

**RESOLUTION PROMULGATING REGULATIONS AUTHORIZING A HARDSHIP WAIVER PROCESS TO THE  
LOCAL LAW CONTINUING THE MORATORIUM ON CERTAIN PERMITS, CERTIFICATES OF OCCUPANCY  
AND APPROVALS (LOCAL LAW 5 OF 2022)**

**WHEREAS** the Village of Woodbury adopted Local Law 5 of 2022 entitled “A Local Law Continuing the Moratorium on Certain Permits, Certificates of Occupancy and Approvals” (the “Moratorium”), after having received reports that the Village’s water supply is at a critical juncture; and

**WHEREAS** the purpose of the Moratorium is to protect the public health, safety and welfare of the residents of the Village and to maintain the status quo of residential and nonresidential development in the Village; and

**WHEREAS** the Moratorium does not provide for any waivers to its applicability, beyond the exemptions listed therein, but permits the Board of Trustees to promulgate regulations by Resolution authorizing a hardship waiver process if it subsequently determines that a waiver process is necessary and in the best interest of the Village.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Village of Woodbury Board of Trustees hereby determines that a waiver process is necessary and in the best interest of the Village, and promulgates the following regulations authorizing a hardship waiver process:

- A. Should any owner of property affected by Local Law 5 of 2022 (“the Moratorium”) suffer an unnecessary and extraordinary hardship due to the enactment and application of the Moratorium, then the owner of said property may petition the Board of Trustees in writing for a waiver from strict compliance with the Moratorium upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary or extraordinary hardship shall not be:
  - 1) A concern or objection that the present regulations may be changed by the Village; or
  - 2) The delay necessarily incurred in making an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.
- B. A petition for an exception based upon unnecessary or extraordinary hardship shall be filed with the Village Clerk, including an escrow fee of one thousand and 00/100 Dollars (\$1,000.00) for each tax map parcel claimed to be subject to unnecessary or extraordinary hardship, by the owner or the applicant, upon the consent of the owner. This escrow fee shall be provided in accordance with Chapter 65 (“Taxpayer Protection”) of the Village Code. The petition shall provide a recitation of the specific facts that are alleged to support the claim of unnecessary or extraordinary hardship and shall contain such other information and/or documentation as the Board of Trustees shall prescribe as necessary for the Board to be fully informed with respect to the petition.
- C. Procedure. Upon submission of a written petition to the Village Clerk by the property owner seeking a waiver from the Moratorium, the Board of Trustees shall, within forty-five (45) days of receipt of a completed petition, schedule a Public Hearing on said petition upon five (5) days’ written notice in the official newspaper of the Village of Woodbury. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the petition shall have an opportunity to be heard, and the Board of Trustees shall, within thirty (30) days of the close of said Public Hearing, or such further time as the Board of Trustee needs to adequately assess the impact of the petition, render its decision either granting, denying, granting in part or denying in part, the petition for a variation from the strict requirements of this Local Law. If the Board of Trustees determines that a property owner will suffer an unnecessary or extraordinary hardship if this Local Law is strictly applied to a particular

property, then the Board of Trustees may waive the application of the Moratorium to the minimum extent necessary to provide the property owner relief from strict compliance with the Moratorium.

- D. Standard of Review/Substantive requirements: In reviewing a petition for a waiver based upon a claim of unnecessary or extraordinary hardship, the Board of Trustees shall consider the criteria listed below. No Waiver seeking relief or partial relief from the requirements and restrictions of this moratorium shall be granted unless the Board of Trustees 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, substantially unique to its property and circumstances, and such hardship is substantially greater than the hardship, including, but not limited to, financial hardship, necessarily experienced by other applicants having their or its application decisions delayed.
  - 2) The granting of a Waiver will have no clear, adverse effect upon the goals or objectives being now undertaken by the efforts of the Board of Trustees to protect and preserve the water resources of the Village.
  - 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 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 of granting a Waiver will not be outweighed by the benefit to the community in preserving the status quo pending completion of review of water resources, and in considering this factor the Board may consider the applicant's or landowner'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 Board of Trustees 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) 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.
- E. Exemptions<sup>1</sup>.
- 1) Should any owner of property affected by Local Law No. 5 of 2022 seeking to construct, or having already constructed, a single-family dwelling located outside of the Consolidated Water Area, be served by a private well for use as potable water, said property owner shall be permitted to provide proof of such connection to the Building Department, Water Department and Village Clerk, which may be referred to the Village

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<sup>1</sup> Amended February 23, 2023

Engineer. Upon a determination that the information provided is accurate, said property shall be eligible for a hardship waiver, the fee and the public hearing for which may be waived by the Board of Trustees.

- 2) Should any owner of property affected by Local Law No. 5 of 2022 seeking to construct, or having already constructed, a building or structure located outside of the Consolidated Water Area, be served by a municipal water connection from the Village of Harriman or the Village of Kiryas Joel or other private water company, said property owner shall be permitted to provide proof of such connection to the Building Department, Water Department and Village Clerk, which may be referred to the Village Engineer. Upon a determination that the information provided is accurate, said property shall be eligible for a hardship waiver, the fee and the public hearing for which may be waived by the Board of Trustees.
- 3) Applications to the Planning Board, Zoning Board and/or Building Department for ARB, site plan, special permit and building permit approval, as necessary, for a “dwelling unit for additional family member” pursuant to Village Code § 310-35 shall be permitted to proceed as being exempt from the moratorium, and the fee and the public hearing for which may be waived by the Board of Trustees.
- 4) Applications to the Planning Board, Zoning Board and/or Building Department for ARB, site plan, special permit and building permit approval, as necessary for any new building construction, renovation or expansion of an existing building, or change of use or intensity of use that would result in an increase in water usage less than or equal to 220 GPD shall be permitted to provide proof of such increase to the Building Department, Water Department and Village Clerk, which may be referred to the Village Engineer. A property shall not be permitted to receive more than one waiver pursuant to this provision (*i.e.*, which would be result exceeding the 220 GPD limitation by compounding requests). Upon a determination that the information provided is accurate, said property shall be eligible for a hardship waiver, the fee and the public hearing for which may be waived by the Board of Trustees.