

TOWN OF CAROLINE
LOCAL LAW No. ____ of the year 2020

**A LOCAL LAW PROVIDING FOR A MORATORIUM ON ACTIONS
SUBJECT TO SITE PLAN OR SUBDIVISION REVIEW
FOR A PERIOD OF ONE-HUNDRED EIGHTY (180) DAYS**

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

Section 1 TITLE

This local law shall be known as “Moratorium on Actions Subject to Site Plan or Subdivision Review”

Section 2 AUTHORITY AND INTENT

This local law is a police power and land use regulation. It is intended and is hereby 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 the following authorities: New York State Constitution Article IX, Municipal Home Rule Law § 10; Statute of Local Governments §10.

Section 3 PURPOSE

The Town Board wishes to place a moratorium on consideration and approval of projects subject to Subdivision or Site Plan Review pending recommendations of its updated Comprehensive Plan in regard to land use regulations that guide development in the Town.

Section 4 FINDINGS

The Caroline Town Board finds, determines and makes the following declarations:

- A. Actions of the types subject to review in the Town of Caroline’s Site Plan Review and/or Subdivision Local Laws and procedures, (hereinafter “Actions”) may affect the overall nature of development within the Town.
- B. The Town of Caroline’s Planning Committee has been actively working on updating the Town’s 2006 Comprehensive Plan for the past 6 years.
- C. The Town of Caroline 2006 Comprehensive Plan identifies the following goals concerning Small Businesses in Caroline (p. 15):
 - i. “Increased town pride, civic engagement, and support of local businesses.”
 - ii. “Opportunities for new small and home-based businesses, central to continued viability of the town.”
 - iii. “Economic development in hamlets compatible with other long-term goals.”

- iv. "Encouraging locally-owned businesses that integrate with the rural residential and agricultural nature of the town, and discouraging commercial development that would negatively affect local agriculture, business, and residential communities."
 - v. "Encouraging businesses to protect air and water quality, reduce impact on traffic density and road quality, use clean and renewable sources of energy, and embrace sustainable business practices."
- D. It is anticipated that the Town's Planning Committee will complete update of the Town's 2006 Comprehensive Plan within one hundred eighty (180) days of the effective date of this local law. This will allow the Town Board to assess whether existing land use regulations are deemed sufficient to support the vision of the Town with respect to commercial developments.
- E. The Town Board is concerned that protection both of the Town's interests, and the public health and welfare interests so implicated could or would be damaged or subverted if Actions were to be entertained or approved before the Town Board considers modifications to address these land use and public health and welfare issues.
- F. Accordingly, to address these issues, and to protect the public health, safety and welfare, it is the intention of the Town Board to prevent the review or approval of Actions during the limited time the Town needs to complete the update to the 2006 Comprehensive Plan in order to assess whether the Town's existing land use regulations support the community vision.

Section 5 **PROHIBITED ACTIONS**

For a period of one hundred eighty (180) days from the effective date of this local law, 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 by the Review Board of any Site Plan or Special Use Permit, or the review thereof, for or in relation to any Action (whether a new land use proposal or a modification that triggers review and is therefore an "Action"), including any waivers, appeals, or variance reviews by such boards.
- B. Acceptance, consideration, preliminary approval or final approval by the Town of Caroline Review Board of any Action or any application for a waiver or variance in connection with any Actions prohibited herein.
- C. The issuance of any permit by the Town of Caroline for highway utility work in connection with any Actions prohibited herein.

Section 6 **EXEMPTIONS**

The following Actions are exempt from the above-described moratorium and the terms and requirements of this local law:

- A. Any Action that has received final approval or conditional final approval from the Town Board, the Site Plan Review Board, or the Subdivision Review Board prior to the effective date of this local law.

- B. Any traditional Agricultural Action that is protected under Article 25-AA of the Agriculture and Markets Law by being 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 subdivision or site plan review procedures and laws.
- D. Any other ministerial building or other permit action that does not trigger review under Town of Caroline's subdivision or site plan review procedures and laws.
- E. 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), 6(C) and 6(D), as applicable, above.
- F. Any Action or matter for which a waiver is granted under Section 7, below.

Section 7 WAIVERS

Any applicant and any property owner may appeal to the Town Board for a waiver of and exemption from the moratorium requirements of this local law (a "Waiver") 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, pursuant to the requirements of this Section.

- A. In determining an application for a Waiver, the Town Board shall consider the following factors:
 - 1. Whether there is or will be an unnecessary hardship to the petitioner which is not self-created and which meets the following requirements: (i) the alleged hardship relating to the property in question is unique and does not apply to other applicants or lands or areas of the Town generally; and (ii) the harm to the applicant is not outweighed by the harm to the public generally should the Waiver be granted; and (iii) the Waiver, if granted, will not alter the essential character of the neighborhood or other area in the vicinity of the Action in any materially adverse manner; and (iv) whether the petitioner can clearly demonstrate by detailed written "dollar and cents" proof the inability to obtain a reasonable return for the entire parcel (and not just the site of the Action) unless the applicant is granted a Waiver.
 - 2. Whether the need for a Waiver is based in whole or in part upon a lack of maintenance or repair of the property or any improvements thereupon, including consideration of the extent to which the existing improvements are aged, decrepit, obsolete, run-down, outmoded, or in a state of disrepair.
 - 3. Whether the site of the proposed Action is affected by an exceptional topographic or other naturally occurring condition as supports a Waiver.
 - 4. Whether the Waiver will: (i) result in the loss of irreplaceable recreation, scenic, and other natural resources and sites; or (ii) impair specific public health factors such air and water emissions, traffic, noise, dust, odors, solid waste generation, and any other nuisance which may produce a moderate or substantial adverse environmental impact; or (iii) cause or contribute to a loss of property values; or (iv) not cause any extraordinary public expense, such as, but not limited to the opening of public highways or the extension of utility infrastructure, including non-traditional single family residential

water supply and septage-sewerage treatment facilities (e.g., non-traditional private single-user residential wells or septic systems as approved by the Tompkins County Department of Health).

5. Whether the applicant had submitted a substantially complete application for review of an Action prior to the effective date of this local law, as well as whether the application for a waiver is complete.
6. Whether the proposed Action proposes to: (i) implement best management practices to mitigate greenhouse gas emissions from water and space heating, such as use of efficient electric-sourced heating appliances; and (ii) conserve groundwater resources, such as grey-water recycling and use of low-flow fixtures that exceed current building code requirements; and (iii) maximize opportunities for on-site renewable energy design or generation in a manner as may or will offset at least 50% of the anticipated electric consumption demand for the site or Action; and (iv) reduce overall energy use and ensure high energy efficiency, such as using building envelope and insulation measures that exceed current building code requirements by at least 15%; and (v) mitigate transportation related greenhouse gas emissions, such as providing electric vehicle charging stations, public access park-and-ride spaces, or other mode-share transportation designs or facilities.

B. Waiver application and review procedures under this local law are as follows:

1. An applicant shall submit a full statement explaining each and all bases upon which a Waiver is sought, and such statement shall be in writing and shall address; (i) the matters set forth in Section 6(A); and (ii) all information that would be required if such Action were to be preliminarily reviewed as an Action, specifically meaning that if the applicant seeks subdivision review a reasonably detailed draft proposed sketch plan or preliminary subdivision plat shall be submitted, or for site plan review a reasonably detailed proposed preliminary site plan shall be submitted, with the goal and purpose of such submission being to inform the Town Board of the size and scope and potential impacts and benefits of such Action.
2. Unless submitted in writing and verified as the complete application by the applicant, the Town of Caroline shall have no duty to review an application as only substantially complete applications may be reviewed for a Waiver.
3. All applications shall be filed with the Town Clerk, who shall submit copies of such applications to the Town Board and Planning Board.
4. Within 40 days of the certification by the applicant that the application is complete, the Town Board shall conduct a public hearing upon said petition. There shall be at least 5-days' notice by publication and posting of the date, location, and purposes of such public hearing, and at the public hearing the applicant may present evidence and testimony and statements in support of its application, and any member of the public wishing to present evidence on the proposed application or Waiver shall have an opportunity to be heard. Scheduling or conducting the hearing and considering the waiver request is not proof that the waiver application was complete, and a waiver request may be denied for being incomplete, as set forth below.
5. Within 20 days of the date the public hearing is closed the Town Board shall render a decision in writing upon the application for a Waiver. Such decision shall either deny, grant with conditions, or grant such Waiver without conditions, and the basis for the determination(s) so made shall be sum-

marily explained in such written decision in a manner as reasonably explains the bases for the decision. Approving a Waiver is and shall not be considered or deemed an approval or recommendation of the Action, which shall still be required to undergo any site plan or subdivision or other required review, including under SEQRA. For the purposes of clarity, if an Applicant certifies and application as complete, the request may be denied of the Town Board finds such application incomplete and, in such event, the Applicant may file a new and updated application.

6. All determinations as to the criteria set forth in Section 6(A) shall be weighed and the Town Board shall balance the overall interest of the petitioner with the overall interest of the Town in effecting the goals of this moratorium and the goal of preventing harm to public health and welfare. The Town Board's determination shall be discretionary and the grant, conditional granting of, or denial of an application for a Waiver shall be and be deemed a legislative determination of the Town Board to the fullest extent permissible under CPLR Article 78.
7. No Waiver may be granted in consideration of or due to the alleged or actual pecuniary or other loss or expense incurred by any applicant in connection with any applications or documents prepared or submitted under or in relation to this local law or any hearing hereunder, and all applicants and other persons proceed with applications, surveys, site development designs, expenses, and engineering and other professional fees at their sole risk and expense.

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 and 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 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 such injury or damage was a primary cause of such injury, loss, or damage and was principally caused by a willful or intentional act of the Town, its officers and 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, gov-

ernmental 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.