

A LOCAL LAW PROVIDING FOR A TEMPORARY MORATORIUM ON LAND USE DEVELOPMENT REVIEWS AND APPROVALS, AND UPON ALL COMMERCIAL, RETAIL, BUSINESS, AND INDUSTRIAL LAND DEVELOPMENT ACTIONS, FOR A PERIOD OF ONE-HUNDRED EIGHTY 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 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 reviews the recently updated 2020 Comprehensive Plan and considers its recommendations to consider town-wide zoning, or other regulatory updates, to implement the hamlet and 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 purposes of this local law:

- A. The Town Board wishes 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 Town’s 2020 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 2020 Comprehensive Plan, resource and land use planning are central and vital to public health, safety, land values, and rural character of a largely residentially-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 in order to ensure that all projects are allowed, sited, and reviewed in congruence with the Town’s 2020 Comprehensive Plan, including to ensure that impacts are managed by appropriate land use regulations and resource protection laws and requirements. 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 in order to promote the goals and aspirations of the community, as identified in Section 4C (Findings) of the 2020 Comprehensive Plan.

- C. The 2020 Comprehensive Plan calls attention to the unique vulnerability of Caroline to loss of rural character by unplanned growth, which can be avoided or controlled by updated land use regulations, including zoning. The 2020 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 in place a 6-month window to consider zoning or, if rejected, site planning and subdivision updates, for the purposes of enhancing and implementing the vision of the 2020 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 2020 Comprehensive Plan, this moratorium may need to be extended, including but not limited to the need for full public participation and comprehensive environmental reviews of any zoning proposal so developed.

Section 4 FINDINGS AND SUPPORT : The Caroline Town Board finds, determines, and makes 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 of Caroline's Planning Committee has recently finalized and the Town has adopted (or is about to adopt) the Town's 2020 Comprehensive Plan. The Comprehensive Plan identifies the types of land use and resource regulations that may best implement the shared community vision of the Town. The Town of Caroline's 2020 Comprehensive Plan identifies 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 Business⁴ 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 tradi-

tional "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 regards 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 2020 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 and the Town Planning Committee will determine whether a comprehensive initial zoning regulatory is both beneficial and needed, and if so then they will complete a draft of such legislation to implement an anticipated initial two-to-three zone zoning law (or other site control/subdivision updates) within one hundred eighty (180) days of the effective date of this local law. 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 2020 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.
- 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 limited time the Town needs to evaluate and complete an initial zoning law, or such other updates to land development controls, as will best implement the 2020 Comprehensive Plan.

Section 5 PROHIBITED ACTIONS AND REVIEWS : 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 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. For purposes of construing the scope of these terms, traditional dictionary-based and land use definitions shall apply, and in the event of any ambiguity an owner or applicant shall be required to seek a waiver in order to proceed with any application or the review or approval thereof.
- C. 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 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; (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 relief from strict compliance with this moratorium upon submission of proof of such extraordinary hardship and the meeting of the standards and requirements set forth in this local law (hereafter, a "Waiver"). For the purpose 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 set forth in this local law:

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 generally 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 2020 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 land owner'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, that 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 extended for such periods of additional time as the Town Board may declare in accord with law.