

TOWN BOARD PUBLIC HEARING OPENED AT 7:01 pm

PRESENT

Councilman Dennis Robinson
Councilman Jesse Hrycik
Councilwoman Patricia Zurbrick
Councilman Gerald Pietraszek
Supervisor James DePasquale

ALSO PRESENT

Planning Board Chairman Walt Kammer
Town Clerk Deborah Jusiak

Public Hearing for a 12 Moratorium on Battery Energy Storage Systems (BESS)

Supervisor DePasquale opened the Public Hearing at 7:01 pm asking if there were any questions or concerns regarding the proposed Local Law for a BESS Moratorium. The Board discussed that a 12-month moratorium provided needed time to determine what regulations are needed to best protect residents. There were no other questions or comments. Supervisor DePasquale closed the Public Hearing at 7:03 pm.

TOWN OF COLDEN
LOCAL LAW 2025-6
A Local Law Entitled
Moratorium For Battery Energy Storage Systems

A LOCAL LAW ESTABLISHING A TWELVE-MONTH MORATORIUM
PROHIBITING THE REVIEW AND APPROVAL OF APPLICATIONS AND
PERMITS FOR “BATTERY ENERGY STORAGE SYSTEM” IN THE TOWN OF
COLDEN

SECTION 1: PURPOSE

The purpose of this local law is to protect the public health, safety and welfare of the residents of the Town of Colden and to maintain the status quo by temporarily suspending the processing of land use approvals as provided herein and to further suspend the rights of land owners and their designees to obtain development approvals as identified below for a period of twelve months from the date of the adoption of this local law while the Town Board studies, analyzes and determines potential appropriate revisions and amendments to the Town Code regarding the propriety of Battery Energy Storage Systems (as defined below).

SECTION 2: DEFINITIONS

BATTERY ENERGY STORAGE SYSTEM (BESS):

A system consisting of electrochemical storage batteries, battery chargers, controls, power conditioning systems and associated electrical equipment, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone twelve-volt car battery or an electric motor vehicle. A battery energy storage system (BESS) is classified as a Tier 1 or Tier 2 battery energy storage system as follows:

(1) Tier 1 battery energy storage systems have an aggregate energy capacity less than or equal to 600 kWh and, if in a room or enclosed area, consist of only a single energy storage system technology. This Tier 1 Battery Energy Storage Systems category is for one- to two-family residential dwellings within or outside the structure with an aggregate energy capacity that shall not exceed:

- [1] Forty kWh within utility closets and storage or utility spaces.
- [2] Eighty kWh in attached or detached garages and detached accessory structures.
- [3] Eighty kWh on exterior walls.
- [4] Eighty kWh outdoors on the ground.

(2) Tier 2 battery energy storage systems have an aggregate energy capacity greater than 600 kWh or are comprised of more than one storage battery technology in a room or enclosed area.

SECTION 3: LEGISLATIVE FINDINGS

The Town of Colden is a rural, largely agricultural, forestry, and residential community, having a population of approximately 3,100 people, in approximately 1,100 residences, according to the results of the 2020 census.

Colden has a distinctive scenic and historic character, comprised of farmland, woodlands, lakes and streams, historic structures and sites, and unique natural resource areas like Colden's Pipe Creek basin, among others. The Town's southern town line adjoins the 974-acre Erie County Sprague Brook Park which is a critical forested site in the Erie County Park System. Colden also adjoins cross country and downhill skiing areas that are an important aspect of life in Colden. These characteristics all contribute to Colden's unique character and help make the Town an attractive place to live, work, and play. Colden's scenic and historic resources should be protected and carried forward into the Town's future, even as development continues to occur consistent with Colden's recently adopted Comprehensive Plan (Comp) and Agriculture and Farmland Protection Plan (AFPP). The Town also has concerns that unregulated commissioning

of BESS projects within the Town may accelerate conversion of viable and productive Agricultural Land into other purposes that would be difficult, if not impossible, to remediate at the end of the BESS project life cycle. Reverting lands used for BESS activities back the Agricultural farms and forests may be impossible for subsequent generations of our citizens.

The Town of Colden is actively engaged in the continual review and updating of its zoning code and Town Local Laws. Colden's new Comp and AFPP provide general guidance for Colden's future, and for development on a community-wide basis. The Town must determine how deployment of Battery Energy Storage Systems may be in conflict with other Town goals.

One specific area of concern and inquiry is Battery Energy Storage Systems (BESS) quality of life impact within the Town. The Town has significant safety concerns, especially following recent fire incidents at facilities across New York State. The Town intends to study the safety and security of these energy storage systems, including thermal runaway, off gassing and toxicity, stranded energy, ways to prevent fires, prevent by-product contamination, and ensure emergency responders have the necessary training and information to prepare and deploy resources in the event of a fire. The Town intends to study which areas in Colden may be appropriate for such systems.

In short, the Town is very concerned with the detrimental effects of Battery Energy Storage Systems on the health, safety, welfare and quality of life of the residents and citizens of the Town of Colden. Thus, the Town Board has decided to review the Town Code in conjunction with recommendations by the Colden Planning Board, and consider potential code and Zoning revisions thereto in order to address the Town's concerns with Battery Energy Storage Systems.

In order to allow the Town Board time to complete its review, draft proposed new legislation and enact any such legislation, the Town Board deems it in the best interest of the general health, safety and welfare of the residents of the Town of Colden to impose a moratorium prohibiting the review and approval of applications and permits for Battery Energy Storage System in the Town of Colden.

SECTION 4: MORATORIUM

Pursuant to the statutory authority vested in the Town to regulate and control land use and to protect the health, safety and welfare of its residents, the Town Board of the Town of Colden hereby declares a twelve-month moratorium on the review and approval of new as of yet unfiled and all pending applications for any and all land use approvals, including site plan approvals, subdivision plats, building permits, special use permits, change of use, and variances (hereinafter "Land Use Approvals") for all Battery Energy Storage Systems within the Town. During the period of this local law:

- The Code Enforcement Department as well as the Colden Planning Board shall defer duties for site plan review and Special Use Permits, shall not accept any

application, grant any approval to, or continue the review of a subdivision plat, site plan, special use permit, change of use, or other permit that includes the permitting, construction and/or development of a Battery Energy Storage System within the Town.

- The Zoning Board of Appeals shall not accept any application or grant any approval for a variance or other permit that would have as a result the permitting, construction and development of a Battery Energy Storage System within the Town.
- The Code Enforcement Department shall not accept any building permit application or grant any Certificate of Occupancy or Certificate of Compliance for a Battery Energy Storage System within the Town.
- Projects currently under construction and projects that have received final approvals are not subject to this moratorium.

Notwithstanding the foregoing, special permit and site plan applications for Battery Energy Storage Systems may be reviewed (but not approved) by the Town of Colden if an applicant signs a moratorium acknowledgment, in a form approved by the Town Attorney, that confirms the applicant is aware of the moratorium, is processing its application at the risk of the applicable regulations being changed, and assumes the consequences of such risk.

SECTION 5: TERM

The moratorium imposed by this Local Law shall be effective for twelve months from the effective date of this Local Law.

SECTION 6: HARDSHIP WAIVER

- A. Should any owner of property affected by this Local Law or any applicant with an application currently pending before any Board of the Town suffer any unnecessary and extraordinary hardship due to the enactment and application of this Local Law, then the owner of said property may apply to the Town Board of the Town of Colden in writing for a variance from strict compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary or extraordinary hardship shall not be:
 - a. the mere concern that regulations may be changed or adopted, or that the Plan may be amended; or

- b. the mere delay in being permitted to make 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. An application for an exception based upon unnecessary or extraordinary hardship shall be filed with the Town Clerk no earlier than the effective date of this Local Law, including a fee of one thousand and five hundred 00/100 Dollars (\$1,500.00) for each tax map parcel claimed to be subject to unnecessary or extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application 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 Town Board, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.
- C. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a hardship waiver from the provisions of this Local Law, the Town Board shall, within forty-five (45) days of receipt of a completed application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town of Colden. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of said Public Hearing, render its decision either granting, denying, granting in part or denying in part, the application for a hardship waiver from the strict requirements of this Local Law. If the Town Board 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 Town Board shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.
- D. Standard of Review. In reviewing an application for an exception based upon a claim of necessary or extraordinary hardship, the Town Board shall consider the following criteria:
 - a. The extent to which the proposed development activity would cause significant environmental harm, adversely impact surrounding natural resource areas, public health, comfort or safety concerns and/or have a negative impact upon the Town.
 - b. Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicable completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

SECTION 7: HOME RULE

Nothing in this Local Law is intended or shall be construed to limit the home rule authority of the Town under State Law or to limit the Town's discretion in setting fees and charges in connection with any applications requiring Town approval.

SECTION 8: SEVERABILITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Colden hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 9: REPEAL

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed to the extent of such inconsistency.

SECTION 10: SEQRA

This local law constitutes a Type II Action under the State Environmental Quality Review Act inasmuch as it constitutes the adoption of a moratorium on land development or construction. As such this project is not subject to review under the State Environmental Quality Act.

SECTION 11: EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule (MHR) Law.

MOTION to approve a Local Law to pass a 12 month BESS Moratorium made by Supervisor DePasquale, seconded by Councilman Pietraszek and approved by the following vote:

On the vote:	Councilman Dennis Robinson – yes
	Councilman Jesse Hrycik – yes
	Councilwoman Patricia Zurbrick – yes
	Councilman Gerald Pietraszek – yes
	Supervisor James P DePasquale – yes

Respectfully submitted,

Deborah Jusiak
Town Clerk