

**TOWN OF HALCOTT
LOCAL LAW NO. 2 OF 2007**

SECTION 1. Title.

This Local Law shall be known as "A Local Law Imposing a Twelve Month Moratorium on Certain Development and Uses in the Town of Halcott."

SECTION 2. Legislative Intent, Finding and Purpose.

In 2004, the Town of Halcott adopted a revised Comprehensive Plan in accordance with the procedures set forth in Section 272-a of the Town Law. The Town currently does not have a zoning law, but has a Site Plan Review law known as Local Law No. 1 of the Year 1996. The Town also has Subdivision Regulations which were approved by the Town Board on May 8, 1986.

The Town recently was awarded a grant to amend its Subdivision and Site Plan Review Laws to reflect the wishes of the town as expressed in the Comprehensive Plan. The Planning Board is working with the Town Board making substantial progress in reviewing proposed recommendations, but it will require approximately six to eight months to complete this task.

The Town has experienced a trend of increased and substantial land use development proposals, some of which may be inconsistent with the Town's Comprehensive Plan and the pending revisions to the Site Plan and Subdivision Regulations.

In light of all of these factors, it would be appropriate for the Town Board to consider enacting a moratorium on certain development within the Town in order to prevent land use development which may prejudice and be inconsistent with the Town's Comprehensive Plan and/or new or amended Land Use Laws or Regulations which may be enacted and/or approved by the Town Board. The Town finds that appropriate interim measures must be taken in the form of a moratorium on the review and approval of certain development and uses.

The Town also finds that there are certain development proposals which, because of their nature, scope and intensity will clearly not be inconsistent with the Town's Comprehensive Plan and/or new or amended Land Use Laws or regulations which may be enacted and/or approved by the Town Board. Accordingly, such development is excluded from the scope of this moratorium.

The Town also recognizes that there are other categories of development which could be allowed to proceed during the course of this Moratorium Law upon a finding of the Town Board that the proposed development is not inconsistent with the provisions of

the Town's Comprehensive Plan and/or new or amended Land Use Laws which may be enacted and/or approved by the Town Board. Accordingly, those development proposals may be allowed to proceed in the discretion of the Town Board during the term of this moratorium pursuant to variance standards as provided in this Law.

The Town Board also recognizes that it is appropriate to provide a mechanism for property owners or sponsors of proposed development to seek relief from the provisions of this Moratorium Law upon a showing of hardship, and a variance procedure has been provided in this Law for that purpose.

SECTION 3. Exceptions to this Moratorium.

This Moratorium shall not apply to the following development and/or uses:

- A. Uses or development which do not require Site Plan Approval pursuant to the Town's current Site Plan Review Law, or pursuant to any amendments to that Site Plan Review Law which may be enacted during the term of this Moratorium.
- B. Applications for subdivisions of land which are defined as "minor" subdivisions under the Town's current Subdivision Regulations, or under any amended Subdivision Regulations which may be enacted and/or approved during the term of this Moratorium.
- C. Uses or development undertaken pursuant to existing building permits and/or site plans which have been granted final approval and pursuant to subdivisions which have been granted preliminary or final approval or final conditional approval by the Planning Board, and such approval or conditional approval has not expired as of the effective date of this Local Law. However, in the event such preliminary, final or final conditional approval expires, or the plans of the applicant are substantially modified prior to final approval, subsequent to the date of this Law and prior to the expiration of this Law, the use or development shall be subject to this Moratorium.
- D. Buildings, structures and/or uses lawfully established prior to the date of the enactment of this law and construction undertaken pursuant to building permits lawfully issued prior to the effective date of this Local Law.
- E. Applications for Site Plan Approval for single family dwellings, additions to existing homes, garages or decks.
- F. Applications for amendments to Site Plan Approval granted by the Planning Board prior to the date of the enactment of this Law, provided the amendment does not increase the square footage of the existing structures of buildings by more than twenty percent (20%) as existed at the time of the Site Plan Approval.
- G. Applications accepted as complete, pending before the Planning Board at the time of the enactment of this law for subdivision and/or Site Plan Approval which have received a Negative Declaration or Conditional Negative Declaration pursuant to Section 6 NYCRR 617.7 by the Lead Agency by the time of the enactment of this Local Law. However, in the event the applicant fails to comply with the provisions of the Conditional Negative Declaration or the Negative Declaration is amended to a Positive Declaration or the Negative

Declaration is rescinded pursuant to §617.7(e) or (f) during the term of this Law, the Moratorium shall apply.

H. Pending applications before the Planning Board as of the date of the enactment of this Local Law not otherwise exempt pursuant to this section which have not received final or preliminary approval in the case of subdivisions, or final approval in the case of Site Plans, and for which the SEQRA review process has commenced but has not been completed are exempt from the provisions of this Moratorium Law only to the extent that the SEQRA review process, at the election of the applicant, may proceed before the Planning Board subject to the following limitations:

- i. the applicant must declare its intent, in writing, to continue with the SEQRA review process at his or its own risk;
- ii. the continuance of the SEQRA review process shall not be construed as vesting any developmental rights in said applicant;
- iii. the applicant, by electing to proceed with the SEQRA review process, shall be deemed to have waived strict compliance with the time frames for acts or decisions of the Lead Agency set forth in the SEQRA regulations and the applicant must, at the time of election, to proceed with the SEQRA review, enter into a written stipulation with the Lead Agency providing for agreed upon time frames for the conduct of the various aspects of the SEQRA review process;
- iv. that failure of the Planning Board to strictly adhere to the agreed upon time frames for the various aspects of the SEQRA review process shall not be deemed to entitle the applicant to any default approvals; v. the completion of such SEQRA review during the term of this law shall not constitute a basis for compelling the approval of the application before the board; and
- vi. the continuance of the SEQRA review process shall occur only with the recognition that, after the adoption of new or amended Land Use Laws or Regulations by the Town, the project application and plans must be modified or changed to comply with those new Land Use Laws or Regulations, and that the SEQRA review process may be modified, reopened or recommenced as the case may be, to consider the environmental impacts of those modifications or changes to the project. For these applications, the Planning Board shall not, during the term of this Law, further process, review or approve the application for Site Plan and/or subdivision approval, as the case may be.

SECTION 4. Scope of Coverage.

This Moratorium shall apply to all uses, development and/or construction not listed as exempt in Section 3 of this Local Law.

SECTION 5. Prohibitions.

No Land Use applications, including, but not limited to, subdivision approval, and/or Site Plan approval shall be accepted, reviewed, and/or granted preliminary, final

or conditional approval by the body, board or public official vested with jurisdiction over such application, for any use, development and/or construction not exempt from the provisions of this Moratorium Law during the term of this Law.

Land use applications for uses or development not exempt from the provisions of this Law, including, but not limited to, subdivision approval and Site Plan approval accepted as complete as of the effective date of this law shall not be further reviewed, processed or approved by the body, board or public official vested with jurisdiction over such application for uses, developments and/or construction, except as provided by Section 3 (I) or (J) of this Law.

SECTION 6. Term.

The Law shall be in effect for a period of twelve months from the effective date of this Law.

SECTION 7. Penalties.

Any person or entity that shall undertake, or permit, the use of, development, construction, erection or alteration of any land or buildings in violation of the provisions of this Local Law, or that shall otherwise violate any of the provisions of this Local Law shall:

- (i) be guilty of an offense punishable by a fine not exceeding \$250.00, or imprisonment for a period not to exceed six months, or both. Each week's continued violation shall constitute a separate offense; and
- (ii) be subject to appropriate action or proceeding by the proper authorities of the Town to enjoin, correct or abate any violation of this Local Law.

SECTION 8. Severability.

The invalidity of any provision of this Local Law shall not affect the validity of any other provisions of this Local Law which may be given effect without such invalid provision.

SECTION 9. Variances.

The Town Board shall have the power to grant a variance from the application of any provisions of this Local Law upon its determination, in its absolute discretion, in accordance with the procedures and standards set forth herein:

- A. An application for a variance shall be filed in triplicate with the Town Clerk, together with a filing fee of \$250.00. The application shall specifically recite the nature of the proposed use of the land, the circumstances pursuant to which the variance is sought and an explanation of how the variance applicant meets the criteria for granting a variance as set forth herein. If the variance is for a use, development or construction which requires the issuance of a building permit, Site Plan approval and/or subdivision approval, the application shall be accompanied by all plats, plans, and submission materials as may be required in conjunction

with those applications.

- B. The Town Board, upon receipt of any application for a variance herein, may refer the application to the Greene County Department of Planning and/or the Town of Halcott Planning Board for their advice and recommendations. If a referral is made, the Greene County Department of Planning and the Town of Halcott Planning Board shall present their reports and recommendations to the Town Board within thirty (30) days after the referral is made. The Town Board shall not, however, be required to follow the recommendations of any of the aforesaid boards in making its determination.
- C. Referral shall be made to the Greene County Planning Board where required by General Municipal Law §239(1) or (m).
- D. The Town Board shall conduct a public hearing on any complete application for a variance within forty five (45) days of receipt by the Town Clerk, and shall issue a decision on the application, in writing, within thirty (30) days of the close of the public hearing. Such decision shall be sent to the applicant, and shall be filed in the Office of the Town Clerk within five (5) business days of the issuance of the decision.
- E. No variance shall be granted by the Town Board unless the Town Board shall find and determine, and shall set forth in its resolution granting such variance, that:
 - i. Failure to grant the variance to the applicant will cause the applicant "unnecessary hardship" as that term is defined in §267-b(2)(b) of the Town Law, which hardship is substantially greater than any harm to the general public welfare resulting from the granting of the variance. Unnecessary hardship shall not constitute the mere delay in being permitted to make application for a building permit, subdivision and/or Site Plan approval or other approval during the period of this Moratorium;
 - ii. The grant of the variance or modification will clearly have no adverse effects on any of the Town's goals or objectives as set forth in the Town's Comprehensive Plan, and the use, project or activity will not be detrimental to the community's resources or character as described in the Town's Comprehensive Plan; and
 - iii. The project or activity for which the applicant seeks a variance is in harmony and consistent with the Comprehensive Plan and with any interim data, recommendations and/or conclusions which, to date, have been promulgated, produced or drafted by the Zoning Commission in its recommendations for amendments to, or the enactment of new, Land Use Laws or Regulations.
- F. For any new use or development proposed by an applicant which will involve the construction of a new commercial building or structure of less than 10,000 feet of floor area designed for single commercial use and occupancy, a variance may be granted by the Town Board upon a showing that the applicant meets the criteria set forth in Subsections (E)(ii) and (iii) of this Section without the requirement of a showing of unnecessary hardship pursuant to Subsection (E)(i) of this Section.
- G. For any new development and/or construction which is designed, and will be used, for a public purpose, such as a Town Hall, highway garage, other municipal building, public library, public park and/or public recreation facility, the variance may be granted by the Town Board upon a showing that the applicant meets the