they considered possible meetings on the 2nd and 4th Tuesday evening. They plan to discuss further at the May Business Meeting.

## Approval of Minutes of April 19, 2023

The Town Board approved the Minutes of April 19, 2023 as submitted by Town Clerk, Jessie Townsend

## Agenda Items for May Business Meeting

## Add Health Insurance Resolution into the Employee Handbook

Discussion and review of pages 64-68 of the draft Zoning Law

## ----Adjourn the meeting ----

The meeting adjourned on a motion by Sup. Witmer and seconded by Clm. Murray at 10:21 p.m. and was carried unanimously.

Respectfully Submitted,

Jessie Townsend, Town Clerk

***(ATTACHMENT)***

 I spoke at the April 5 Caroline Town Board meeting about zoning. Here is what I have to say about zoning, and what I tried to convey at that meeting.

 I have recent experience with the Town of Newfield, and a proposal to expand a facility there for homeless people. The proposal was going to be funded by Tompkins County through a committee that I am the chair of. So I had a front row seat to the whole process. Even though the Town of Newfield rejected the proposal, I spoke in favor of it and voted in favor of it at every single step of the process. So anyone who says that I think we should not make accommodations for homeless people is just ignoring every single fact that shows otherwise.

 I brought up this issue at the Caroline Town Board meeting because Newfield, like Caroline, does not have zoning. I have heard people in Newfield say what I have also heard people in Caroline say: that you can’t tell people what they can do with their land.

 When the proposal to expand the homeless facility in Newfield came up, suddenly a number of people who felt that way changed their minds about how they felt about zoning. It seems they don’t want anyone to tell them what they can do with their own land, but they are ok telling other people what they can and can’t do. That is not fair, and zoning is the way to make it fair.

 For many of us, our homes and property are the single biggest investment we will make in our lifetimes. I chose to live in a town with zoning because I wanted to know what is possible and not possible on my land and on my neighbor’s land. There are all kinds of things that could affect my quality of life and the value of my property. You may or may not want something next to your house that would impact your investment: a marijuana dispensary, a bar, a gravel mining pit, a commercial dog kennel, a homeless facility, etc. I don’t care if you are for or against any of these things, but I want to know whether these things are possible or not in my neighborhood before I make the biggest investment of my life by buying a house. That is why I am in favor of zoning.

 With zoning, everyone knows the rules in advance, and that’s what makes it fair.

* Dan Klein

***(ATTACHMENT)***

**TOWN OF CAROLINE, TOMPKINS COUNTY, NEW YORK**

**LOCAL LAW NUMBER 3 OF 2023**

**A LOCAL LAW MODIFYING AND EXTENDING THE EXISTING MORATORIUM UPON**

**LAND USE DEVELOPMENT REVIEWS AND APPROVALS AND COMMERCIAL,**

**RETAIL, BUSINESS, AND INDUSTRIAL LAND DEVELOPMENT ACTIONS**

**Be it enacted** by the Town of Caroline as follows:

**SECTION 1:** This Local Law shall be known as “Local Law Number 3 of 2023.” It is the intent of this Local Law to extend the land use and development moratorium imposed by Local Law #3 of 2020 until February 1, 2024, or the date upon which the Town of Caroline (“Town”) adopts and enacts an initial zoning law or determines not to adopt a zoning law and instead implements a comprehensive regulatory update for subdivision and site plan reviews.

**SECTION 2:** Since the effective date of this moratorium, as herein extended, the Town has made, and

continues to make, substantial progress towards the implementation of regulations and goals pursued and sought to help implement the Comprehensive Plan, including but not limited to: (i) hiring a professional planning team to review and write zoning or land use regulations, oversee mapping, manage public engagement and regulatory reviews, including the evaluation of environmental impacts under SEQRA; (ii) appointing a Zoning Commission that has spent hundreds of hours in meetings and conducting reviews and work to draft the local laws and rules/regulations to implement such Comprehensive Plan; (iii) coordinating with many other agencies and the public concerning the mapping and regulatory goals being pursued; (iv) undertaking the completion of draft zoning regulations by the Town’s Zoning Commission, and updating the same through the review and public engagement processes, including two Public Hearings, and to now have approved a Final Report of Zoning Recommendations to the Town Board on March 27, 2023.

**SECTION 3:** For the purposes of clarity, and to extend the existing moratorium until February 1,

2024, Local Law #3 of 2020 be and hereby is amended and restated in its entirety as follows:

**A LOCAL LAW PROVIDING FOR A TEMPORARY MORATORIUM UPON**

**CERTAIN LAND USES AND DEVELOPMENT REVIEWS AND APPROVALS, INCLUDING**

**MOST COMMERCIAL, RETAIL, BUSINESS, AND**

**INDUSTRIAL LAND DEVELOPMENT ACTIONS AND ACTIVITIES**

**TOWN OF CAROLINE LOCAL LAW No. 3 of 2023**

Be it enacted by the Town Board of the Town of Caroline as follows:

**Section 1 TITLE :** This local law shall be known as the “local law” or the “moratorium”, each

as the context thereof so admits or requires. Among the purposes of this local law are to freeze-in-place current land uses and development activities while the Town considers town-wide zoning and/or other regulatory updates to implement the development goals of the community.

**Section 2 AUTHORITY AND INTENT :** This local law is a police power and land use regulation.

It is intended and declared to address matters of local concern. This local law is intended to be consistent with and adopted pursuant to the authority granted to the Town Board under the New York State Constitution and the laws of the State of New York, including but not limited to Town Law §§ 130 and 261, *et seq*., the New York State Constitution Article IX, Municipal Home Rule Law § 10, and the Statute of Local Governments §10. It is the intent of the Town to consider its first zoning law and, if the Town opts not to proceed with zoning, then to consider architectural and size-form based controls to supplement existing site planning and subdivision requirements and local laws.

**Section 3 PURPOSES AND GOALS :** The following are among the continuing purposes of this local law:

A. To place a moratorium on consideration and approval of certain residential and almost all commercial projects, including those land use and development activities subject to subdivision or site plan reviews, pending the consideration and completion and adoption, if appropriate, of its initial zoning regulatory scheme (or other land use development regulatory updates). After careful deliberation, the Town Board duly finds and declares that the Town’s lack of a comprehensive zoning scheme likely does and will prevent or impede the accomplishment of the goals and community vision as are outlined in the Comprehensive Plan. In accordance with these determinations, the Town Board believes that it is necessary to enact a temporary moratorium so that the Board can, during the pendency of the moratorium, consider and adopt resolutions, policies, and local laws necessary to implement changes to local laws and consider and adopt a new zoning code which will promote and maintain the rural character, livability, and natural resources of the Town, and protect the health and safety of its residents.

B. The Town Board declares that, in accordance with the Comprehensive Plan, resource and land use planning are central and vital to public health, safety, land values, and the rural character of a residentially and agriculturally oriented, small town in the Finger Lakes Area of Upstate New York. Thus, the Town desires to consider any recommended land use regulations that guide future residential and commercial land use developments to help ensure that all projects are allowed, sited, and reviewed by appropriate land use regulations and resource protection laws and requirements that will help implement the vision of the Comprehensive Plan. These may include measures that guide not only development within a single parcel, but also shape the nature and distribution of development within the boundaries of the Town to

help promote the goals and aspirations of the community, as identified in Section 4C (Findings) of the Comprehensive Plan.

C. The Comprehensive Plan calls attention to the unique vulnerability of Caroline to a loss of rural character by unplanned growth, which can be avoided or controlled by updated land use regulations, including zoning. The Comprehensive Plan stresses the importance of maintaining the rural nature of the Town, while balancing a vibrant local economy that encourages harmonic growth and businesses and commercial developments that integrate well with the Town’s goals of remaining rural and agriculturally oriented.

D. Having a moratorium in place to maintain the *status quo* while considering zoning or, if rejected,

site planning and subdivision updates, for the purposes of enhancing and implementing the vision of the Comprehensive Plan, including regulating where certain land uses may be sited, is therefore deemed to be vital to the public health, safety, and interests of the Town of Caroline and its citizens, visitors, and surrounding communities, and to the natural resources of the Town, the Finger Lakes areas of Central New York, and the remarkable inventories of scenic views this rural part of New York preserves and seeks to protect.

E. If a comprehensive zoning plan is selected as the most appropriate way to achieve the goals of, and implement the vision within, the Comprehensive Plan, this moratorium may need to be extended to fulfill the need for full public participation and comprehensive environmental reviews of any zoning or other regulatory proposals so developed.

**Section 4 FINDINGS AND SUPPORT :** The Caroline Town Board finds, determines, and

makes and continues the following declarations:

A. Actions of the types subject to discretionary review in and under the Town of Caroline’s

Site Plan Review or Subdivision Local Laws and procedures, (hereinafter “Actions”) may affect the overall nature and patterns of development within the Town. Unchecked and non-regulated Actions create unreasonable risks pertaining to the loss of important local resources of value, as well as create potential conflicts between residences and other uses. These potential losses and conflicts require consideration and mitigation to preserve desired characteristics, resources, and harmonies between adjacent uses in a rural environment.

B. The Town’s Comprehensive Plan identifies the types of land use and resource regulations that may best implement the shared community vision of the Town, including the following:

i. General Goals, p. 14: Noting that there is a need to “Explore and enact land-use planning regulations such as zoning, design guidelines, and Formula Business regulations that encourage locally-owned businesses that integrate with the rural residential and agricultural nature of the town and discourage commercial development that would negatively affect local agriculture, business, and residential communities”.

ii. General goals, P.14: Further noting a need to “Develop a process to strengthen reviews of significant commercial development to include economic impact reviews.”

iii. Development & Residential Growth: Impact on Rural Character, pp. 37-38, where it is noted that “Another strategy to preserve rural character in the face of development is more traditional "zoning". This would provide additional guidance related to siting development projects in locations which would preserve open spaces and viewsheds, be strategic and proactive in regard to traffic patterns, and create buffers around commercial development in service to the vision of preserving a rural residential living experience.”

~~iv. Changing Agricultural Landscape & Strategies for Addressing, p. 38: Noting “A variety of agricultural protection tools have been identified which may be implemented, as desired, to preserve rural character. These include: agricultural districts, agricultural assessment, agricultural zoning, right to farm laws, infrastructure planning, subdivision regulations, purchase of development rights, transfer of development rights, and land banking. Town residents are encouraged to determine which of these strategies may assist with stewardship of their land in ways most consistent with their values. This Comprehensive Plan is in support of Town leadership continuing to recognize the value of these agricultural protection tools and actively working to explore possible impacts of implementation.”~~

v. Identifying Goals in Current Trends, p. 40: “Enact legislative land regulations which would preserve rural character in the face of development pressure, i.e. nodal development/development focus zones, traditional zoning, and/or formula business restrictions.”

vi. Replete throughout the Comprehensive Plan are references to the use of enhanced land use controls, including traditional zoning, to effect and support the community’s vision for its future, including but not limited to: (1) increased support of local businesses and opportunities for new small and home-based businesses, central to continued viability of the town; (2) promoting economic development in hamlets that is compatible with other long-term goals and enhanced infrastructure, such as modern communications and renewable energy that supports small business enterprises; (3) encouraging human-scaled locally owned businesses that integrate with the rural residential and agricultural nature of the town; (4) developing stronger reviews of commercial and retail development, including architectural,

form, and locational controls; (5) to promote residential development guidelines that include neighborhood preparedness, resilience, and Age-Friendly Community design principles; (6) to promote and protect ecological values that promote air, water, and agricultural resources, as well as environmentally sensitive areas, including clustering to help preserve open space and recreation; (7) and, overall, to promote the Town as a vibrant and desirable community to enjoy the rural lifestyle, highlighting contemporary homesteading, hobby farming and small-scale agricultural activities consistent with what the

economy and topography can reasonably support.

C. It is anticipated that the Town will determine whether a comprehensive initial zoning regulatory is both beneficial and needed, and if so, then complete a draft of such legislation to implement an anticipated initial two-to-three zone zoning law (or other site control/subdivision updates) in or before May 2023. This recommendation and draft will, in turn, allow the Town Board to assess what are the proper tools, means, and methods to utilize to best implement community goals and visions as set forth in the Comprehensive Plan, including with respect to land development activities, residential and non-residential subdivisions, and proposed land development projects as may or could change the characteristics of, intensity of use of, and primary uses of both small and large parcels of land throughout the Town. Having the moratorium thus extended until February 1, 2024, will allow for time to complete environmental reviews and allow for the adoption of any final local laws pursuant to and in compliance with the Municipal Home Rule Law.

D. The Town Board is concerned that protection of the Town’s interests, and the public health and welfare interests so implicated, could or would be damaged or subverted if Actions (as defined in Section 5, hereunder) were to be entertained or approved before a comprehensive zoning scheme is both evaluated and adopted, or before the Town could consider modifications of or additions to current regulatory measures as are deemed necessary or desirable to address land use and public health and welfare issues. Accordingly, to address these issues, and to protect the public health, safety, and welfare, it is the intention of the Town Board to stay the review or approval of Actions during the effective period of this moratorium.

**Section 5 PROHIBITED ACTIONS AND REVIEWS:** Until February 1, 2024, or the date

upon which the Town of Caroline (“Town”) adopts and enacts an initial zoning law and/or

updates its subdivision and site plan review laws, the Town Board hereby declares a moratorium prohibiting each of the following “Actions” in the Town, regardless of the submittal or receipt of any application prior to the effective date of this local law, unless such Action is exempt under Section 6 hereunder:

A. The consideration or review by the Town, or any of its boards or committees, of any site plan or subdivision requiring discretionary or environmental reviews, for or in relation to any matter which is a new or amended/revised land use proposal, including any modifications that trigger review, including any waivers, appeals, or variance reviews by the Town or its boards or committees, except for a waiver issued by the Town Board under this local law.

B. The proposed siting of, or development or use of land for, any commercial, business, retail,

manufacturing, or industrial use or operations that require any discretionary or environmental reviews, including any new or amended/revised land use proposal that triggers any such reviews, including any waivers, appeals, or variance reviews by the Town or its boards or committees, except for a waiver issued by the Town Board under this local law. For purposes of construing the scope of this subdivision “B.”, traditional dictionary-based and land use definitions shall apply to construe terms such as “commercial, business, retail, manufacturing or industrial use or operations” and, in the event of any ambiguity as to the application of this moratorium to such use or application, the owner or applicant shall be required to seek a Waiver in order to proceed with any application or the proposed siting of, or development or use of land for, any commercial, business, retail, manufacturing or industrial use or operations, or expansions of any thereof.

C. Traditional single-family residences and accessory buildings that are to be constructed and emplaced upon an existing lot that are of a size, character, and design as trigger review under the Town of Caroline’s existing subdivision or site plan review procedures and laws, and any traditional home occupation that is of a size, character, or nature as would trigger or require site plan review(s). For the purposes of construing the scope of this subdivision “C.,” residential uses and home occupations that do not require subdivision or site plan reviews (often being those wholly located within residences and accessory residential buildings) are not subject to or prohibited by this moratorium.

D. The issuance of any permit by the Town of Caroline for highway utility work in connection with any Actions prohibited in or by this local law, and the issuance of ground disturbance permits, SWPPP reviews or approvals, or building permits or approvals in relation to any Actions prohibited in or by this local law.

**Section 6 EXEMPTIONS :** The following Actions are exempt from this moratorium and the terms and requirements of this local law:

A. Any Action that has received final approval or conditional final approval from the applicable town board or agency upon or prior to the original effective date of this moratorium (December 9, 2020).

B. Any traditional Agricultural Action that is: (i) protected under Article 25-AA of the Agriculture and Markets Law; and (ii) exempt under the Town of Caroline’s subdivision or site plan review procedures and laws.

C. Traditional single-family residences and accessory buildings that are to be constructed and emplaced upon an existing lot that are of a size, character, and design as to not trigger review under the Town of Caroline’s existing subdivision or site plan review procedures and laws.

D. Any appeal or review seeking a variance or waiver in relation to an Action that has already been approved and which meets the requirements of Sections 6(A), 6(B), or 6(C), above.

E. Any Action or matter for which a waiver is granted under Section 7, hereunder.

**Section 7 WAIVERS :** Should any applicant or owner of property affected by this moratorium suffer an extraordinary hardship as a result of the temporary requirements or limitations set forth in this local law, then said applicant or owner may apply to the Town Board in writing for either: (i) a determination that this local law does not apply to such action or application, or such land use; or (ii) relief from strict compliance with this moratorium, upon submission of proof of such extraordinary hardship and proof that the action meets the standards and requirements set forth in this local law (both individually or severally hereafter, a “Waiver”). For the purposes of this moratorium, an extraordinary hardship shall not be the mere delay in being able to apply for some determination or approval related to an Action during the period of

the moratorium. Any applicant and any property owner may apply to the Town Board for a Waiver of or from any one or more of the requirements or restrictions set forth in this local law and, upon good cause shown, the Town Board may grant such relief, or so much relief as said Board may determine to be necessary and appropriate in accordance with the following application and review criteria:

A. Substantive Requirements: No Waiver seeking relief or partial relief from the requirements and restrictions of this moratorium shall be granted unless the Town Board shall specifically find and determine, and set forth in its resolution granting such Waiver, in whole or in part, that:

i That the failure to grant a Waiver will cause the petitioner extraordinary hardship, and

such hardship is substantially greater than any harm to the general public and greater than the potential harm to the public welfare that could result from the granting, in whole or in part, of any Waiver. In considering this factor, the Town Board may consider the unique nature of the land in question, including whether the site of the proposed Action is affected by an exceptional topographic or other naturally occurring conditions as supports a Waiver, and the hardship should be unique to the applicant or its land, and not a form of hardship suffered generally by others in the Town, whether across a spectrum of a particular land uses, in a particular neighborhood or area, or by any group of citizens generally. A hardship should be a unique, invidious harm that should, in fairness or constitutionally, be mitigated by carving out an exception to this local law and the public interest and good it duly seeks to protect and promote.

ii. That the granting of a Waiver will have no clear, adverse effect upon the goals or objectives being now pursued or undertaken as outlined in this local law, including but not limited to efforts to protect and preserve the essential character and important resources of the Town, including avoiding potentially deleterious or irreversible impacts to residential life, open spaces, agricultural resources and farming, or wildlife corridors and other significant ecological resources.

iii. That the Waiver is sought for an Action that is, or which by imposition of conditions or voluntary land covenants and restrictions can be or become, harmonious with neighboring uses and the Comprehensive Plan.

iv. That the extraordinary hardship is not the result of any delay, action, or inaction by the applicant, the property owner, or any predecessors-in interest, and such alleged hardship has not been self-created. In considering this factor, the Town Board may consider whether the need for a Waiver is based in whole or in part upon a lack of maintenance or repair of the property or improvements thereupon, including a consideration of the extent to which the existing improvements are aged, decrepit, obsolete, run-down, outmoded, or in a state of disrepair, and further including whether financial hardship has been materially promoted by such lack of maintenance, repair, or the property condition and causes thereof.

v. That the impact and harm to applicant in denying a Waiver will not be outweighed by the benefit to the community in preserving the *status quo* pending completion of the work envisioned by this local law. In considering this factor, the Town Board may consider the applicant’s or landowner’s vested rights and monetary investment “in the ground”, but such rights or investments shall be only one factor in the balancing test of hardships and harms undertaken in consideration of this factor. However, under no circumstances should the costs and expenses of a Waiver application be considered as, or be a part of, any monetary investment arguments, calculations, harms, or hardships.

vi. That the application for a Waiver is and was substantially complete at the time of filing and at the time the notice of public hearing was posted, such that all parties and the Town Board had a full and fair opportunity to consider the facts, bases, and arguments upon which the Waiver application and any Waiver approval (or denial) is to be, or was, based. In evaluating this factor, the Town Board may consider whether the applicant advanced new theories, facts, or arguments not set forth in the application as may have unduly and adversely impacted the Town Board’s ability to conduct a full and fair hearing, as well as the rights of participants and witnesses to prepare evidence and address the application and Waiver request as submitted.

vii. That no relief granted in respect of the Waiver is greater than the relief requested by the applicant in their application or petition, and no such relief is greater than the minimum amount of relief necessary to alleviate any extraordinary hardship, should a Waiver be granted in whole or in part.

B. Procedural Requirements: The following process and procedures shall apply, and whenever there is doubt the due process rights of property owners shall be deemed primary, particularly including the right to petition for relief, the right to a timely hearing, the right to be heard, and the right to have a full and fair opportunity to present evidence and testimony in favor of any application for a waiver:

i. Upon submission of a written application to the Town Clerk by any person seeking a Waiver, the Town Board shall schedule a public hearing within 45 days, upon 10-days published and posted notice, with due and similar notice to such applicant by personal service or by mailing notice thereof to the address of the applicant, which shall be set forth in such application.

ii. An application shall consist of all general materials required for a general sketch plan meeting or, if desirable or beneficial in the opinion of the applicant, such materials as would be necessary to allow for a preliminary site plan or subdivision plat review, together with a description of the proposed land subdivision or proposed land uses. The applicant shall also include a delineation of the issues, facts, conditions, and features, or mitigation of impact features, as will be proposed in such Action, including such information as addresses the evidence needed to support the findings required for a Waiver. The applicant shall be solely responsible to determine the extent to which factual and evidentiary matters are alleged and relevantly explained in the application seeking a Waiver, and all applications shall contain a subscribed certification of the applicant stating that the foregoing application, and its exhibits, constitute the applicant’s full and complete application and set forth all bases upon which applicant relies upon for a Waiver.

iii. At said public hearing, applicant and all other persons shall be entitled to submit evidence and have an opportunity to be heard, and the Town Board shall hear and accept all evidence regardless of formal rules of evidence, instead giving weight to such testimony and evidence as it deems worthy of relevance and reliability.

iv. Within 30 days of the close of the public hearing, or 45 days of the date of the first public hearing, whichever shall first arrive, the Town Board shall issue its written findings and decision and grant the Waiver in whole or in part, with or without conditions, or deny the same. Denial without prejudice to re-applying is proper where the basis for denial is any of the following: (i) the application was incomplete; or (ii) the applicant advanced a new theory, or new facts or evidence, which are not addressed or described in the application. The fact that a hearing was conducted or concluded is not relevant to, or an acknowledgement that, any application was substantially complete at any time.

v. All determinations as to the criteria and findings set forth for Waivers shall be and be deemed discretionary actions in respect of a legislative determination by the Town Board, and all determinations shall be subject only to review in accord with Article 78 of the New York Civil Practice Law and Rules. Approving a Waiver in whole or in part is not an approval of the Action, which must still undergo formal review, including environmental reviews as required under Article 8 of the New York Environmental Conservation Law and its implementing regulations.

vii. All persons who submit testimony, applications, documents, surveys, site or development designs, or other evidence, undertake to prepare and submit the same at their own and sole cost and expense, including all surveying, engineering, planning, legal, and general or other costs and expenses. The results of, and determinations issued upon, any Waiver application entitle no person, applicant, party, or participant to recover any portion of such fees, costs, or expenses.

**Section 8 VALIDITY AND SAVINGS:** If any provision of this local law, whether as written or applied, shall be adjudged by any court or tribunal of competent jurisdiction to be invalid or unenforceable, such judgment or determination shall not affect, impair or invalidate the remainder of this local law, shall be confined in its operation and interpretation only to the circumstances, persons, and provisions of this local law directly involved in the controversy in which such judgment or determination shall have been rendered, and such invalidity or unenforceability shall not be applied to other persons or circumstances. If such provision may not be so saved, then it shall be deemed severed from this local law and the balance hereof shall survive.

**Section 9 LIMITATION UPON TOWN LIABILITY:** The Town, and its officers, employees, and agents shall not be liable or responsible for any injuries to persons or damages to property or property rights due to the Town’s actions or failures to act under or pursuant to this local law, unless it is proven to a reasonable degree of certainty that: (i) such alleged act of, or failure to act by, the Town was a primary cause of such injury, loss, or damage; and (ii) such act or failure act was principally caused by a willful or intentional act of the Town, its officers or agents. This provision shall be construed and applied to the maximum extent permitted by law, does not waive any sovereign or governmental immunity of the Town, and does not create any theory or claim of liability where none exists at law or in equity.

**Section 10 ARTICLE 78:** Any person aggrieved by any decision or determination of the Town Board in respect of the application of this local law, or the issuance or denial of a Waiver hereunder, may have said decision or determination reviewed by the Supreme Court in the manner provided by Article 78 of the Civil Practice Law and Rules. This provision shall not, however, expand the jurisdiction, scope, or applicability of said Article 78, create a right of standing where such right does not otherwise exist, or waive any claims, rights, or defenses the Town may have regarding questions of law or fact pertaining to the judicial and legal concepts of ripeness, standing, timeliness, governmental immunities, or of any other matter. Further, all administrative remedies and appeals must be fully exhausted before any Person may commence any proceeding under said Article 78.

**Section 11 EFFECTIVE DATE :** This local law shall take effect immediately, and for good cause shown may be further extended for such periods of additional time as the Town Board may declare in accord with law.