

**A LOCAL LAW PROVIDING FOR A MORATORIUM ON ACTIONS
SUBJECT TO SITE PLAN OR SUBDIVISION REVIEW
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 “Moratorium on Actions Subject to Site Plan or Subdivision Review”, or hereinafter as just the “local law” or the “moratorium”, each as the context thereof so admits or requires.

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 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.

Section 3 PURPOSE

The Town Board wishes to place a moratorium on consideration and approval of residential and commercial projects subject to Subdivision or Site Plan Review pending the completion and adoption of its Comprehensive Plan, which Comprehensive Plan does and will have further recommendations from the Town Planning Board pertaining to land use and development within the Town. The Town Board duly finds and declares that after years of comprehensive planning and public input and meetings related to the same, it is crucial to maintain the status quo relative to land use developments and subdivisions during the “home stretch” of finalizing and adopting the final updated sections of the Comprehensive Plan, particularly for the resource and land use planning that is 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.

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 Town’s vision of the community, and 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 existing Comprehensive Plan and in updated sections of proposed revised Comprehensive Plan.

In particular, the November 2019 section drafts of the Updated Comprehensive Plan call attention to the unique vulnerability of Caroline to loss of rural character by unplanned growth without land use regulations. Having in place a 6-month window to finalize that Comprehensive Plan and to consider zoning or 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 natural re-

sources, whether the Finger Lakes proper or the remarkable inventories of scenic views this rural part of New York preserves and seeks to protect.

Section 4 FINDINGS

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.
- B. 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, and these potential losses and conflicts require consideration and mitigation to preserve desired characteristics, resources, and harmonies between adjacent uses in a rural environment.
- C. The Town of Caroline's Planning Committee has been actively working on updating the Town's 2006 Comprehensive Plan for the past 6 years to achieve those goals and to identify the types of land use and resource regulations may best implement the shared community vision of the Town as will be guided and implemented through the updated Comprehensive Plan.
- D. The Town of Caroline's 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."
- E. It is anticipated that the Town's Planning Committee will complete an 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 sufficient to support the vision of the Town as reflected in such completed Comprehensive Plan with respect to Actions, including residential and non-residential subdivisions and projects as proposed to develop and change the characteristics of, intensity of use of, and primary uses of both small and large parcels of land throughout the Town.
- F. 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 5A

hereunder) were to be entertained or approved before the Comprehensive Plan is adopted and the Town Board is able to consider modifications of or additions to current regulatory measures reasonably 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 complete the update to the 2006 Comprehensive Plan, including in order to assess whether the Town's existing land use regulations support the community vision expressed in such Comprehensive Plan.

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 board.
- B. The consideration by the Review Board of any Preliminary or Final Plat for any land subdivision or the review thereof, for or in relation to any Action, including any waivers, appeals, or variance reviews by such board.
- C. 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 (such authority being exclusively delegated to the Town Board under § 7, below).
- 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 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 permit 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, 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 (a "Waiver") upon submission of proof of such extraordinary hardship and the meeting of the standards and requirements set forth in this local law. 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 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:
 - 1. 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 welfare resulting from the Waiver (if granted in whole or in part). 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.
 - 2. The granting of a Waiver will have no clear, adverse effect upon the goals or objectives being now undertaken by Comprehensive Planning and community-wide efforts to protect and preserve the essential character and important resources of the Town, including potentially deleterious or irreversible impacts to open spaces, agricultural resources and farming, and wildlife corridors and other significant ecological resources.
 - 3. The Waiver is sought for an Action that is, or which by imposition of conditions or voluntary land covenants and restrictions can be, harmonious with neighboring uses and the community planning efforts currently underway.
 - 4. 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 that 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 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.

5. 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 its Comprehensive Plan, and 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 by the Town Board in consideration of this finding and factor. The costs and expenses of a Waiver application shall not be considered as, or be a part of, any monetary investment arguments, calculations, harms, or hardships.
6. 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 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.
7. No relief granted in respect of the Waiver is greater than the relief requested by the applicant in the 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. Procedure:

1. 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.
2. 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 as address the proofs and evidence needed to support the required findings supporting a full or partial 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. 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.
3. 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.

4. 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 based upon an incomplete application, or applicant advancing arguments and facts in support of the finding of a substantial hardship that were not summarily described in the application, which shall also be deemed an incomplete 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.
5. 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.
6. 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 (including its implementing regulations).
7. All applicants and other persons proceeding with and submitting applications, documents, surveys, site development designs, or other documents in support of applications, or evidence or testimony provided or planned to be submitted at any hearing(s), shall be incurred and undertaken at such applicant's or person's sole cost and expense, including all surveying, engineering, planning, and legal expenses, and other professional fees and expenses, together with all costs and other expenses generally. The results of any Waiver application entitle neither the Town nor any other 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 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 alleged act of, or failure to act by, the Town 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, 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.