

**TOWN OF HALCOTT  
LOCAL LAW NO. 2 OF 2008**

**SECTION 1.**      **Title.**

This Local Law shall be known as "A Local Law Extending 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 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 The Site Plan Review Law of the Town of Halcott. The Town also has Subdivision Regulations that were approved by the Town Board in February 1987.

The Town Board charged the Town of Halcott Planning Board with implementing parts of the adopted Comprehensive Plan. Specifically, the Planning Board's efforts have concentrated on drafting amendments or new local laws related to land use in the Town of Halcott. In June 2004, a first draft of updated subdivision and site plan review laws (collectively known as Land Use Laws) were submitted to the Planning Board by the Town's consultant. Since then the Planning Board has been reviewing these documents and have made substantial progress in preparing full draft amendments. Although progress has been made, the review process will require at least eight months to complete. Further the Planning Board has not yet begun work on reviewing other existing or potential land use laws as recommended in the Comprehensive Plan.

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.

The Planning Board has recently recommended that, 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 certain types of construction and development and 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.

The Town also recognizes that there may be development projects now pending before the Planning Board for subdivision and/or Site Plan Review and Approval for which the review process under the State Environmental Quality Review Act ("SEQRA") has commenced, but has not, to date, been completed. Accordingly, this Law contains a provision which allows those applications to proceed at the risk of the applicant, but only to the extent of moving forward with and/or completing the SEQRA review process, with certain limitations.

### **SECTION 3. Exceptions to this Moratorium.**

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

A. Buildings, uses, structures, land disturbance, or development that requires 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 and covering an area of less than three thousand five hundred (3500) square feet in size. All proposed uses, structures, land disturbance or development covering an area of greater than 3500 square feet and which require Site Plan Approval shall be subject to this moratorium.

B. Applications for subdivisions of land which are defined as "minor" subdivisions under the Town's current Land Subdivision Regulations, or under any amended Subdivision Regulations which may be enacted and/or approved during the term of this Moratorium.

C. Buildings, uses, structures, land disturbance, 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. Alteration, renovation or repair to any building, structure or accessory land development lawfully existing as of the effective date of this Local Law, provided such alteration, renovation or repair

to the building or structure does not increase the square footage of the existing use, structure or building to an area larger than 3500 square feet.

F. Applications for Site Plan Approval for home occupations or signage.

G. 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 use, structures or buildings to an area larger than 3500 square feet.

H. 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.

I. 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) 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 approval; (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, those for building permits, subdivision approval, and/or Site Plan approval shall be accepted, reviewed, and/or granted preliminary, final or conditional approval by the Planning Board or other such Board having 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, those for building permits, 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) of this Law.

**SECTION 6.**      **Term.**

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

**SECTION 7.**      **Penalties.**

Any person or entity that shall undertake or permit the use, 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 \$100.00. 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 Economic Development and Planning, and the Town of Halcott Planning Board for their advice and recommendations. If a referral is made, the Greene County Department of Economic Development and 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(l) 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 Planning Board in its recommendations for amendments to, or the enactment of new, Land Use Laws or Regulations.

F. 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 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. The burden of proving that the application for a variance meets the criteria as set forth in this Local Law shall be upon the applicant, and such showing must be made by competent proof and/or evidence.

H. In the event the Town Board grants a variance from the provisions of this Local Law to the applicant, the applicant shall be required to comply with all provisions of the Town's current Site Plan Review Law and/or subdivision regulations, or any amendments to that law or regulations which may be enacted during the term of this Law, and to all requirements of the State Environmental Quality Review Act, in conjunction with such application proceedings.

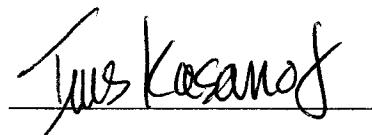
**SECTION 10.** **Supersession of the Town Law.**

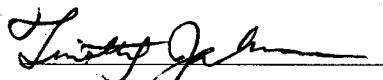
This Local Law is hereby adopted pursuant to the Municipal Home Rule Law §10(1)(i) and (ii) and Subparagraph (a)(11) and (12) and shall supersede the provisions of the Town Law, §274-a, 274-b, 276, 277, 278 and 279 of the State of New York and any inconsistent provisions set forth in Article 16 of the Town Law.

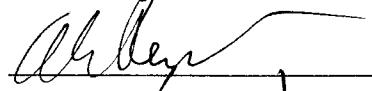
**SECTION 11.** **Effective Date.**

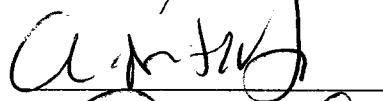
This Local Law shall take effect immediately when it is filed in the Office of the New York State Secretary of State in accordance with §27 of the Municipal Home Rule Law.

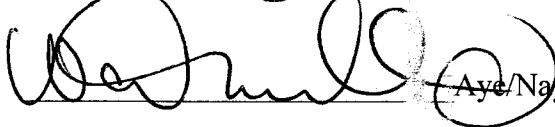
BE IT ENACTED this 20th day of October, 2008, by the Town Board of the Town of Halcott, Greene County, New York.

 Aye/Nay

 Aye/Nay

 Aye/Nay

 Aye/Nay

 Aye/Nay

(Seal)

ATTEST:

Jacquelyn VanValkenburgh

Jacquelyn VanValkenburgh

Town Clerk

I hereby certify that the local law annexed hereto, designated as Local Law No. 2 of 2008, of the Town of Halcott was duly passed by the Town Board on October 20, 2008, in accordance with the applicable provisions of law.

Jacquelyn VanValkenburgh

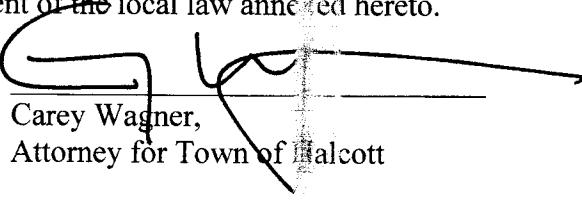
(seal)

Date: October 20, 2008

**(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)**

**STATE OF NEW YORK  
COUNTY OF DELAWARE**

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

  
Carey Wagner,  
Attorney for Town of Halcott

Date: Nov 6, 2008