



TOWN OF BETHLEHEM Chapter 128. Zoning Code

Part 2. District & Use Regulations

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ARTICLE 20

RESIDENTIAL DISTRICTS

§ 128-20.1 RESIDENTIAL DISTRICTS ESTABLISHED

The residential districts of the Town of Bethlehem are listed in the following table.

DISTRICT NAME	ABBREVIATION & MAP SYMBOL
<i>Residential Large Lot</i>	RLL
<i>Core Residential</i>	CR
<i>Low-Density Residential</i>	LDR
<i>Mixed-Density Residential</i>	MDR

§ 128-20.2 PURPOSE STATEMENTS

- A. Residential Large Lot (RLL).** The RLL District is generally characterized by semirural, large lots having a minimum size of two acres, often located between lightly developed rural and natural areas and more intensively developed residential areas. RLL areas will often have environmental constraints or attributes that support less intensive development.
- B. Core Residential (CR).** The CR District is characterized by the Town's oldest single family neighborhoods concentrated around the hamlets of Delmar, Elsmere, Slingerlands, and Selkirk. CR District areas should maintain the traditional, walkable character of these neighborhoods by continuing to provide tree-lined streets, sidewalks, and an interconnected street grid. The general development pattern of the CR District consists of smaller lot sizes with modest homes in close proximity to local goods and services.
- C. Low-Density Residential (LDR).** The LDR District is intended to maintain and provide predominately low density housing including single family, two-family, and three-family homes in a compatible development pattern on varied lot sizes. Infill and redevelopment opportunities should continue to implement strong neighborhood design elements to create visually interesting, connected, and walkable environments for residents. The establishment of this District is meant to help advance the Town's Comprehensive plan goal of increasing affordable and middle market housing stock in a manner that compliments existing residential context.
- D. Mixed-Density Residential (MDR).** The purpose of the MDR District is to provide for a mix of residential densities and housing types in accordance with the recommendations of the Town's Comprehensive Plan. Mixed density supports a more diversified housing market and encourages desirable land use design practices to preserve open space and take advantage of existing infrastructure. Residential uses permitted in this District include single-, two-, and multi-family dwellings, which should be arranged in a manner that provides for an inclusive and connected community. To ensure the future design, layout, and character of the MDR District is cohesive and results in a natural transition from single- and two-family neighborhoods to higher density developments, community resources, and commercial centers, all development proposals shall:
1. Establish neighborhoods with a variety of housing types in a unique, attractive environment that is oriented toward connecting residents and fostering pedestrian activity.
 2. Locate residential types and densities in a manner that provides a natural transition from single- and two-family neighborhoods to higher density developments, community resources, and commercial centers.

3. Foster the compatibility of residences and other improvements through their arrangement, bulk, form, character, and landscaping.
4. Develop on- and off-site connections to nearby amenities, roadways, sidewalks, parks, and trails.
5. Design well-configured greens, landscaped streets, greenbelts, and parks that are woven into the pattern of the neighborhood and dedicated to the social interaction, recreation, and visual enjoyment of the residents.
6. Preserve and integrate existing natural features and undisturbed areas into the open space and design of the neighborhood.
7. Create a cohesive and interconnected traditional neighborhood development pattern throughout the entirety of the District, regardless of the sequence of proposals or project phasing.

§ 128-20.3 DEVELOPMENT REVIEWS REQUIRED

- A. **Site Plan Review.** Site plan review and approval shall be required for development activities resulting in exterior changes to a building or site, such as new construction, alteration, or demolition of structures. See Article 42 for specific site plan review requirements and procedures.
- B. **Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. **Waterfront Area Consistency Review.** Waterfront area consistency review shall be required for all development actions in the Local Waterfront Revitalization Program (LWRP) boundary as provided for by Chapter 80 (Local Waterfront Revitalization Program) of the Town Code.
- D. **Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in a special flood hazard area as provided for by Chapter 69 (Flood Damage Prevention) of the Town Code.
- E. **Stormwater Pollution Prevention Plan (SWPPP).** A SWPPP shall be required for all development activities as provided for by Chapter 98 (Stormwater Management) of the Town Code.

§ 128-20.4 DESIGN & DEVELOPMENT STANDARDS

All uses and development within the residential districts shall be subject to the design and developments standards of Part 3 of this Chapter, as noted therein. This includes, but is not limited to, Building & Site Design (Article 30), Circulation, Access, Parking, & Loading (Article 31), Landscaping and Screening (Article 32), Lots Bordering Streams, Wetlands, & Stormwater Management (Article 33), Signs (Article 34), and Exterior Lighting (Article 35).

§ 128-20.5 USE LISTS

- A. **Permitted.** Uses identified with a “P” are permitted by-right, subject to compliance with all other applicable standards of this zoning code, which may include Planning Board, Town Staff, or Town Board review. Such uses may also be subject to the Additional Use Regulations of Article 25 as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with permitted uses.
- B. **Specially Permitted.** Uses identified with a “SUP” are permitted subject to issuance of a special use permit in accordance with Article 43. Such uses may also be subject to additional use regulations in the sections as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with specially permitted uses.
- C. **Prohibited.** Uses not listed and those identified with a “-” are expressly prohibited, unless the unlisted use is determined to be consistent with the nature of operation, scale, and intensity of an already listed use.

LAND USE	RLL	CR	LDR	MDR	ADDITIONAL REGULATION S
RESIDENTIAL USES					
<i>Single-Family Dwelling, attached or detached</i>	P	P	P	P	-
<i>Two-Family Dwelling</i>	P	P	P	P	-
<i>Multi-Family Dwelling, 3-4 units</i>	SUP ¹	SUP ¹	SUP ¹	P ¹	-
<i>Multi-Family Dwelling, 5+ units</i>	-	-	SUP ¹	P ¹	-
<i>Two- or Multi-Family Dwelling, by conversion</i>	SUP ¹	SUP ¹	SUP ¹	P ¹	§ 128-25.24
<i>Residential Care Facility</i>	-	-	SUP	SUP	-
<i>Senior Citizen Housing</i>	P	P	P	P	§ 128-25.22
<i>Bed and Breakfast</i>	P	P ²	P ²	P	§ 128-25.8
<i>Short-Term Rental</i>	-	-	-	-	-
NONRESIDENTIAL USES					
<i>Agricultural Use</i>	P	P	P	P	§ 128-25.6
<i>Day Care Center</i>	P	P ²	P ²	P	-
<i>Wellness Center</i>	-	SUP ²	-	-	-
<i>Office, Administrative or Professional</i>	-	SUP ²	-	-	-
<i>Cultural or Community Facility</i>	SUP	SUP	SUP	SUP	-
<i>Municipal or Public Service Use</i>	P	P	P	P	-
<i>Social Club</i>	-	P ²	P ²	-	-
<i>Religious Institution</i>	SUP	SUP	SUP	SUP	-
<i>Educational Institution</i>	P	P ²	P ²	P	-
<i>Cemetery</i>	SUP	SUP	SUP	SUP	§ 128-25.11
<i>Telecommunication facilities, Collocated</i>	P	P	P	P	§ 128-25.25
<i>Telecommunication facilities, Noncollocated</i>	SUP	SUP	SUP	SUP	§ 128-25.25
ACCESSORY USES					
<i>Accessory Use or Structure</i>	P	P	P	P	§ 128-25.4
<i>Accessory Dwelling Unit</i>	P	P	P	P	§ 128-25.3
<i>Keeping of Animals</i>	P	P	P	P	§ 128-25.14
<i>Home Occupation, Residential or Agricultural</i>	P	P	P	P	§ 128-25.13
<i>Alternative Energy System, Solar</i>	P	P	P	P	§ 128-27.1

NOTE: 1. The siting of multi-family dwellings shall follow the density transition provisions of § 128-30.11.
 2. Adaptive reuse of existing residential structure only as defined in § 128-25.21.

§ 128-20.6 DIMENSIONAL REQUIREMENTS

	RLL	CR	LDR	MDR
MIN LOT AREA				
<i>Single-Family Dwelling</i>	2 acres	7,200 sf	10,000 sf	8,500 sf
<i>Two-Family Dwelling</i>	2 acres	8,500 sf	12,000 sf	8,500 sf
<i>Multi-Family Dwelling, 3-4 units</i>	2 acres	5,000 sf / du ¹ (9 du / acre)	6,500 sf / du ¹ (7 du/acre)	3,500 sf / du ¹ (12 du / acre)
<i>Multi-Family Dwelling, 5+ units</i>	-	-	6,500 sf / du ¹ (7 du / acre)	2,500 sf / du ¹ (17 du / acre)
<i>Nonresidential Use</i>	2 acres	15,000 sf	15,000 sf	15,000 sf
MIN LOT WIDTH^{2,3}				
<i>Single- or Two-Family Dwelling</i>	100 ft	50 ft	60 ft	50 ft
<i>Multi-Family or Nonresidential Use</i>	100 ft	50 ft	70 ft	60 ft
MIN FRONT SETBACK⁴				
<i>Primary Use</i>	50 ft	25 ft ⁵	25 ft ⁵	25 ft ⁵
MIN SIDE SETBACK				
<i>Single- or Two-Family Dwelling</i>	25 ft	8 ft / 50 ft ⁶	10 ft / 50 ft ⁶	8 ft
<i>Multi-Family Dwelling</i>	25 ft / 50 ft ⁷	10 ft / 50 ft ⁶	15 ft / 50 ft ⁶	12 ft
<i>Nonresidential Use</i>	25 ft / 50 ft ⁷	10 ft	15 ft	12 ft
<i>Accessory Use</i>	5 ft / 25 ft ⁸	5 ft / 8 ft ⁸	5 ft / 10 ft ⁸	5 ft / 8 ft ⁸
MIN REAR SETBACK				
<i>Single- or Two-Family Dwelling</i>	50 ft	25 ft	25 ft	25 ft
<i>Multi-Family Dwelling or Other Use</i>	50 ft	35 ft	35 ft	35 ft
<i>Accessory Use</i>	5 ft / 10 ft ⁸	5 ft / 10 ft ⁸	5 ft / 10 ft ⁸	5 ft / 10 ft ⁸

- NOTES:**
1. Minimum requirement defined as square feet per dwelling unit (sf / du).
 2. Or the most common lot width on the block within +/- 3 feet, whichever is less. Minimum lot width may be subject to increases depending on site grading needs.
 3. The minimum lot width shall also be applied as the minimum highway frontage.
 4. An additional 25 feet shall be required for the minimum setback from the centerline of the roadway when the property line follows the centerline of the roadway.
 5. Where 30% of the lots on a block are developed, the most common front setback shall be the minimum so as to establish a consistent building line.
 6. Residential uses proposed for previously undeveloped property abutting a multi-use or industrial district shall include a 50-foot landscaped buffer set back from the adjoining district. The landscaped buffer shall be planted with a mixture of evergreen and deciduous plantings. The Planning Board shall use its discretion to establish appropriate landscaped buffer setbacks for redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.
 7. The larger requirement shall apply where abutting a residential property or district.
 8. The larger setback requirement shall apply to accessory dwelling units.

§ 128-20.7 BULK REQUIREMENTS

	RLL	CR	LDR	MDR
MAX BUILDING HEIGHT				
<i>Single-Family or Two-Family Dwelling</i>	35 ft	35 ft	35 ft	35 ft
<i>Multi-Family Dwelling</i>	35 ft	35 ft	35 ft	45 ft ¹
<i>Accessory Use</i>	25 ft	18 ft	18 ft	18 ft
MAX BUILDING COVERAGE				
	20%	20%	20%	30%
MAX LOT COVERAGE ²				
<i>Dwelling, up to 4 units</i>	-	-	-	-
<i>Multi-Family Dwelling, 5+ units</i>	-	-	30%	35%
<i>Nonresidential Use</i>	30%	30%	30%	35%

- NOTES:** 1. Building height may be further restricted depending on surrounding neighborhood context, per §128-30.11.
 2. Measured by the gross impervious surface of the lot.

ARTICLE 21

HAMLET DISTRICTS

§ 128-21.1 HAMLET DISTRICTS ESTABLISHED

The hamlet districts of the Town of Bethlehem are listed in the following table.

DISTRICT NAME	ABBREVIATION & MAP SYMBOL
<i>Traditional Hamlet</i>	TH
<i>Commercial Hamlet</i>	CH
<i>Rural Hamlet</i>	RH

§ 128-21.2 PURPOSE STATEMENTS

- A. Traditional Hamlet (TH).** The TH District areas include many of the Town's earliest settled hamlets characterized by a walkable development pattern of small-scale businesses and essential services. Traditional hamlets often support buildings with commercial uses on the first floor and residential uses on the second. Hamlets are identified as community hubs for their pedestrian friendly infrastructure, amenities and blending of commercial and residential uses. The purpose of these districts is to encourage efficient mixed-use commercial and residential development, or redevelopment, within neighborhoods identified as appropriate to maintain or create a Hamlet character. The Hamlet character is further supported through specific bulk and dimensional requirements, such as:
1. A zero-foot minimum setback and maximum front setback that reflects the existing traditional, walkable development pattern and ensures future investment brings buildings closer to the street, establishing a consistent main street environment. Such building placement is the foundation of a main street corridor, an environment that is conducive to active commercial uses and public spaces.
 2. A minimum building height for new construction to create a distinct sense of place by framing the street and fostering attractive building designs, which also contribute to active commercial uses and public spaces.
- B. Commercial Hamlet (CH).** The CH District is intended to allow for medium-scale and intensity uses in the major corridors leading into and surrounding Bethlehem's traditional hamlets and residential neighborhoods, while still fostering a walkable, mixed-use environment. The CH District follows similar lot, building, and site design requirements as the TH District to encourage more compact, mixed-use development, while providing more flexibility in allowed uses that acknowledges greater vehicular intensity than the TH District. The CH provides flexibility in requirements for existing shopping plazas to redevelop, while still maintaining the traditional hamlet settlement pattern that encourages active commercial and public activity. Like, the TH District, the CH District is supported by the specific bulk and dimensional requirements noted above that foster a human-scaled, walkable streetscape environment.
- C. Rural Hamlet (RH).** The RH District is meant to encourage compact commercial and residential development within rural neighborhoods throughout the Town. Areas of the Town designated under this district are largely original settlement areas situated along major corridors that inhabit small-scale businesses and essential services in close proximity to rural and moderately developed lands. Rural Hamlets tend to be oriented to vehicular rather than pedestrian access due to their presence within rural and active agricultural lands.

§ 128-21.3 DEVELOPMENT REVIEWS REQUIRED

- A. **Site Plan Review.** Site plan review and approval shall be required for development activities resulting in exterior changes to a building or site, such as new construction, alteration, or demolition of structures. See Article 42 for specific site plan review requirements and procedures.
- B. **Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. **Waterfront Area Consistency Review.** Waterfront area consistency review shall be required for all development actions in the Local Waterfront Revitalization Program (LWRP) boundary as provided for by Chapter 80 (Local Waterfront Revitalization Program) of the Town Code.
- D. **Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in a special flood hazard area as provided for by Chapter 69 (Flood Damage Prevention) of the Town Code.
- E. **Stormwater Pollution Prevention Plan (SWPPP).** A SWPPP shall be required for all development activities as provided for by Chapter 98 (Stormwater Management) of the Town Code.

§ 128-21.4 DESIGN & DEVELOPMENT STANDARDS

All uses and development within the residential districts shall be subject to the design and developments standards of Part 3 of this Chapter, as noted therein. This includes, but is not limited to, Building & Site Design (Article 30), Circulation, Access, and Parking (Article 31), Landscaping and Screening (Article 32), Greenspace (Article 33), Signs (Article 34), and Exterior Lighting (Article 35).

§ 128-21.5 USE LISTS

- A. **Permitted.** Uses identified with a “P” are permitted by-right, subject to compliance with all other applicable standards of this zoning code, which may include Planning Board, Town Staff, or Town Board review. Such uses may also be subject to the Additional Use Regulations of Article 25 as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with permitted uses.
- B. **Specially Permitted.** Uses identified with a “SUP” are permitted subject to issuance of a special use permit in accordance with Article 43. Such uses may also be subject to additional use regulations in the sections as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with specially permitted uses.
- C. **Prohibited.** Uses not listed and those identified with a “-” are expressly prohibited, unless the unlisted use is determined to be consistent with the nature of operation, scale, and intensity of an already listed use.

LAND USE	TH	CH	RH	ADDITIONAL REGULATION S
RESIDENTIAL USES				
<i>Single-Family Dwelling, attached or detached</i>	P	P	P	-
<i>Two-Family Dwelling</i>	P	P	P	-
<i>Multi-Family Dwelling, 3-4 units</i>	P	P	P	-
<i>Multi-Family Dwelling, 5+ units</i>	P ¹	P	SUP	-
<i>Two- or Multi-Family Dwelling, by conversion</i>	SUP	SUP	SUP	§ 128-25.24
<i>Upper-Floor Dwelling Units</i>	P	P	P	-
<i>Live/Work Units</i>	P	P	P	§ 128-25.16
<i>Residential Care Facility</i>	P	P	P	-
<i>Senior Citizen Housing</i>	P	P	P	§ 128-25.22
<i>Bed and Breakfast</i>	P	P	P	§ 128-25.8

LAND USE	TH	CH	RH	ADDITIONAL REGULATION S
<i>Short-Term Rental</i>	P	P	P	§ 128-25.23
NONRESIDENTIAL USES				
<i>Mix of Uses in a Single Structure or Lot</i>	P ¹	P	P	-
<i>Agricultural Use</i>	P	P	P	§ 128-25.6
<i>Brewery, Winery, or Distillery, including micro</i>	P ²	P	P	§ 128-25.9
<i>Day Care Center</i>	P	P	P	-
<i>Wellness Center</i>	P ²	P	P	-
<i>Office, Administrative or Professional</i>	P ²	P	P	-
<i>Office or Clinic, Medical</i>	P ²	P	P	-
<i>Retail or Service Business</i>	P ²	P	P	-
<i>Restaurant or Bar</i>	P ^{2,3}	P	P	-
<i>Marijuana/Cannabis, Dispensary or On-Site Consumption</i>	-	-	-	-
<i>Hotel or Inn</i>	P	P	P	-
<i>Animal Care Services, no overnight stay</i>	P ²	P	P	§ 128-25.7
<i>Animal Care Services or Kennel, with overnight stay</i>	-	-	SUP	§ 128-25.7
<i>Recreation or Entertainment Use, Indoor</i>	P ²	P	P	-
<i>Recreation or Entertainment Use, Outdoor</i>	SUP	SUP	SUP	§ 128-25.20
<i>Motor Vehicle Sales, Service, or Repair</i>	-	SUP	SUP	-
<i>Gasoline/Fuel Sales, existing operation</i>	- ⁴	- ⁴	- ⁴	-
<i>Gasoline/Fuel Sales, new or expanded</i>	- ⁵	- ⁵	- ⁵	-
<i>Public Transportation Terminal</i>	SUP	SUP	SUP	-
<i>Cultural or Community Facility</i>	P	P	P	-
<i>Municipal or Public Service Use</i>	P	P	P	-
<i>Social Club</i>	P	P	P	-
<i>Religious Institution</i>	P	P	P	-
<i>Educational Institution</i>	P	P	P	-
<i>Funeral Home or Mortuary</i>	SUP	SUP	P	-
<i>Cemetery</i>	SUP	SUP	SUP	§ 128-25.11
<i>Telecommunication facilities, Collocated</i>	P	P	P	§ 128-25.25
<i>Telecommunication facilities, Noncollocated</i>	-	SUP	SUP	§ 128-25.25
<i>Broadcasting Facilities, FCC Licensed</i>	-	P	-	-
<i>Permitted Use over 5,000 sf in floor area, where limited herein</i>	SUP	-	-	-
ACCESSORY USES				
<i>Accessory Use or Structure</i>	P	P	P	§ 128-25.4
<i>Accessory Dwelling Unit</i>	P	P	P	§ 128-25.3
<i>Keeping of Animals</i>	P	P	P	§ 128-25.14
<i>Home Occupation, Residential or Agricultural</i>	P	P	P	§ 128-25.13
<i>Drive-Through Facility</i>	SUP ³	SUP	SUP	§ 128-25.12
<i>Alternative Energy System, Solar (rooftop)</i>	P	P	P	§ 128-27.1
<i>Alternative Energy System, Solar (ground-mounted)</i>	SUP	SUP	P	§ 128-27.1
<i>Alternative Energy System, Wind</i>	-	-	SUP	§ 128-27.2

- NOTES:**
1. First-floor dwelling units shall be prohibited from fronting primary commercial corridors (e.g. Delaware Avenue) to maintain active storefronts and inviting streetscape environment. For lots that have 600 feet or more of primary commercial corridor frontage, the Planning Board may modify this standard where the applicant demonstrates and the Planning Board finds that the standard is unreasonable as applied because of real estate market conditions, project location or other relevant factors.
 2. Provided such use occupies no more than 5,000 square feet of gross floor area.
 3. Drive-throughs associated with restaurant uses are prohibited in the TH District.
 4. Existing gasoline and diesel fuel sales uses may be allowed through site plan review.
 5. Expansion of existing gasoline or fuel sales is measured by an increase to the quantity of pumps.

§ 128-21.6 DIMENSIONAL REQUIREMENTS

	TH	CH	RH
MIN LOT AREA			
<i>Single- or Two-Family Dwelling</i>	5,000 sf (8 du / acre)	5,000 sf (8 du / acre)	7,000 sf (6 du / acre)
<i>Multi-Family Dwelling, 3-4 units</i>	4,300 sf (10 du/ acre)	4,300 sf (10 du/ acre)	7,000 sf (6 du / acre)
<i>Multi-Family Dwelling, 5+ units</i>	2,000 sf / du ¹ (21 du / acre)	2,000 sf / du ¹ (21 du / acre)	2,500 sf / du ¹ (17 du / acre)
<i>Other Use</i>	10,000 sf	10,000 sf	10,000 sf
MIN LOT WIDTH ^{2,3}			
<i>Single- or Two-Family Dwelling</i>	40 ft	40 ft	60 ft
<i>Multi-Family Dwelling or Other Use</i>	50 ft	50 ft	70 ft
FRONT SETBACK ⁴			
<i>MIN, Primary Use</i>	0 ft	0 ft	25 ft
<i>MIN, fronting major arterial / thoroughfare</i>	0 ft	0 ft ⁵ / 25 ft	25 ft
<i>MAX, Nonresidential or Mixed Use</i>	25 ft ⁶	35 ft ⁶	-
MIN SIDE SETBACK			
<i>Primary Use</i>	5 ft	5 ft	10 ft
<i>Nonresidential or Mixed Use, where abutting residential</i>	10 ft	10 ft	15 ft
<i>Accessory Use</i>	5 ft	5 ft	5 ft
MIN REAR SETBACK			
<i>Primary Use</i>	35 ft	35 ft	40 ft
<i>Accessory Use</i>	5 ft	5 ft	5 ft

- NOTES:**
1. Minimum requirement defined as square feet per dwelling unit (sf / du).
 2. Or the most common lot width on the block.
 3. The minimum lot width shall also be applied as the minimum highway frontage.
 4. An additional 25 feet shall be required for the minimum setback from the centerline of the roadway when the property line follows the centerline of the roadway.
 5. Applies to Delaware Avenue only.
 6. Requirement shall apply to new construction only.

§ 128-21.7 BULK REQUIREMENTS

	TH	CH	RH
MAX BUILDING HEIGHT ¹			
<i>Primary Use</i>	45 ft ⁵ (3 stories)	45 ft (3 stories)	35 ft (2.5 stories)
<i>Accessory Use</i>	18 ft	20 ft	25 ft
MIN BUILDING HEIGHT ²			
<i>Nonresidential or Mixed Use</i>	30 ft	30 ft	-
MAX BUILDING FOOTPRINT ^{2,3}			
<i>Nonresidential or Mixed Use</i>	5,000 sf	10,000 sf	5,000 sf
MAX COVERAGE			
<i>Building Coverage</i>	75% / 5% ⁴	75% / 5% ⁴	65% / 5% ⁴
<i>Gross Impervious Surface, including building coverage</i>	85%	85%	75%

- NOTES:**
1. Building height shall be measured in feet, while the visual scale or appearance in height of the building shall be determined in stories.
 2. Requirement shall apply to new construction only.
 3. Exceptions may be made only if the facades of larger buildings are articulated to appear as multiple buildings, each part of which does not exceed the maximum building footprint.
 4. The smaller requirement shall apply to the total lot coverage of all accessory structures.
 5. For sites with slopes along the lot frontage, notwithstanding 128-14.7, maximum building height is measured from the high side of the slope of the finished grade along the front of the site.

ARTICLE 22

MULTI-USE DISTRICTS

§ 128-22.1 MULTI-USE DISTRICTS ESTABLISHED

The multi-use districts of the Town of Bethlehem are listed in the following table.

DISTRICT NAME	ABBREVIATION & MAP SYMBOL
<i>Commercial Multi-Use</i>	CMU
<i>Rural Multi-Use</i>	RMU
<i>Rural Riverfront</i>	RR

§ 128-22.2 PURPOSE STATEMENTS

A. Commercial Multi-Use (CMU). The purpose of the CMU District is to recognize the Town's regional commercial areas and increase economic opportunity within them by supporting a wide mix of uses in a more compact and sustainable development pattern. To accomplish this, the CMU District regulates the location, design, and use of structures and land to redefine the public and private realms in a manner that promotes attractive, multi-modal streetscapes and mixed use destination centers. Investment within the CMU District shall be in furtherance of the following objectives:

1. Continue to service the needs of residents and the travelling public by allowing a variety of goods, services, and experiences.
2. Incorporate residential living options to increase local housing choice for residents of all ages, incomes, and lifestyles.
3. Capitalize on existing infrastructure with infill development and the vertical and horizontal mixing of uses to maximize the use of land and increase economic opportunity.
4. Enhance non-motorist access and connectivity along the Town's major transportation corridors as well as within and between adjacent neighborhoods and development sites.
5. Employ sustainable building and site design practices to mitigate any potential negative impacts to the environment.
6. Observe the relationship and transitions between residential and commercial uses, ensuring compatibility with the scale and design of adjacent properties and the greater community context.
7. Give special attention to the design of sites and structures as well as the designation of public space to further define Town character and create a sense of place.
8. Ensure buildings help frame the street and foster a pedestrian-friendly environment through the implementation of a maximum front setback and minimum building height requirement.

B. Rural Multi-Use (RMU). The purpose of this district is to facilitate a variety of uses, including low density residential, agriculture, forestry, mining, small-scale commercial, and light industrial activity - incorporating traditional farmstead design aesthetics where appropriate. Multiple uses on a single parcel may be found. Areas of the Town designated under this district are characterized by historically resource-based economic activities and limited infrastructure availability. The remaining agricultural businesses, undeveloped lands, and natural resources contrast the more developed areas of the Town.

- C. **Rural Riverfront (RR).** Areas of the Town designated under this district are those located along areas overlooking the banks of the Hudson River. The purpose of this district is to limit the density of residential development while encouraging tourism and recreational-based nonresidential development.

§ 128-22.3 DEVELOPMENT REVIEWS REQUIRED

- A. **Site Plan Review.** Site plan review and approval shall be required for development activities resulting in exterior changes to a building or site, such as new construction, alteration, or demolition of structures. See Article 42 for specific site plan review requirements and procedures.
- B. **Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. **Waterfront Area Consistency Review.** Waterfront area consistency review shall be required for all development actions in the Local Waterfront Revitalization Program (LWRP) boundary as provided for by Chapter 80 (Local Waterfront Revitalization Program) of the Town Code.
- D. **Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in a special flood hazard area as provided for by Chapter 69 (Flood Damage Prevention) of the Town Code.
- E. **Stormwater Pollution Prevention Plan (SWPPP).** A SWPPP shall be required for all development activities as provided for by Chapter 98 (Stormwater Management) of the Town Code.

§ 128-22.4 DESIGN & DEVELOPMENT STANDARDS

All uses and development within the residential districts shall be subject to the design and developments standards of Part 3 of this Chapter, as noted therein. This includes, but is not limited to, Building & Site Design (Article 30), Circulation, Access, and Parking (Article 31), Landscaping and Screening (Article 32), Greenspace (Article 33), Signs (Article 34), and Exterior Lighting (Article 35).

§ 128-22.5 USE LISTS

- A. **Permitted.** Uses identified with a “P” are permitted by-right, subject to compliance with all other applicable standards of this zoning code, which may include Planning Board, Town Staff, or Town Board review. Such uses may also be subject to the Additional Use Regulations of Article 25 as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with permitted uses.
- B. **Specially Permitted.** Uses identified with a “SUP” are permitted subject to issuance of a special use permit in accordance with Article 43. Such uses may also be subject to additional use regulations in the sections as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with specially permitted uses.
- C. **Prohibited.** Uses not listed and those identified with a “-” are expressly prohibited, unless the unlisted use is determined to be consistent with the nature of operation, scale, and intensity of an already listed use.

LAND USE	CMU	RMU	RR	ADDITIONAL REGULATIONS
RESIDENTIAL USES				
<i>Single-Family Dwelling, attached or detached</i>	- 1	P	P	-
<i>Two-Family Dwelling</i>	- 1	P	P	-
<i>Multi-Family Dwelling, 3-4 units</i>	- 1	P	P	-
<i>Multi-Family Dwelling, 5+ units</i>	P	-	-	-

LAND USE	CMU	RMU	RR	ADDITIONAL REGULATIONS
<i>Upper-Floor Dwelling Units</i>	P	P	P	-
<i>Live/Work Units</i>	P	P	-	§ 128-25.16
<i>Farm Labor Housing</i>	-	P	-	-
<i>Bed and Breakfast</i>	P	P	P	§ 128-25.8
<i>Short-Term Rental</i>	P	P	P	§ 128-25.23

* Table continued on following page *

NONRESIDENTIAL USES

<i>Mix of Uses in a Single Structure or Lot</i>	P	P ²	P	-
<i>Residential Dwelling, Conversion to Nonresidential Use</i>	P	P ²	P	§ 128-25.21
<i>Agricultural Use</i>	P	P	P	§ 128-25.6
<i>Day Care Center</i>	P	P ²	P	-
<i>Wellness Center</i>	P	P ²	-	-
<i>Office, Administrative or Professional</i>	P	P ²	-	-
<i>Office or Clinic, Medical</i>	P	P ²	-	-
<i>Retail or Service Business</i>	P	P ²	-	-
<i>Restaurant or Bar</i>	P	P ²	P	-
<i>Commercial Bakery</i>	P	P ²	-	-
<i>Brewery, Winery, or Distillery, including micro</i>	P	P ²	P	§ 128-25.9
<i>Marijuana/Cannabis Use, Dispensary or On-Site Consumption</i>	-	-	-	-
<i>Hotel</i>	P	-	-	-
<i>Inn</i>	P	P ²	P	-
<i>Animal Care Services, no overnight stay</i>	P	P ²	-	§ 128-25.7
<i>Animal Care Services or Kennel, with overnight stay</i>	SUP	P ²	-	§ 128-25.7
<i>Recreation or Entertainment Use, Indoor</i>	P	P ²	P	-
<i>Recreation or Entertainment Use, Outdoor</i>	SUP	P ²	P	§ 128-25.20
<i>Campground</i>	-	P	P	§ 128-25.10
<i>Marina</i>	-	-	SUP	§ 128-25.17
<i>Motor Vehicle Sales, Service, or Repair</i>	SUP	P ²	-	-
<i>Farm Equipment Storage, Sales, Service, or Repair</i>	SUP	P ²	-	-
<i>Gasoline/Fuel Sales, existing operation</i>	- ³	- ³	- ³	-
<i>Gasoline/Fuel Sales, new or expanded</i>	- ⁴	- ⁴	- ⁴	-
<i>Public Transportation Terminal</i>	P	P	-	-
<i>Cultural or Community Facility</i>	P	P ²	P	-
<i>Municipal or Public Service Use</i>	P	P ²	P	-
<i>Public Utility</i>	-	SUP	-	-
<i>Social Club</i>	P	P ²	P	-
<i>Religious Institution</i>	P	P ²	P	-
<i>Educational Institution</i>	P	P ²	P	-
<i>Funeral Home or Mortuary</i>	P	-	-	-
<i>Cemetery</i>	-	SUP	SUP	§ 128-25.11
<i>Self-Storage Facility (indoor)</i>	P	-	-	-
<i>Lumberyard or Contractor's Yard</i>	-	P	-	-
<i>Fabrication Shop</i>	-	P ²	-	-

LAND USE	CMU	RMU	RR	ADDITIONAL REGULATIONS
<i>Mining or Mineral Extraction</i>	-	SUP	-	§ 128-25.18
<i>Trucking Business, Fuel Delivery, no bulk storage</i>	-	P ²	-	-
<i>Telecommunication Facilities, Collocated</i>	P	P	P	§ 128-25.25
<i>Telecommunication Facilities, Noncollocated</i>	SUP	SUP	SUP	§ 128-25.25
<i>Broadcasting Facilities, FCC Licensed</i>	P	P	-	-
<i>Battery Energy Storage System</i>	-	SUP	-	§ 128-27.3
<i>Alternative Energy System, Solar</i>	-	SUP	-	§ 128-27.1
ACCESSORY USES				
<i>Accessory Use or Structure</i>	P	P	P	§ 128-25.4
<i>Accessory Dwelling Unit</i>	P	P	P	§ 128-25.3
<i>Keeping of Animals</i>	-	P	P	§ 128-25.14
<i>Home Occupation, Residential or Agricultural</i>	P	P	P	§ 128-25.13
<i>Drive-Through Facility</i>	SUP	SUP	-	§ 128-25.12
<i>Alternative Energy System, Solar</i>	P	P	P	§ 128-27.1
<i>Alternative Energy System, Wind</i>	-	SUP	SUP	§ 128-27.2

- NOTES:** 1. Single-, two-, and multi-family dwellings up to four units in existence as of the effective date of this chapter shall be considered permitted uses.
2. Nonresidential and nonagricultural uses occupying no more than 4,000 square feet in one or more structures on a single lot shall be permitted by-right. See Site Plan Review Table § 128-42.3. Uses exceeding 4,000 square feet may be approved through site plan review. Uses associated with and established to support a permitted agricultural operation shall be exempt from this size limitation.
3. Modifications to existing gasoline and diesel fuel sales uses may be allowed through site plan review.
4. Expansion of existing gasoline or fuel sales is measured by an increase to the quantity of pumps.

§ 128-22.6 DIMENSIONAL REQUIREMENTS

	CMU	RMU	RR
MIN LOT AREA¹			
<i>Single- or Two-Family Dwelling, major subdivision</i>	-	2 acres	5 acres
<i>Single- or Two-Family Dwelling, minor subdivision</i>	-	1 acre	5 acres
<i>Multi-Family Dwelling, 3-4 units</i>	-	1 acre	5 acres
<i>Multi-Family Dwelling, 5+ units</i>	1,750 sf / du ² (25 du / acre)	-	-
<i>Other Use</i>	20,000 sf	1 acre	5 acres
MIN LOT WIDTH³			
<i>Single- or Two-Family</i>	-	75 ft	100 ft
<i>Multi-Family Dwelling or Other Use</i>	70 ft	75 ft	100 ft
MIN FRONT SETBACK⁴			
<i>Primary Use</i>	30 ft	35 ft	40 ft
MAX FRONT SETBACK			
<i>Nonresidential or Multi-Use</i>	50 ft ⁵	-	-
MIN SIDE SETBACK			
<i>Residential Use</i>	-	15 ft	15 ft ⁶
<i>Nonresidential or Multi-Use</i>	15 ft / 25 ft ⁷	15 ft / 50 ft ⁷	15 ft

<i>Accessory Structure</i>	5 ft	5 ft	5 ft
MIN REAR SETBACK			
<i>Residential Use</i>	-	35 ft	40 ft ⁶
<i>Nonresidential or Multi-Use</i>	35 ft / 100 ft ⁷	35 ft / 50 ft ⁷	40 ft
<i>Accessory Structure</i>	5 ft	5 ft	5 ft

- NOTES:**
1. Minimum lot area may be subject to increases depending upon the availability of public water and/or sewer.
 2. Minimum requirement defined as square feet per dwelling unit (sf / du).
 3. The minimum lot width shall also be applied as the minimum highway frontage.
 4. An additional 25 feet shall be required for the minimum setback from the centerline of the roadway when the property line follows the centerline of the roadway.
 5. Requirement shall apply to new construction only.
 6. Residential uses proposed for previously undeveloped property abutting a multi-use or industrial district shall include a 50-foot landscaped buffer set back from the adjoining district. The landscaped buffer shall be planted with a mixture of evergreen and deciduous plantings. The Planning Board shall use its discretion to establish appropriate landscaped buffer setbacks for redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.
 7. The larger requirement shall apply where a nonresidential or multi-use property abuts a residential property or district.

§ 128-22.7 BULK REQUIREMENTS

	CMU	RMU	RR
MAX BUILDING HEIGHT ¹			
<i>Primary Use</i>	55 ft (4 stories)	35 ft (2.5 stories)	35 ft (2.5 stories)
<i>Accessory Use</i>	18 ft	25 ft	25 ft
MIN BUILDING HEIGHT			
<i>Nonresidential or Multi-Use</i>	30 ft ²	-	-
MAX BUILDING FOOTPRINT ^{2, 3}			
<i>Nonresidential or Multi-Use</i>	12,000 sf	5,000 sf	-
MAX COVERAGE			
<i>Building Coverage</i>	35% / 5% ⁴	30% / 5% ⁴	20% / 5% ⁴
<i>Gross Impervious Surface, including building coverage</i>	80%	45%	35%

- NOTES:**
1. Building height shall be measured in feet, while the visual scale or appearance in height of the building shall be determined in stories.
 2. Requirement shall apply to new construction only.
 3. Exceptions may be made only if the facades of larger buildings are articulated to appear as multiple buildings, each part of which does not exceed the maximum building footprint.
 4. The smaller requirement shall apply to the total lot coverage of all accessory structures.

ARTICLE 23

INDUSTRIAL DISTRICTS

§ 128-23.1 INDUSTRIAL DISTRICTS ESTABLISHED

DISTRICT NAME	ABBREVIATION & MAP SYMBOL
<i>Rural Light Industrial</i>	RLI
<i>Heavy Industrial</i>	HI

§ 128-23.2 PURPOSE STATEMENTS

- A. Rural Light Industrial (RLI).** Areas designated under this district have sufficient highway access and which are deemed appropriate for light industrial uses, with limited residential development. The purpose of the Rural Light Industrial District is to support and facilitate light industrial, limited commercial, and services uses including but not limited to light manufacturing, research and development, product assembly, processing, storage, warehousing, transloading facilities, flex space, automotive services and more. Rural Light industrial and commercial operations are characterized by their limited environmental externalities and disruptions such as noise, light, smell, and air pollution. The Rural Light Industrial District should promote and sustain job growth within the Town with limited disruption to its external context.
- B. Heavy Industrial (HI).** Heavy Industrial District areas have sufficient highway and other transportation access and limited residential development. The purpose of the Heavy Industrial District is to support industrial uses that may entail significant externalities involving hazards or offensive conditions including but not limited to manufacturing, or processing of hazardous materials, bulk storage, trans-loading facilities, and more. The Heavy Industrial District should facilitate intelligent growth and maintenance of heavy industrial uses, and is expected to accommodate trucking or rail transportation to move goods and materials.

§ 128-23.3 DEVELOPMENT REVIEWS REQUIRED

- A. Site Plan Review.** Site plan review and approval shall be required for development activities resulting in exterior changes to a building or site, such as new construction, alteration, or demolition of structures. See Article 42 for specific site plan review requirements and procedures.
- B. Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. Waterfront Area Consistency Review.** Waterfront area consistency review shall be required for all development actions in the Local Waterfront Revitalization Program (LWRP) boundary as provided for by Chapter 80 (Local Waterfront Revitalization Program) of the Town Code.
- D. Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in a special flood hazard area as provided for by Chapter 69 (Flood Damage Prevention) of the Town Code.
- E. Stormwater Pollution Prevention Plan (SWPPP).** A SWPPP shall be required for all development activities as provided for by Chapter 98 (Stormwater Management) of the Town Code.

§ 128-23.4 DESIGN & DEVELOPMENT STANDARDS

All uses and development within the residential districts shall be subject to the design and developments standards of Part 3 of this Chapter, as noted therein. This includes, but is not limited to, Building & Site Design

(Article 30), Circulation, Access, and Parking (Article 31), Landscaping and Screening (Article 32), Greenspace (Article 33), Signs (Article 34), and Exterior Lighting (Article 35).

§ 128-23.5 USE LISTS

- A. **Permitted.** Uses identified with a “P” are permitted by-right, subject to compliance with all other applicable standards of this zoning code, which may include Planning Board, Town Staff, or Town Board review. Such uses may also be subject to the Additional Use Regulations of Article 25 as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with permitted uses.
- B. **Specially Permitted.** Uses identified with a “SUP” are permitted subject to issuance of a special use permit in accordance with Article 43. Such uses may also be subject to additional use regulations in the sections as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with specially permitted uses.
- C. **Prohibited.** Uses not listed and those identified with a “-” are expressly prohibited, unless the unlisted use is determined to be consistent with the nature of operation, scale, and intensity of an already listed use.

LAND USE	RLI	HI	ADDITIONAL REGULATIONS
RESIDENTIAL USES			
<i>Single- or Two-Family Dwelling, minor subdivision</i>	P ^{1, 2}	- ¹	-
<i>Single- or Two-Family Dwelling, major subdivision</i>	-	-	-
<i>Live / Work Units</i>	P	-	§ 128-25.16
NONRESIDENTIAL USES			
<i>Mix of Uses in a Single Structure or Lot</i>	P	P	-
<i>Agricultural Use</i>	P	P	§ 128-25.6
<i>Airport</i>	SUP	SUP	-
<i>Animal Care Services, no overnight stay</i>	P	-	§ 128-25.7
<i>Animal Care Services or Kennel, with overnight stay</i>	SUP	-	§ 128-25.7
<i>Brewery, Winery, or Distillery, including micro</i>	P	-	§ 128-25.9
<i>Campground</i>	P	-	§ 128-25.10
<i>Cemetery</i>	P	P	§ 128-25.11
<i>Cultural or Community Facility</i>	P	-	-
<i>Office, Administrative or Professional</i>	P	P	-
<i>Recreation or Entertainment Use, Indoor</i>	P	-	-
<i>Recreation or Entertainment Use, Outdoor</i>	P	-	§ 128-25.20
<i>Marina</i>	-	SUP	-
<i>Motor Vehicle/Marine Sales, Service, Processing or Repair</i>	P	P	-
<i>Farm or other Heavy Equipment Storage, Sales, Service, or Repair</i>	P	P	-
<i>Gasoline/Fuel Sales, existing operation</i>	- ³	- ³	-
<i>Gasoline/Fuel Sales, new or expanded</i>	- ⁶	- ⁶	-
<i>Public Transportation Terminal</i>	SUP	SUP	-
<i>Municipal or Public Service Use</i>	P	P	-
<i>Public Utility</i>	SUP	SUP	-
<i>Religious Institution</i>	P	-	-

LAND USE	RLI	HI	ADDITIONAL REGULATIONS
<i>Slaughter Plants</i>	-	SUP	-
<i>Self-Storage Facility, indoor or outdoor</i>	P	P	-
<i>Wholesaling, Warehouse, or Bulk Storage</i>	P	P	-
* Table continued on following page *			
<i>Lumberyard or Contractor's Yard</i>	P	P	-
<i>Junkyard or Automobile Salvage Yard</i>	-	SUP	§ 128-25.15
<i>Research and Development Facility or Laboratory</i>	P	P	-
<i>Manufacturing, Production, Processing, Packaging, or Assembly</i>	P	P	-
<i>Manufacturing or Processing, Bulk Storage of Fossil Fuels, Hydrocarbons, or other Hazardous Materials</i>	-	SUP	-
<i>Mining or Mineral Extraction</i>	SUP	SUP	§ 128-25.18
<i>Concrete or Asphalt Plants</i>	-	SUP	-
<i>Truck or Rail Terminal</i>	SUP	SUP	-
<i>Trucking Business, Fuel Delivery, no bulk storage</i>	P	P	-
<i>Distribution Facility</i>	P	P	-
<i>Adult Business Use</i>	-	SUP	§ 128-25.5
<i>Telecommunications facilities, Collocated</i>	P	P	§ 128-25.25
<i>Telecommunications, Noncollocated</i>	SUP	SUP	§ 128-25.25
<i>Broadcasting Facilities, FCC Licensed</i>	P	P	-
<i>Battery Energy Storage System</i>	SUP	SUP	§ 128-27.3
<i>Alternative Energy System, Solar</i>	SUP	SUP	§ 128-27.1 + 27.2
<i>Day Care Center</i>	P ⁵	-	-
<i>Wellness Center</i>	P ⁵	-	-
<i>Hotel or Inn</i>	P	-	-
<i>Retail or Service Business</i>	P ⁵	-	-
<i>Restaurant or Bar</i>	P ⁵	-	-
<i>Permitted Use in Excess of 5,000 square feet, where limited herein</i>	SUP	-	-
ACCESSORY USES			
<i>Accessory Use or Structure</i>	P	P	§ 128-25.4
<i>Accessory Dwelling Unit</i>	P	-	§ 128-25.3
<i>Keeping of Animals, Residential Use</i>	P	P	§ 128-25.14
<i>Home Occupation</i>	P	P	§ 128-25.13
<i>Gasoline Fueling Station, Private</i>	P ⁴	P ⁴	-
<i>Alternative Energy System, Solar or Wind</i>	P	P	§ 128-27.1 + 27.2

- NOTES:**
1. All single- and two-family dwellings existing on the effective date of this amendment shall be considered a use permitted by right.
 2. For land divisions, each parcel shall be permitted single- and two-family dwellings, provided that no more than one new residential lot may be created from the original parcel in any calendar year. Any new lot so created cannot be further subdivided for residential purposes and no more than one structure containing such dwellings shall be constructed on any new lot so created. The land division process §103-3.9 results in the creation of no more than 4 new lots.
 3. Existing gasoline and diesel fuel sales uses may be allowed through site plan review.
 4. Where associated with a permitted industrial use and such use does not include sales to the general public.
 5. Provided such use occupies no more than 5,000 square feet of gross floor area.

6. Expansion of existing gasoline or fuel sales is measured by an increase to the quantity of pumps.

§ 128-23.6 DIMENSIONAL REQUIREMENTS

		RLI	HI
MIN LOT AREA			
	<i>Residential</i>	1 acre / du ¹	-
	<i>Nonresidential</i>	1 acre	5 acres
MIN LOT WIDTH ²			
	<i>Primary Use</i>	50 ft	150 ft
MIN FRONT SETBACK ³			
	<i>Primary Use</i>	50 ft	100 ft
	<i>Accessory Use</i>	- ⁴	- ⁴
MIN SIDE SETBACK			
	<i>Primary Use</i>	25 / 125 ft ⁵	25 / 125 ft ⁵
	<i>Accessory Use</i>	5 ft ³ / 100 ft ⁵	10 ft ³ / 100 ft ⁵
MIN REAR SETBACK			
	<i>Primary Use</i>	50 / 150 ft ⁵	50 / 150 ft ⁵
	<i>Accessory Use</i>	5 ft ³ / 100 ft ⁵	10 ft ³ / 100 ft ⁵

- NOTES:** 1. Smaller lot size is permitted if the site is not served by a public water supply and/or sewage disposal system. The proposed lot(s) shall be of a size and configuration so as to meet the minimum separation distances and design standards for on-site water supply and/or sewage disposal systems as established by the reviewing agency (previously Albany County Health Department).
2. The minimum lot width shall also be applied as the minimum highway frontage.
3. An additional 25 feet shall be required for the minimum setback from the centerline of the roadway when the property line follows the centerline of the roadway.
4. An accessory building shall not be located in a front yard setback. Notwithstanding, a farm stand for the sale of agricultural products may be located within a front yard setback.
5. The larger setback requirement shall apply to all buildings, parking areas, access aisles, parking spaces and outdoor storage areas for nonresidential and nonagricultural uses located on property adjacent to a residential zoning district.

§ 128-23.7 BULK REQUIREMENTS

		RLI	HI
MAX BUILDING HEIGHT			
	<i>Primary Use</i>	45 ft	60 ft
	<i>Accessory Use</i>	25 ft	25 ft ¹
MAX LOT COVERAGE			
	<i>Building Coverage</i>	30%	30%
	<i>Gross Impervious Surface, including building coverage</i>	80%	-

- NOTE:** 1. An accessory building shall not exceed a height of 25 feet or a height of 50% of the height of the principal structure, whichever is greater.

ARTICLE 24

SPECIAL PURPOSE DISTRICTS

§ 128-24.1 DISTRICTS ESTABLISHED

The special purpose districts of the Town of Bethlehem are listed in the following table. When this zoning code refers to a special purpose district it is referring to one of the following:

DISTRICT NAME	ABBREVIATION & MAP SYMBOL
<i>Waterfront Revitalization Area Overlay</i>	WRAO
<i>Delaware Avenue Hamlet Overlay</i>	DHO
<i>Planned Development</i>	PD
<i>Vista Mixed Economic Development</i>	VMED

§ 128-24.2 WATERFRONT REVITALIZATION AREA OVERLAY (WRAO) DISTRICT

- A. Purpose.** The purpose of the WRAO District is to align the Town’s zoning code and map with the Town of Bethlehem’s Local Waterfront Revitalization Program (LWRP) to guide land use and development within the Town’s waterfront areas and ensure future development actions are consistent with the policies of the LWRP through the fulfillment of the waterfront consistency review process as provided for by Chapter 80 (Local Waterfront Revitalization Program) of the Town of Bethlehem Code.
- B. Applicability.**
 1. The extent of the WRAO District boundary shall follow that of the WRA boundary of the Town’s most recently adopted LWRP plan.
 2. For a complete list of actions subject to waterfront consistency review and review procedures, see Chapter 80 of the Town of Bethlehem Code.

§ 128-24.3 DELAWARE AVENUE HAMLET OVERLAY (DHO) DISTRICT

- A. Purpose.** The Delaware Avenue Hamlet Overlay District is based on the recommendations identified in the Delaware Avenue Hamlet Enhancement Study. The Delaware Avenue Hamlet area of the Town is considered the Town’s “main street” and “downtown” area. The Hamlet is located along a major road corridor, New York State Route 443 (Delaware Avenue), and major intersection of Kenwood Avenue (New York State Route 140) and Delaware Avenue and contains small-scale businesses and essential services in close proximity to residences. The area allows and encourages the development of mixed-use buildings: first-floor commercial use and second-floor residential use. Transportation options consists of pedestrian-friendly access along street fronts, on-street parking, access to municipal parking lots, and access to public transit. A walkable, pedestrian-friendly environment is encouraged.
- B. Applicability.** All requirements of this chapter shall apply unless otherwise modified herein by Article 31 of this Chapter. Refer to §128-31.11 for specific parking requirements applicable to the DHO District.

§ 128-24.4 PLANNED DEVELOPMENT DISTRICT (PDD)

- A. Purpose.** Planned development districts (PDD) are intended as floating zones to provide for new residential uses in which economies of scale or creative architectural or planning concepts may be utilized by the developer without departing from the spirit and intent of this chapter. In no case shall the regulations of this

section be so interpreted as to circumvent the benefits of this chapter to the owners or residents of such development or the owners or residents of adjacent properties. Planned development districts and building projects within planned development districts may be established in accordance with the procedure specified below.

- B. Location.** Planned development districts may be established at locations designated by the Town Board acting independently or on the basis of an application. In establishing the location of a PDD, compatibility with the Town Comprehensive Plan and the criteria for rezoning in Article 48 (Amendments) shall be considered.
- C. Permitted uses.** All uses permitted within a planned development district shall be determined by the provisions of this section and the district plan approved at the time of rezoning to PDD. Permitted uses shall consist of primary uses, secondary uses and accessory uses as described below.
 - 1. **Primary Uses.** Residential uses shall constitute the primary uses permitted in a PDD. Residences may be any of a variety of dwelling unit types as identified below. In developing a balanced community, the use of a variety of housing types shall be deemed most in keeping with this section:
 - a. Single-family dwellings.
 - b. Two-family dwellings.
 - c. Three-family dwellings.
 - d. Four-family dwellings.
 - e. Multifamily dwellings.
 - f. Senior citizen housing.
 - g. Assisted and/or assistive living facilities.
 - h. Any other residential use recommended by the Planning Board and approved by the Town Board.
 - 2. **Secondary Noncommercial Uses.** Secondary uses may consist of noncommercial religious, recreational, educational or community service uses specifically approved by the Town Board as part of a district plan. Such uses may include the following:
 - a. Parks and recreational areas.
 - b. Community buildings and activity spaces.
 - c. Churches.
 - d. Schools.
 - e. Day-care center.
 - f. Nursery school.
 - g. Any other similar use as recommended by the Planning Board and approved by the Town Board.
 - 3. **Secondary Commercial and Service Uses.** Neighborhood commercial and service business uses are permitted where:
 - a. The scale of such uses is compatible with the scale and character of the planned development district and its surrounding neighborhoods;
 - b. The uses can reasonably be expected to provide goods and/or services to surrounding residential neighborhoods; and
 - c. Such uses are specifically approved by the Town Board as part of the rezoning and district plan.
 - d. The total floor area of all structures devoted to secondary commercial and service uses shall not exceed 20% of the total floor area of all structures in the PDD.
 - 4. **Customary Accessory Uses.** Uses that are customary, incidental and subordinate to the principal use of a lot within the PDD shall also be permitted on said lot.
- D. Intensity of land use.** The Town Board shall, at the time of rezoning to PDD, and after recommendation from the Planning Board, establish as part of the district plan for each PDD the permitted land use intensity and/or dwelling unit density for the PDD. The determination of dwelling unit density shall be documented,

including the facts, opinions and judgments relied on in the selection of the density. In no case shall the permitted density exceed the maximum density established at Subsection I of this section.

- E. **Common property in a planned development district.** Common property in a planned development district may consist of a parcel or parcels of land, together with improvements thereon, the ownership, use and enjoyment of which are shared by the individual lot owners and/or occupants of the district. When common property exists, arrangements satisfactory to the Town Board must be made for the improvement, operation and long-term maintenance of such common property following procedures approved by the New York State Attorney General. Responsibility for ownership and maintenance of all common property and facilities must be explicitly established by a legally binding instrument acceptable to the Town Attorney. For the purpose of this subsection, "common property" shall include both the land and any private facilities and/or improvements located thereon, including but not limited to private streets, driveways, infrastructure, parking areas, open space and recreation areas.
- F. **Bulk Regulations.** For planned development districts the area, density and yard dimension regulations shall be as set forth below:
 - 1. **Minimum Area.** The minimum area for establishment of a PDD is five acres. The calculation of area for a planned development district shall not include existing easements, existing parks, and existing streets or otherwise dedicated land; water areas in excess of 5% of the minimum gross acreage; lands designated on the Official Map for public purposes; or constrained lands as defined by this chapter.
 - 2. **Yard Dimensions.** Except as may otherwise be determined by the Town Board, the minimum setback along the perimeter of the PDD shall not be less than 50 feet. This setback shall apply to parking areas, buildings and other similar structures. Where the PDD abuts a Residential District, the minimum yard setback area shall be planted with a mixture of evergreen and deciduous plantings at a height so as to provide, as much as practicable, a visual screen of the buildings and parking areas from neighboring properties and streets. The species type, location, spacing, and planted height of such landscaping shall be subject to the approval of the Planning Board. This setback shall not apply to driveways, streets, utility rights-of-way or similar crossings that the Planning Board determines necessary in providing access to the PDD.
 - 3. **Front Yard.**
 - a. Except as may otherwise be determined by the Town Board, all buildings, including porches, hereafter erected shall have a minimum required front yard which shall be 50 feet from the center line of the pavement or roadway of the street on which the building fronts or 25 feet from the property line of the street on which the building fronts, whichever develops the greater front yard.
 - b. Such buildings erected on a corner lot shall also have a front yard facing the side street or highway. Except as may otherwise be determined by the Town Board, this front yard shall also have a minimum dimension of 25 feet from the street or highway property line of said side street or highway.
 - 4. **Height.** Height of a building in planned development districts shall not exceed 45 feet.
 - 5. **Ingress and Egress.** Locations for ingress and egress shall be approved by the Town Board and shall be so arranged as to connect with existing state, county or Town highways or proposed Town highways.
- G. **Off-Street Parking.** Off-street parking in planned development districts shall conform to the requirements of the Schedule of Off-Street Parking of this chapter. Parking areas shall provide the necessary space for maneuvering and driving. Where aisles are planned or indicated in such parking areas, said aisles shall be not less than 25 feet in width. In addition:
 - 1. Where a parking area is located in the front yard such parking shall be separated from the street right-of-way by a lawn or planting area 20 feet or more wide. This provision shall not apply to single-family detached homes or other dwelling unit types where individual driveway access is provided to the dwelling unit.
 - 2. Parking and loading areas in a planned development district shall be adequately screened from any adjacent residence district.

H. Maximum Dwelling Unit Density. The maximum dwelling unity density in a PDD shall be as follows. The calculation of permitted density shall not include constrained lands.

1. Five units per acre for detached single- and two family dwelling units;
2. 12 dwelling units per acre for multifamily dwelling units of three (3) to four (4) units; and
3. 17 dwelling units per acre for multifamily dwelling units of five units or more.

§ 128-24.5 VISTA MIXED ECONOMIC DEVELOPMENT (VMED) DISTRICT

- A. Purpose.** The purpose of the VMED District is to uphold the vision of the approved 2010 VISTA Development Master Plan and the development goals of the Town's Comprehensive Plan. Uses in this District should not only strengthen the economic vitality of Bethlehem, but also contribute to its attractiveness as a place to live, work, recreate, and invest. The mixing of uses in the VMED District is encouraged. Developments in this District shall employ techniques to minimize negative impacts (including traffic, parking, glare, noise, odor, etc.) on adjacent uses, especially established residential districts and environmentally sensitive areas.
- B. Conformity with Development Master Plan.**
1. Investment in this District shall be consistent with the approved layout, uses, and area, yard and bulk requirements as contained within the 2007 VISTA Development Master Plan Approval Document (MED #1) Resolution No.20-2007, subsequent Amendment #1 via Resolution No. 09-2008, and Amendment #2, dated January 28, 2015.
 2. The Planning Board shall not approve any site plan and/or subdivision within an area covered by an approved development master plan unless the Board finds that the site plan and/or subdivision is in substantial conformance with said master plan and all additional conditions and requirements imposed by the Town Board at the time of its approval of the master plan.
 3. If during the site plan and/or subdivision review it becomes apparent that certain elements of the development master plan as previously approved by the Town Board are infeasible and in need of significant modification, the applicant shall then present a solution to the Planning Board. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of the development master plan approval.
 4. Where the proposed modified plan is determined to be in keeping with the intent of the approved master plan, the proposal shall not be considered a zoning amendment and therefore shall not require review and approval by the Town Board
 5. Where the proposed modified plan is determined not to be in keeping with the intent of the approved master plan, the proposal shall be considered a zoning amendment and therefore require review and approval by the Town Board.
- C. Development Reviews Required.**
1. **Site Plan Review.** Site plan review and approval shall be required for development activities resulting in exterior changes to a building or site, such as new construction, alteration, or demolition of structures. See Article 42 for specific site plan review requirements and procedures.
 2. **Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
 3. **Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in a special flood hazard area as provided for by [Chapter 69 \(Flood Damage Prevention\)](#) of the Town Code.
 4. **Stormwater Pollution Prevention Plan (SWPPP).** A SWPPP shall be required for all development activities as provided for by [Chapter 98 \(Stormwater Management\)](#) of the Town Code.
- D. Permitted Use Table.** The uses listed in the table below are permitted as follows:
1. **Permitted.** Uses identified with a "P" are permitted by-right, subject to compliance with all other applicable standards of this zoning code, which may include Planning Board, Town Staff, or Town Board review. Such uses may also be subject to the Additional Use Regulations of Article 25 as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with permitted uses.
 2. **Specially Permitted.** Uses identified with a "SUP" are permitted subject to issuance of a special use permit in accordance with Article 43. Such uses may also be subject to additional use regulations in the

sections as noted in the table below and site plan review in accordance with Article 42. See §128-42.3 Site Plan Review Table for specific review requirements for development actions associated with specially permitted uses.

3. **Prohibited.** Uses not listed and those identified with a “-” are expressly prohibited, unless the unlisted use is determined to be consistent with the nature of operation, scale, and intensity of an already listed use.
4. **Primary Uses.** Primary uses that are permitted in the district include office, light industrial, manufacturing and technology-based businesses and such other uses that are identified as permitted primary uses in the Schedule of Uses listed below.
5. **Secondary Uses.** Secondary uses that are permitted in the district include service businesses, restaurants, entertainment uses, small-scale retail uses, fitness clubs, and such other uses that are identified as permitted secondary uses in the Schedule of Use listed below. Secondary uses are intended to provide support services to primary uses in the Mixed Economic Development District and uses within the surrounding neighborhoods. The amount of building floor area devoted to secondary uses is intended to be restricted. Within the geographic area covered by an approved development master plan, the total gross floor area devoted to secondary uses shall not exceed 20% of the total gross floor area of all buildings located in said geographic area.

LAND USE	PRIMAR Y USE ¹	SECONDAR Y USE ²	ADDITIONAL REGULATION S
RESIDENTIAL USES			
<i>Multi-Family Dwelling, 3-4 units</i>	-	P	-
<i>Multi-Family Dwelling, 5+ units</i>	-	P	-
NONRESIDENTIAL USES			
<i>Day Care Center</i>	P	-	-
<i>Office, Administrative or Professional</i>	P	-	-
<i>Research and Development Facility or Laboratory</i>	P	-	-
<i>Manufacturing, Production, or other such industrial operations associated with tech or energy-based industries</i>	P	-	-
<i>Bank or Financial Institution</i>	-	P	-
<i>Educational Institution</i>	-	P	-
<i>Fitness Club</i>	-	P	-
<i>Hotel, Motel, or Inn</i>	-	P	-
<i>Conference Center</i>	-	P	-
<i>Conservancy</i>	-	P	-
<i>Convenience Store, Mini Mart</i>	-	P	-
<i>Bakery, Commercial</i>	-	P	-
<i>Religious Institution</i>	-	P	-
<i>Laundry, Dry-Cleaning Service</i>	-	P	-
<i>Nursery School</i>	-	P	-
<i>Public Utility</i>	-	P	-
<i>Recreation or Entertainment, Indoor</i>	-	P	-
<i>Restaurant or Bar</i>	-	P	-
<i>Retail or Service Business</i>	-	P	-
<i>Shopping Center, Shopping Mall</i>	-	P	-
<i>Telecommunication Facilities, Collocated</i>	-	P	§ 128-25.25
<i>Telecommunication Facilities, Non-collocated</i>	-	SUP	§ 128-25.25
<i>Wellness Center</i>	-	P	-
<i>Alternative Energy System, Solar as Accessory Use</i>	-	SUP	§ 128-27.1
<i>Alternative Energy System, Solar as Principal Use</i>	P ³	-	§ 128-27.1

- NOTES:**
1. Primary uses shall comprise at least 80% of the gross floor area of the structure(s) on a development site.
 2. Secondary uses may comprise up to 20% of the gross floor area of the structure(s) on a development site.
 3. Permitted only in location of Vista Technology Campus MED 1 Amendment 2 Approval, dated January 28, 2015.

E. Dimensional Requirements.

		VMED
MIN LOT AREA		
		10,000 sf
MIN LOT WIDTH		
		100 ft
MIN FRONT SETBACK ¹		
	<i>Primary Use</i>	30 ft
MIN SIDE SETBACK ¹		
	<i>Primary Use</i>	10 ft
	<i>Accessory Use</i>	5 ft
MIN REAR SETBACK ¹		
	<i>Primary Use</i>	40 ft
	<i>Accessory Use</i>	5 ft

NOTE: 1. There shall be a 0-foot setback when the property line is the same as the Town boundary line.

F. Bulk Requirements.

		VMED
MAX BUILDING HEIGHT ¹		
	<i>Primary Use</i>	55 ft (4 stories) ²
	<i>Accessory Use</i>	25 ft
MAX COVERAGE		
	<i>Gross Impervious Surface, including building coverage</i>	20%
	<i>Building Coverage, accessory structures only</i>	5%

NOTES: 1. Building height shall be measured in feet, while the visual scale or appearance in height of the building shall be determined in stories.
 2. The maximum building height shall apply to new construction only.

ARTICLE 25

ADDITIONAL USE REGULATIONS

§ 128-25.1 PURPOSE & INTENT

- A. **Purpose.** This Article provides additional regulations for uses that are generally considered to be less common or compatible with allowed uses within residential, hamlet, multi-use, and industrial districts. The purpose of the regulations herein is to protect, maintain, and further evolve the character and value of Bethlehem's commercial areas and residential neighborhoods. Ultimately, the regulations will promote the health, safety, and general welfare of the community.
- B. **Intent.** These regulations are intended to mitigate the potentially undesirable impacts of certain uses, which by reason of nature or manner of operation, are or may become hazardous, obnoxious, or offensive owing to excessive and undue increases in the production and presence of odors, dust, smoke, fumes, noise, vibrations, refuse matter, vehicular traffic, or human activity.

§ 128-25.2 APPLICABILITY

- A. The following requirements are applicable to all uses, permitted (P) and specially permitted (SUP), as noted in the Use Lists of Articles 20, 21, 22, 23, and 24.
- B. Specially permitted uses must obtain a special use permit and site plan review in accordance with Articles 43 and 42.
- C. Permitted uses do not require a special use permit. However, use permitted as-of-right must conform to the requirements of this Article, where applicable, and obtain site plan review approval in accordance with Article 42.
- D. Should the additional use regulations of this Article conflict with other requirements of this Chapter, the regulations contained herein shall take precedence.

§ 128-25.3 ACCESSORY DWELLING UNITS (ADUS)

- A. **Purpose.** The purpose of regulating attached and detached accessory dwelling units (ADUs) is to support the Town of Bethlehem's housing goals of the Comprehensive Plan and the following objectives:
 1. Create new housing units while respecting the design and scale of low density residential neighborhoods;
 2. Increase the housing stock of existing neighborhoods in a manner that is less intense than multi-family dwelling alternatives;
 3. Provide a broader range of affordable housing options that respond to changing family and household needs; and
 4. Offer a means for residents to remain in their homes and neighborhoods while also obtaining extra income, security, companionship, and/or services.
- B. **General Requirements.**
 1. The location and operation of an ADU shall be limited to single-family residential lots.
 2. ADUs shall be clearly accessory and subordinate to the primary dwelling. There shall be no more than one such use per property.

3. ADUs shall not exceed 40% of the total floor area of the primary dwelling or 1,000 square feet, whichever is less.
4. No ADU shall include more than two (2) bedrooms.
5. Not be permitted on a nonconforming lot or within a nonconforming principal or accessory structure.
6. Conform to the lot coverage and setback requirements of the district in which it is located.

C. Design and Residential Character.

1. The ADU and primary dwelling shall have safe and proper means of entrance, clearly marked for the purpose of fire safety and mail service.
2. ADUs must be within a permanent, habitable structure built on a permanent foundation that meets all local and state building code requirements. The use of recreational vehicles for ADU purposes shall be prohibited.
3. Stairways leading to any floor or story above the first floor shall be located within the walls of the building wherever practicable. Stairways and fire escapes shall be located on the rear wall in preference to either side wall. In no instance shall a stairway or fire escape be located on any wall fronting a street.

D. Parking Requirements.

1. Properties with an ADU must provide the minimum number of off-street parking spaces for a single-family dwelling plus two (2) spaces.
2. The additional parking spaces shall be located behind the front building line of the primary structure.
3. ADUs are not permitted on properties where the minimum off-street parking requirements cannot be met.

E. Utilities.

1. ADUs are required to have permanent and legal hookups for water, sewer, and electricity that comply with local and state building codes.
2. If the water supply is from a private source, the applicant shall certify that the water supply is potable and of adequate flow.
3. The applicant shall certify that the sewage disposal system is adequate to serve both the primary and accessory dwelling units. Failure to correct promptly any resulting sewage system problem shall result in revocation of all permits associated with the ADU and will be considered a violation of this Chapter.
4. No permit shall be granted in any case where the County Department of Health has determined that the water or sewage system serving the dwelling or dwellings in question is for any reason not capable of handling the additional demand that would be imposed upon it in the event the ADU is established.

F. Owner-Occupancy Requirements.

1. The owner(s) of the single-family lot upon which the accessory apartment is located shall occupy at least one of the dwelling units on the premises.
2. The owner shall refile the deed to the property in the County Clerk's Office incorporating the following notice in said deed: "The single family residence on the property includes an accessory dwelling unit approved by the Town of Bethlehem subject to the regulations of the Town Zoning Code, which among other things requires that one of the dwelling units on the premises shall be occupied by the lot owner." A copy of the filed deed shall be provided to the Town Planning and Development Department together with proof of filing.
3. The individual sale or subdivision of an ADU from the single-family dwelling is strictly prohibited. Both the primary and accessory uses shall be located on the same tax parcel.

G. Enforcement.

1. Prior to the issuance of any permits, the property shall be subject to inspection by the Code Enforcement Officer to ensure compliance with the requirements of this Chapter and all other local, regional, or state laws, rules, and regulations.
2. ADUs may also be subject to annual inspection to ensure continued compliance.
3. The certificate of occupancy for the principal use shall clearly identify such ADU and its floor area.
4. ADUs associated with an agricultural use shall be exempt from site plan review.

§ 128-25.4 ACCESSORY USES OR STRUCTURES

- A. Applicability.** Accessory uses and structures are allowed in any zoning district in connection with any principal use lawfully existing within such district as noted in Articles 20, 21, 22, 23, and 24 of this Chapter. All accessory uses and structures shall conform to the following requirements.
- B. General Requirements.** Accessory uses and structures shall:
1. Be clearly incidental and subordinate to the primary structure or use by height, area, extent, and purpose.
 2. Not be erected in any required front yard area, unless otherwise permitted by this Chapter.
 3. Be in conformance with the dimensional and bulk requirements of the zoning district in which they are located. Projection and lot coverage allowances of certain accessory structures may be found in Article 26.
 4. Not obstruct, block, or force the enclosure of any structural opening (windows, doors, etc.), open porch, deck, or terrace, or required vehicular or pedestrian accessway.
- C. Residential Accessory Uses and Structures.** The following shall be considered permissible residential accessory uses or structures for the purposes of this Chapter.
1. Decks, patios, terraces, seating areas, gazebos, and the like. Notwithstanding, §128-25.4 B.2, uncovered areas for seating in the front yard such as patios or low decks are permissible but shall not exceed 100 square feet.
 2. Residential garages, carports, off-street parking areas, and driveways, including personal charging stations and EVSE, provided all applicable residential requirements of Article 31 are met.
 3. Enclosed storage structures, such as sheds.
 4. Fences and freestanding walls in accordance with §128-26.4.
 5. Swimming pools, spas, and hot tubs in accordance with §128-26.8.
 6. Noncommercial nurseries, gardens, hoop houses, or greenhouses.
 7. Fire escapes or other such structures intended to maintain the health, safety, and welfare of residents within the dwelling and the general public.
 8. Ramps, lifts, or other such structures intended to provide an increased level of accessibility to the structure or use. Such structures may be permitted in the front yard area.
 9. Dish or radio antennae no more than one meter in diameter and intended for noncommercial use.
 10. Personal generators, air conditioning units, and other small-scale mechanical equipment for noncommercial use, provided such equipment is not located in the front yard, unless properly screened.
 11. Green infrastructure installations, such as rain barrels, rain gardens, or bioswales.
 12. Solar energy systems and panels, subject to the requirements of §128-27.1.
 13. Chicken or duck coops, bee hives, or similar structures supporting the keeping of animals on residential lots not associated with an agricultural use, subject to the requirements of §128-25.14.

14. Other uses and structures which the Code Enforcement Officer deems appropriate by virtue of similarity in nature, activity, and/or extent to those already listed.

D. Nonresidential Accessory Uses and Structures. The following shall be considered permissible nonresidential accessory uses or structures for the purposes of this Chapter.

1. Decks, patios, terraces, seating areas, gazebos, and the like.
2. Garages, carports, off-street parking and loading areas, and driveways, including charging stations and EVSE, provided all requirements of Article 31 are met.
3. Enclosed storage structures, such as sheds.
4. Fences and freestanding walls in accordance with §128-26.4.
5. Nurseries, gardens, hoop houses, or greenhouses.
6. Fire escapes or other such structures intended to maintain the health, safety, and welfare of employees, patrons, and the public.
7. Ramps, lifts, or other such structures intended to provide an increased level of accessibility to the structure or use.
8. Dish or radio antennae no more than two meters in diameter when screened from public view and adjacent residential property. Such antennae shall not extend more than five feet above the roofline or exceed the maximum building height of the district, whichever is less.
9. Generators, HVAC systems, and other mechanical equipment, provided such equipment is located, screened, and operated in accordance with the requirements of this Chapter.
10. Green infrastructure installations, such as rain barrels, rain gardens, or bioswales.
11. Solar energy systems and panels, subject to the requirements of §128-27.1.
12. Walkup service windows with site plan review approval in accordance with Article 42.
13. Clinics, cafeterias, daycares, and recreational facilities for the exclusive use of employees or residents of the principal use.
14. Other uses and structures which the Code Enforcement Officer deems appropriate by virtue of similarity in nature, activity, and/or extent to those already listed.

§ 128-25.5 ADULT BUSINESS USES

- A. Statement of Purpose.** In the execution of these provisions, the Town of Bethlehem recognizes that there are some adult business uses which, due to their very nature, have serious objectionable operational characteristics, particularly when located near residential neighborhoods and other sensitive land uses. The objectionable characteristics of these uses are further heightened by their concentration within an area, thereby having deleterious effects on adjacent areas. It has been acknowledged by communities across the nation that state and local governments have a special concern in regulating the operation of such businesses under their jurisdiction to ensure that their objectionable characteristics will not contribute to the degradation of adjacent neighborhoods nor endanger the well-being of the youth in their communities. The special regulations deemed necessary to control the undesirable secondary effects arising from these enterprises are set forth below. The primary purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods and important natural and human resources of the Town, to deter the spread of blight and to protect minors from objectionable characteristics of these adult business uses by restricting their proximity to places of worship, schools, nursery schools, day-care centers, educational institutions, parks, historic and scenic resources, civic and cultural facilities and residential areas.
- B. General Requirements.** Adult business uses are to be restricted in the following manner, in addition to any other requirements of the Code.

1. Adult business uses shall not be located within a 1,000-foot radius of any residential district, or any property used for residential purposes. For measurement purposes, the distance shall be measured in a straight line, without regard to intervening structures or objects, from the closest structural wall of such adult use to the boundary line of such residential district or residential property.
2. Adult business uses shall not be located within a 1,500-foot radius of another adult use. For measurement purposes, the distance between adult business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest structural wall of any adult use to the closest structural wall of any other adult use.
3. Adult business uses shall not be located within a 1,000-foot radius of any school, nursery school, day-care center, educational institution, place of worship, park, or playground, historic or scenic resource and civic or cultural facility. For measurement purposes, the distance between an adult business use and other such named uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest structural wall of such adult use to the closest property boundary of such school, nursery school, day-care center, educational institution, house of worship, park, or playground, historic or scenic resource and civic or cultural facility.
4. Not more than one adult business use shall be located in the same building or upon the same lot or parcel of land.
5. No loudspeakers or sound equipment shall be used for adult business uses that can be discerned by the public from public or semipublic areas.

§ 128-25.6 AGRICULTURAL USES & RIGHT-TO-FARM

- A. Purpose and Intent.** The Town of Bethlehem supports the use of land for agricultural purposes and through the Town Comprehensive Plan and this chapter has attempted to provide, to the fullest extent allowed by law, for the protection of agricultural uses and lands suitable for agricultural production. The Town supports the continued operation of active farm operations and has provided, through the regulations of this chapter and Chapter 103, Subdivision Regulations, the means for the Planning Board to approve nonagricultural land development subject to such conditions as may be required to assure the long-term viability of active farm operations and agricultural activities by limiting the potential for conflict between established farms and agricultural uses and newly established nonagricultural land uses. The Town supports sound agricultural practices necessary for the on-farm production, preparation and marketing of agricultural commodities and supports the farm protection policies set forth in § 308 of NYS Agriculture and Markets Law.
- B. Agricultural Uses and Operations.** For the purposes of this Chapter the following shall be considered agricultural uses and/or operations, provided such use is on a property that is actively used for agricultural production, is currently receiving an agricultural tax exemption, and/or is located within an Albany County managed agricultural district as provided for by NYS Agriculture and Markets Law Article 25-AA.
1. Crops, Livestock and Livestock Products.
 - a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans
 - b. Fruits, including but not limited to, apples, peaches, grapes, cherries, and berries
 - c. Vegetables, including but not limited to, tomatoes, snap beans, cabbage, carrots, beets and onions
 - d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers
 - e. Orchards and vineyards
 - f. Maple sap
 - g. Hops
 - h. Christmas trees derived from a managed Evergreen tree operation whether dug for transplanting or cut from the stump
 - i. Industrial hemp and cannabis, as permitted by NYS Law
 - j. Actively managed log-grown woodland mushrooms

- k. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, ratites, such as ostriches, emus, rheas and kiwis, farmed deer, farmed buffalo, fur bearing animals, wool bearing animals, such as alpacas and llamas, milk, eggs and furs
 - l. Aquaculture products, including fish, fish products, water plants and shellfish
 - m. Apiary products, including honey, beeswax, royal jelly, bee pollen, propolis, package bees, nucs (small honeybee colonies created from larger colonies) and queens
 - n. Wood Products
 - o. Woody biomass, which means short rotation woody crops raised for bioenergy (different from “farm woodland,” see below)
 - p. Farm woodland (production of woodland products intended for sale, including but not limited to logs, lumber, posts and firewood)
 - q. Forestry and forestry management
 - r. Timber operation
 - s. Silvopasturing (the intentional combination of trees, forages and livestock managed as a single integrated practice for the collective benefit of each, including the planting of appropriate grasses and legume forages among trees for sound grazing and livestock husbandry)
2. Animal Products.
 - a. Dairy Products including milk processing and cheese-making
 - b. Game farms, fish hatcheries and fishing reserves
 3. Plants Products and Services.
 - a. Lawn/landscape services
 - b. Prepared feeds for animals and fowl
 4. Food Processing and Sales.
 - a. Farmers’ market
 - b. Roadside stand
 - c. Flour and Other Grain Mill Products
 - d. Bakery selling baked goods, grown on the farm and/or baked on site
 - e. Cold storage facility for agricultural products.
 - f. Agricultural product distribution center (wholesale)
 - g. Packaged Frozen Foods
 - h. Commercial kitchens (for processing and packaging value added products)
 - i. Land used by a not-for-profit institution for the purposes of agricultural research that is intended to improve the quality or quantity of crops, livestock or livestock products
 5. Farm Support/Accessory Livelihoods.
 - a. Land set aside through participation in a federal conservation program established for the purposes of replenishing highly erodible land which has been depleted by continuous tilling or reducing national surpluses of agricultural commodities
 - b. Compost, mulch or other organic biomass crops. (i.e., manure, hay, leaves, yard waste, silage, organic farm waste, vegetation, wood biomass or by-products of agricultural products that have been processed on such farm operation)
 - c. Farm equipment repair
 - d. Farm Products Warehousing and Storage (barns, silos)
 - e. Farm equipment storage
 6. Equine Operations.

- a. Commercial horse boarding
 - b. Commercial equine activities (i.e riding lessons, trail riding activities or training of horses)
7. Agritourism/Hospitality.
- a. Agricultural tourism (activities which primarily promote the sale, marketing, production, harvesting or use of the products of the farm and enhance the public’s understanding and awareness of farming and farm life)
 - b. Seasonal U-pick operation
 - c. Petting zoo, animal display and pony rides
 - d. Wagon, sleigh and hay rides
 - e. Seasonal outdoor crop maze
 - f. Family-oriented animated barn (e.g., fun houses, haunted houses)
 - g. Museum and/or agricultural learning institution
 - h. Historical agricultural exhibit
 - i. Harvest festival and barn dance
 - j. Educational experiences such as farm tours, day camps, farming and food preserving classes, cooking classes, nature hikes
8. Residences.
- a. Farm labor housing
 - b. Accessory dwelling unit
9. Other such agricultural activities as permitted and defined by NYS Agriculture and Markets Law.
- C. Keeping of Animals, Residential.** The keeping of animals on residential lots not associated with an agricultural use as defined under this section shall be permitted in accordance with §128-25.14.

§ 128-25.7 ANIMAL CARE SERVICES & KENNELS

- A. General Requirements.** The following shall apply to all animal care service operations, such as grooming shops, animal hospitals, veterinary clinics, and kennels.
- 1. Adjacent properties shall be adequately protected from noise, odors, and unsightly appearances as determined appropriate by the reviewing body in site plan review. Such protections may include, but are not limited to landscaped buffers, berming, and fencing.
 - 2. Adequate methods for sanitation and sewage disposal, which may require a waste disposal plan, are required. The disposal plan, at a minimum, should outline the approximate amount of waste expected and proper disposal and sanitation methods.
 - 3. All operations must apply for and secure proper licensing and registration as required by state and local law.
- B. Kennels and Animal Care Services with Overnight Stay.**
- 1. The minimum lot size requirement for such use shall be five acres.
 - 2. All services shall be provided within a completely enclosed building, with the exception of outdoor animal exercise, play, or containment areas subject to site plan review approval.
 - 3. All buildings, structures, accessory use areas, and outdoor animal exercise, play, or containment areas, except off-street parking areas, shall be located at least 200 feet from any property line.
 - 4. Screening for outdoor animal exercise, play, or containment areas may be required as part of site plan review to create a visual, sound, and odor buffer between such facility and adjacent properties.

5. All animals will be confined to the property and housed in an enclosed structure in humane conditions (i.e. protected from weather, clean, sanitary, adequate space, non-porous surfaces, well-ventilated, etc.).
6. All animals shall be kept within a totally enclosed building between 10:00 PM and 6:00 AM.

§ 128-25.8 BED & BREAKFASTS (B&BS)

- A. Owner-Occupancy Requirement.** The operator must be the owner of the B&B and must reside full-time on the property in the primary dwelling. Full-time residency shall be defined as occupying said dwelling at least 185 days in a calendar year.
- B. General Requirements.**
 1. B&Bs may be permitted in a primary dwelling or detached accessory structure located on the same lot as the dwelling.
 2. No B&B shall be permitted on a nonconforming lot or within a nonconforming structure.
 3. A B&B may have no more than five (5) guest bedrooms and may accommodate no more than 10 lodgers.
 4. No more than two (2) employees not living on the property may report to the B&B for work.
 5. The residential character of the lot and structures located thereon shall be preserved. Structural alterations or additions of a nonresidential nature shall be prohibited.
 6. B&Bs must be able to accommodate the minimum off-street parking requirements on-site.
 7. Off-street parking shall not be permitted in the front yard, except for within an approved driveway area. All parking areas shall be screened from adjacent properties and the public right-of-way in a manner approved through site plan review.

C. Operational Restrictions.

1. Sales of merchandise shall be incidental to the use.
2. The provision of meals shall be limited to lodgers only.
3. B&Bs may not be used commercially for conference centers, weddings, concerts, a public restaurant, auctions, retreats, or other for-hire events.
4. It shall be the responsibility of owners to have and maintain a valid sales tax certificate as required by New York State Law and to collect and remit the applicable occupancy and sales tax as required by law, ordinance, or regulation.
5. The owner shall comply with all applicable health codes, building codes and other applicable laws. Upon request the operator shall provide documentation that all required permits, including but not limited to County Health Department, state, county and local highway permits, etc., have been obtained. Prior to the issuance of a certificate of occupancy, the applicant must show that all applicable permits have been received.

§ 128-25.9 BREWERIES, WINERIES, & DISTILLERIES, INCLUDING MICRO

- A. Wineries, breweries, and distilleries located in the Hamlet and Multi-Use Districts shall include a retail sales and/or tasting room space that is open to the public to maintain an active storefront.
- B. When adjacent to residential uses or districts, such uses shall be buffered to minimize visual and auditory impacts in a method approved during site plan review. Such buffering may include but is not limited to landscaping, screening, and fencing.
- C. All such uses dealing with the importation, manufacture, distribution, or sale of alcohol shall obtain a license as required by the NYS Liquor Authority and operate in accordance with the regulations therein.
- D. If a food truck is proposed, the site plan shall show the location of food truck placement that does not impede on parking spaces or vehicle circulation areas.

§ 128-25.10 CAMPGROUND

- A. **Bulk and Dimensional Requirements.** Campgrounds shall be subject to the following lot and yard requirements. Where such requirements conflict with district regulations, these provisions shall take precedence.

REQUIREMENTS	
MIN AREA	
<i>Lot Area</i>	10 acres
<i>Campsite Area</i>	3,000 sf
<i>Campsite Width, average of all sites</i>	30 ft
MIN LOT WIDTH	
	200 ft
MAX DENSITY	
<i>Campsites per Acre</i>	4 to 8 ¹
MIN SETBACKS	
<i>Front</i>	100 ft
<i>Side</i>	50 ft ²
<i>Rear</i>	100 ft
<i>From any watercourse part of a public water supply system</i>	100 ft
<i>Between Campsite Pads</i>	80 ft

- NOTES:**
1. As approved by the Planning Board through site plan review.
 2. In the RR District principal and accessory structures shall be set back not less than 100 feet. The setback shall not apply to a property line along the edge of the Hudson River.

B. Water Supply. The site shall be serviced by a municipal or private water system. A minimum rate of 200 gallons per day per site shall be provided at a minimum pressure of 20 pounds per square inch at peak demand. An adequate supply of potable water shall be provided within 250 feet of all campsites. One water spigot with a soakage pit or other disposal facilities shall be provided for each 10 campsites without individual water facilities. Other water sources supplied to toilets and urinals shall not be physically connected with the drinking supply or be available for public use.

C. Sewage and Solid Waste Management.

1. The site shall be provided with a municipal or approved private sanitary sewage disposal system. Only flush toilets shall be provided.
2. Lavatories or other hand-washing facilities shall be provided at a ratio of one for each 15 sites (without water and sewage hookups) for each gender.
3. At least one travel trailer sanitary dumping station shall be provided for every 100 campsites or less.
4. The design of all sewage treatment facilities shall be based on the water supply design flow, plus infiltration, and approved by the County Health Department.
5. The owner of a campground shall provide for the collection of refuse and garbage daily and shall also conveniently locate fly tight refuse containers on each campsite. Refuse containers shall be cleaned, covered, and maintained as often as may be necessary to prevent the breeding of insects and attracting of vermin.

D. Vehicular Access. Sight distances at the entrance and exit must be in compliance with all appropriate Town, county and state regulations.

E. Campground Amenities.

1. Campground stores are permitted to be located within the campground site and may be part of the office.
2. Plans for ancillary facilities, such as stores, offices, swimming pools, service buildings, etc., shall be submitted to the Planning Board for site plan approval along with the overall development.
3. Recreational facilities, such as swimming pools, beaches, golf courses, tennis courts, and camp recreational facilities, shall be for campsite guests only.
4. Each campground shall have at least one public telephone.

F. Landscaping and Screening.

1. The entire site except for areas covered by structures or service or parking areas shall be suitably landscaped. All landscaping shall be approved by the Planning Board and properly maintained after planting.
2. All campground sites shall be screened from the view of adjacent properties and adjoining public highways by means of an opaque screen of plant materials and/or fencing. All screening shall be approved by the Planning Board, properly maintained after placement, and located within the required front, rear and side yards.

G. Resident Manager. No permanent structures shall be permitted for use as living quarters, with the exception of those of the resident manager or property owner. The resident manager or a caretaker shall reside on the premises.

H. Annual period of closing. The campground must close annually from December 15 to March 15. Any habitable structures or vehicles, other than those of the owner/caretaker, must be locked and made unavailable for occupancy during that time period. Occupancy by an individual or group of individuals in any

form of permitted temporary, movable, or portable shelter shall be for a period of no longer than 120 days in any twelve-month period.

- I. **Fire protection.** The property owner shall ensure that adequate fire protection equipment is always on the premises, as required by the New York State Fire Code.

§ 128-25.11 CEMETERIES

- A. **Public Cemeteries.** Public cemeteries shall comply with the following additional requirements:

1. The minimum lot size shall be 10 acres.
2. The establishment of a crematorium and the cremation of human remains are prohibited.
3. No interment shall take place within 75 feet of any street right-of-way, property line, wetland, or stream. Such 75-foot buffer area shall be suitably landscaped to screen the cemetery from view insofar as is practicable as determined through site plan review.
4. Caretakers' cottages, mausoleums, chapels, and columbarium, which are incidental to the cemetery, shall be permitted as accessory uses, provided that any such structure shall comply with the setback and yard requirements for the district in which it is located.

- B. **Family cemeteries** The establishment of a family cemetery must comply with the following criteria:

1. The cemetery shall be an accessory use.
2. The cemetery shall not be located in a floodplain or within 250 feet of a reservoir or watercourse.
3. The cemetery shall not be located within 100 feet of any dwelling.

§ 128-25.12 DRIVE-THROUGH FACILITIES

- A. **Purpose.** Products of the automobile age, drive-through facilities have become a common amenity for a specific range of uses, including banks, freestanding drug stores, and fast-food restaurants. A well-designed drive-through on a parcel with adequate area can be convenient for motorists and have minimal impact upon the streetscape and pedestrians. Conversely, a poorly designed drive-through on a parcel of inadequate size can cause problems with traffic circulation and create areas that are hostile to pedestrians. Moreover, drive-throughs have the potential to generate undesirable impacts for adjacent properties such as odors from vehicle exhaust and noise from engines, car stereos, and menu board speakers. The purpose and intent of this section is to establish appropriate standards which allow for the typical range of activities while ensuring public safety and mitigating the associated impacts.

- B. **Access Drives and Vehicular Lanes.**

1. All access management provisions of Article 31 shall apply.
2. Vehicular stacking/exit lanes, service areas, or windows shall not be located in the front yard.
3. All stacking/exit lanes shall be designed so that they do not interfere with off-street parking areas or vehicular and pedestrian circulation on the site. Such lanes shall be designed to reduce the impacts of traffic congestion on adjacent property and public streets.
4. All stacking/exit lanes and pedestrian walkways shall be delineated with landscaping, curbing, raised or decorative pavement, and/or signage that is identifiable during all seasons.

- C. **Speakers and Menu Boards.**

1. Speakers and any other such devices used for audio amplification shall be located a minimum of 30 feet from any adjacent residential property line and shall not be audible beyond the property line.
2. Menu boards shall not be illuminated outside of business hours.

3. To the greatest extent practicable, all speakers and menu boards shall face away from adjacent residential use(s) and public rights-of-way and be suitably screened.
- D. Buffering and Landscaping.** All impervious surfaces, including curbing, shall maintain a setback of at least 10 feet from any abutting residential property line. Such setback areas shall be landscaped to the satisfaction of the reviewing body in site plan review.

§ 128-25.13 HOME OCCUPATIONS

- A. Purpose.** The purpose of regulating home occupations is to provide residents with the opportunity to conduct low-impact businesses within their home or associated with a farm operation, while still preserving the value and character of the neighborhood. The following regulations are to ensure such uses do not infringe on the right of neighboring landowners to the quiet enjoyment of their land, and do not alter the character of the district in which the property is located.
- B. Residential Home Occupations.**
1. Permitted residential home occupations include but shall not be limited to the following uses: lawyer, accountant, author, doctor, engineer, dentist, architect, software or web developer, consultant, realtor, insurance agent/broker, counselor, artist, photographer, teacher, tutor, beautician, barber, tailor, dressmaker, and repairperson. Business or administrative operations performed within a home in support of a business with off-site operations shall also be permitted.
 2. Prohibited home occupations include those that would generate adverse impacts to or are incompatible with the existing character of a residential district due to a higher intensity of use as a result of increased traffic, noise, outdoor operations, outdoor storage of equipment or material, or other such nuisance. These uses include but are not limited to the following: Ambulance services, animal care services, funeral homes, restaurants, cafes, taverns, landscape and other contractors, and vehicle sales or repair.
- C. Agricultural Home Occupations.** Permitted agricultural home occupations include, but shall not be limited to, the following uses: carpenter, electrician, welder, landscaper, machine shop, mechanic or equipment repairperson. This may also include the storage of recreational, commercial, and other vehicles or property otherwise not owned by the home occupation operator.
- D. General Regulations.** The following shall apply to all home occupations, residential and agricultural.
1. Home occupations shall be incidental to and secondary to the use of the property. Such use may be operated within a primary or accessory structure.
 2. Activity involving on-site retail sales is prohibited, except the sale of items that are incidental to a permitted home occupation.
 3. No home occupation shall be conducted in such a manner as to produce noise, dust, vibration, glare, smoke, or smell, electrical, magnetic, or other interference, fire hazard, or any other nuisance not typically found in a residential neighborhood.
 4. No home occupation shall use, store, produce or dispose of any toxic or hazardous material beyond what may typically be present on a residential property.
- E. Residential Home Occupation Restrictions.**
1. The operation of a home occupation shall in no way change or alter the residential appearance or character of the premise or neighborhood in which it is located.
 2. The home occupation shall be owned and operated by the full-time resident(s) of the dwelling and shall operate wholly within the principal building or accessory structure.
 3. The home occupation shall be limited to an area not to exceed the equivalent of 30% of the total floor area of the dwelling unit or 600 square feet, whichever is less.
 4. More than one home occupation may be conducted on a lot, provided that the total floor area of the dwelling devoted to all of the home occupations does not exceed the maximum floor area as provided herein.
 5. Not more than one person not residing in the household shall report to the property for work. Additional individuals may be employed by or associated with the home occupation in so far as they do not report to work at the home occupation site.

6. Not more than one patron may be present on the home occupation property at a time. The intensity of vehicular traffic generated by customers, clients or sales representatives shall be restricted to no more than 20 trips per week, or five per day.
7. Hours of operation shall be limited to those between 8:00 AM and 9:00 PM EST.
8. Deliveries on streets within residential districts shall be permitted by two-axle vehicles only. Delivery and pickup of material or commodities to and from the premises shall not exceed three trips per week, and the parking of delivery vehicles shall not impede or restrict the movement of traffic on adjacent streets.
9. The quantity and type of solid waste and its disposal shall be the same as that of any other permitted residential use.
10. There shall be no exterior display or storage of materials, goods, supplies, or equipment related to the operation of the home occupation, except for a sign as permitted by this Chapter.

F. Agricultural Home Occupation Restrictions.

1. Such use shall not be permitted on lots less than two acres.
2. The use shall be clearly secondary to the main agricultural use and shall not change the agricultural character of the farm.
3. The home occupation shall be owned and operated by the full-time resident(s) of the dwelling.
4. The storage of materials, goods, supplies, or equipment which are used for, or result from, the agricultural home occupation shall follow the front setback requirements of the district in which it is located and screened from public view.
5. No use shall create a safety hazard for the existing residential and agricultural activities on or adjacent to the property.

§ 128-25.14 KEEPING OF ANIMALS, RESIDENTIAL USE

- A. Purpose.** The purpose of this chapter is to establish safeguards for the keeping of certain animals on residential properties within the Town of Bethlehem to protect the public health, safety, and welfare.
- B. Animals Restricted.** No person shall keep or harbor any cattle, horses, sheep, goats, or swine on residential properties unless otherwise associated with an agricultural use as defined by this Chapter shall be permitted in accordance with §128-25.6.
- C. Bees.**
 1. It shall be unlawful to keep more than the following number of colonies, based upon the lot size on which the apiary is situated:
 - a. One-quarter acre or less: one colony.
 - b. More than 1/4 acre but less than 1/2 acre: two colonies.
 - c. More than 1/2 acre but less than one-acre tract size: four colonies.
 - d. One acre or larger tract size: six colonies.
 2. No bees shall be allowed in multi-family complexes, including duplexes, without the express written consent of the owner of the building.
 3. All colonies must be kept in structures designed for the purpose of keeping bees and shall be of a design commonly used for the housing and keeping of bees.
 4. Hives shall not exceed 20 cubic feet in volume.
 5. Hives shall not be located within 15 feet of any property line.
 6. Hives shall not be located within the front yard.

7. Hives shall not be located within 50 feet of a preexisting swimming pool or a preexisting kenneled animal.
8. Hives are not permitted within 10 feet of any adjacent buildings.
9. To the extent possible, hive entrances shall face away from the closest neighboring property and in such a direction that the bees fly across the beekeeper's property at sufficient distance to gain a height of at least six feet at the property line.
10. When an apiary is located within 25 feet of a lot line, a flyway barrier of a minimum of six feet in height is required, located within five feet of the apiary, and extending at least two feet on either side of the apiary. The flyway barrier must be made of a fence, hedge, or dense vegetation to effectively prompt bees to fly at an elevation at least six feet above ground level.
11. A convenient on-site source of fresh water must be available at all times.
12. No bee comb or other materials may be left exposed on the property. Upon their removal from the hive, all materials must promptly be disposed of in a sealed container or placed within a bee-proof enclosure.
13. All colonies must be maintained with queens selected from stock bred for gentleness and non-swarming characteristics. In any instance in which a colony exhibits unusual aggressive characteristics by stinging or attempting to sting without due provocation or exhibits an unusual disposition toward swarming, the beekeeper must promptly re-queen the colony with another queen.

D. Chickens and Ducks. Chickens and ducks may be kept and maintained under the following circumstances:

1. General Requirements.
 - a. No more than six chickens or ducks shall be allowed on a single property.
 - b. The keeping of roosters shall be prohibited.
 - c. No chickens or ducks shall be allowed in multi-family complexes, including duplexes and triplexes, without the express written consent of the owner of the building.
 - d. Chickens and ducks shall be kept for personal use only; no person shall sell eggs or meat or engage in breeding or fertilizer production for commercial purposes.
 - e. The slaughtering of chickens or ducks on the premises is prohibited.
 - f. Chickens and ducks must be kept in coops from dusk to dawn.
 - g. Such animals shall be provided with a covered, predator-proof coop or cages that are well ventilated and designed to be easily accessed for cleaning.
 - h. Chickens and ducks shall be kept only in conditions that limit odors and noise and the attraction of insects and rodents so as not to cause a nuisance to occupants of nearby buildings or properties and to comply with applicable provisions of both the New York State and County sanitary codes.
 - i. Chickens and ducks shall not be kept in a manner that is injurious or unhealthful to any animals being kept on the property.
2. Coops, Cages, and Outdoor Enclosures.
 - a. Coops or cages housing chickens must be at least 10 feet from any door or window of any other occupied structure other than the owner's dwelling.
 - b. Coops and cages shall be located at least 10 feet from side and rear yard lot lines. No chickens or ducks shall be kept in front yard areas.
 - c. Coops and enclosures must be screened from the neighbor's view, using an opaque fence and/or landscape screen. Such structures shall be located a minimum of 25 feet from residential structures on neighboring properties.
 - d. Coops shall provide a minimum of three square feet per chicken or duck and be of a sufficient size to permit free movement of the animals. Runs shall provide a minimum of four square feet per chicken or duck.

- e. The coop may not be taller than six (6) feet, measured from the natural grade, and must be easily accessible for cleaning and maintenance.
 - f. The coop and enclosure shall include measures to prevent predators. For stationary enclosures, fencing shall be buried at a depth of 1 foot below the ground. For mobile coops and enclosures, the Applicant shall provide a plan for predator protection.
 - g. If the coop structure exceeds 100 square feet in size, a building permit is required to be obtained from the Town of Bethlehem Building Department.
 - h. Chickens and ducks shall have access to an outdoor enclosure that is adequately fenced to contain the birds on the property and to prevent predators from accessing the birds. Outdoor enclosures shall be a minimum of four square feet per animal.
 - i. The enclosure area must be well drained and clean at all times, offer access to living vegetation, be resistant to erosion by activities of the birds, and provide access to water, shelter, and feeding areas.
 - j. The coop and outdoor enclosure must be kept in a sanitary condition and free from offensive odors. The coop and outdoor enclosure must be cleaned on a regular basis to prevent the accumulation of waste. Bedding must be kept in a dry, mold-free, friable condition, and replenished as necessary.
3. Feed.
- a. Chicken feed or other food used to feed the chickens shall be stored in a rat-proof, fastened container stored within a structure, which shall only be unfastened for the retrieval of food and immediately refastened thereafter.
 - b. Such animals shall be fed only from a trough or by hand. Scattering of food on the ground is prohibited.
4. Manure Management.
- a. Waste should be managed through proper use and disposal of bedding materials and coop design. Pine shavings are the preferred coop bedding material for chickens. Straw is the preferred coop bedding material for ducks.
 - b. Bedding and waste from routine cleaning should be added to a bin for composting or disposed of at a municipal composting facility.

§ 128-25.15 JUNKYARDS

A. Applicability.

- 1. The establishment of a new junkyard use, and the expansion or alteration of a junkyard in existence as of the effective date of this chapter, shall be subject to special use permit review and approval pursuant to Article 43 of this chapter.
- 2. A special use permit for a junkyard use shall be valid for five years and may be renewed. It shall be the responsibility of the owner/applicant to apply for a renewal of the special use permit before the expiration date. The Town will not provide any notice to the owner/applicant of the pending expiration of said permit.

B. Standards.

- 1. No display, storage, or collection of junk or junk cars, and no more than one unregistered vehicle, shall be permitted in a location visible from adjoining properties, or public roads, in any district.
- 2. No junkyard hereafter established shall be licensed to operate if such yard, or any part thereof, shall be within 500 feet of a church, school, hospital, public building or place of public assembly.
- 3. The Planning Board shall consider the character of the neighborhood in which the proposed junkyard is located and is expressly authorized to require vegetative and/or fence screening as a visual buffer to adjacent and nearby properties.

4. The Planning Board is expressly authorized to require additional yard setback(s) as may be required to screen stored and waste material from adjacent and nearby properties. In this regard the Planning Board may consider collectively the type of road servicing the junkyard or from which the junkyard may be seen, the natural or artificial barriers protecting the junkyard from view, the proximity of the proposed junkyard to established residential and recreational areas or main access routes thereto, as well as the reasonable availability of alternative locations on the property for the storage of waste and stored materials.

§ 128-25.16 LIVE/WORK UNITS

A. Applicability. A single dwelling unit (e.g., studio, loft, apartment, or single-family home) consisting of both a commercial and a residential component where the uses share a common wall or floor with direct access between the residential and non-residential area. Live-work units are differentiated from home occupations in that the residential and/or commercial use need not be subordinate to the other in terms of floor area or intensity of use. Live/work units typically occupy a larger share of the dwelling and/or include a larger-scale commercial element such as retail sales or on-site production.

B. Requirements.

1. No live/work unit shall exceed 2,500 square feet in gross floor area.
2. Nonresidential areas of the live/work unit shall not exceed 60% of the gross floor area.
3. At least one of the full-time employees of the live work unit must be a full-time resident of the live/work unit and shall possess a valid Business Tax Certificate.
4. No more than two (2) employees not living on the property may report to the unit for work.
5. No more than two (2) bedrooms per unit shall be allowed.
6. The residential area/bedrooms shall not be rented separately from the working space.
7. Commercial operations within live-work units may include on-site retail sales, production of materials, art, or other such craft.
8. No use shall be operated in an objectionable manner, due to fumes, odor, dust, smoke, gas, noise or vibrations that are or may be detrimental to properties and occupants in the neighborhood, and/or to any other uses and occupants on the same property.

§ 128-25.17 MARINA

In the RR District principal and accessory structures shall be set back not less than 100 feet from all surrounding property lines. The setback shall not apply to a property line along the edge of the Hudson River.

§ 128-25.18 MINING & MINERAL EXTRACTION

A. Purpose.

1. Mined materials such as clay, sand, silt, gravel, and rock for construction purposes. Facilities to contribute to the supply of these materials are necessary to support construction activity in a cost-effective manner. Providing a reasonable supply of competitively priced extractive materials is a goal of the Town.
2. While the Town of Bethlehem wishes to contribute to the continued supply of mined materials, it believes that it must protect the health and welfare of its residents by confining mining and mineral extraction to certain specific zones where such activities will be a specially permitted use along with the several other uses permitted in those zones.

3. The health of the residential, agricultural, and business community in the Town of Bethlehem is an essential goal of the Town. This goal requires that adverse effects to the environment, such as excessive noise and dust, degradation of water resources, and other hazards to the public, be mitigated or avoided entirely. Accordingly, the special use permit requirements will be used by the Town to determine whether a mining or mineral extraction use is appropriate for the neighborhood in which it is proposed and whether the use can be operated in a manner that meets the criteria for approval of a special use permit pursuant to this chapter. These standards are designed to work in conjunction with Environmental Conservation Law § 23-2701 et seq.
 4. While state law has denied to the Town the power to regulate the reclamation of land used for mining and mineral extraction, it is the purpose and intention of the Town to make full use of special permit powers granted to it by state law. To protect the health and welfare of its residents and to achieve the goals of the Town as stated above, it is the intention of the Town that the special permit powers described herein be utilized to the full extent permitted by law.
- B. Processing.** The Town recognizes that processing is an integral part of mining and mineral extraction processes. However, the Town is also mindful that processing is one of the more invasive of the activities that is part of mining and mineral extraction activity in terms of noise and other environmental hazards. If the processing of mined products is permitted as a standalone use in the designated zones it would give soil mines a potential for a life well beyond the exhaustion of materials available from the site where the processing machinery is located. It is the Town's intention not to permit this to occur by providing that the permitted uses in the zones where mining and mineral extraction are allowed do not include the processing of materials not mined at the subject site. The Town considers the processing of material taken from other sites to be an industrial activity and not included within the uses permitted in the zones where mining and mineral extraction are permitted uses.
- C. Exemptions.** The following, to the extent specified herein, are exempt from the permitted zone requirements of this section:
1. Excavation in conjunction with utility installation, which is to be backfilled;
 2. Excavation in conjunction with a development project that has a special use permit approval, site plan approval or subdivision approval and where the excavation is incidental to the development project;
 3. Excavation in conjunction with road construction within the limits of the right-of-way or slope rights of any Town, county, or state highway, or for the sole purpose of building roads and slopes incidental thereto which lie within the area of a subdivision approved by the Planning Board;
 4. Excavation which by its nature lasts for a matter of hours or days, e.g., graves, septic tanks, swimming pools, etc., and does not involve removal of material from the property;
 5. Agricultural drainage work incidental to agricultural operations, including farm ponds, if no material is removed from the property;
 6. Excavation for structures, parking areas, and rights-of-way;
 7. Regrading of property for aesthetic purposes that does not affect existing drainage, if no material is removed from the property;
 8. Dredging operations under the jurisdiction of the United States Army Corps of Engineers and other governmental entities;
 9. Excavation in conjunction with the drainage maintenance or improvements under Town, county or state jurisdiction;
 10. The improvement of a single lot or parcel of land in connection with construction of a dwelling, multifamily dwelling, building, or any other structure or structures for which a building permit has been issued; and
 11. The excavation, in any calendar year, of not more than 200 cubic yards of material per acre within any parcel or any contiguous parcels in any twelve-month period, provided that no more than 750 cubic yards of material may be removed from any parcel in any calendar year.

§ 128-25.19 OUTDOOR SEATING

- A. No seating area shall block windows, entrances, exits, pedestrian or vehicular access, sidewalks, fire lanes, or other travel lanes.
- B. No seating area shall exceed 30% of the gross floor area of the primary use.
- C. All seating areas shall remain clean and free of trash or debris at all times.
- D. The use of seating areas shall be clearly ancillary to the primary use. Businesses and operators not directly associated with the primary use of the property are not permitted to occupy such space.
- E. All seating areas shall be located adjacent to the wall of the primary structure and shall not extend more than 20 feet from said wall or beyond any public right-of-way or property line.
- F. All seating areas shall be protected and delineated through the use of bollards, curbing, or other such barrier.
- G. No seating area shall be used for storage purposes.
- H. Seating area furniture shall be removed, enclosed, screened, and/or otherwise secured during non-business hours.

§ 128-25.20 RECREATION OR ENTERTAINMENT USE, OUTDOOR

A. Setbacks.

1. No outdoor recreation or entertainment facilities shall be located closer than 150 feet to the property line of any adjacent residential use or district unless proper landscaping and screening is provided as approved in site plan review.
2. In the RR District principal and accessory structures shall be set back not less than 100 feet from all surrounding property lines. The setback shall not apply to a property line along the edge of the Hudson River.

B. Operations.

1. Permanent, enclosed bathroom facilities for the general public shall be provided on site.
2. Hours of operation shall be posted on-site. All outdoor facilities shall be secured and closed to the public outside of operating hours.
3. A waste management plan shall be required to ensure proper upkeep of the site and disposal of trash, litter, animal waste, and other refuse.

§ 128-25.21 RESIDENTIAL DWELLING, CONVERSION TO NONRESIDENTIAL USE

- A. **Applicability.** For uses involving the adaptive reuse conversion of a residential structure to nonresidential use, the following shall apply.
- B. **Building Size.** The alteration or expansion of an existing building shall not cause the total building size (post construction) to exceed 15% of the total lot area.
- C. **Access.** The lot shall derive access from a state or county highway and shall be located within 1,000 feet of one of the following intersections:
 1. Maple Avenue and Route 9W.
 2. Creble Road and Old School Road.
 3. Delaware Avenue and Elm Avenue.
 4. Delaware Avenue and Kenwood Avenue.

- D. Setbacks.** The Planning Board is hereby expressly authorized to require such additional front, side and rear yard setbacks as may be required to ensure that the nonresidential use does not interfere with the quiet enjoyment of adjoining residential properties. The additional setback area, as well as the minimum yard setback area, shall be planted with a mixture of evergreen and deciduous plantings at a height so as to adequately screen the parking area from neighboring properties and streets. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.

§ 128-25.22 SENIOR CITIZEN HOUSING

- A.** Senior citizen housing shall be arranged as individual dwelling units for occupancy by senior citizens and their families. Senior citizen dwellings may be located in structures having one, two, three, four or multiple dwelling units.
- B.** Accessory uses, including buildings and facilities, which are reasonably necessary to meet the proper maintenance, administration, security, off-street parking, storage, fencing and utility system needs of the development are permitted. In addition, the following accessory uses are permitted, provided that such facilities are restricted in their use to residents of the development and their guests:
1. Meeting rooms, multipurpose rooms, lounges, lobby areas or other similar common spaces.
 2. Game rooms, art and craft rooms, workshops, jacuzzis, exercise rooms, libraries or other similar indoor recreation or leisure facilities.
 3. Outdoor sitting areas, game areas, walking trails or other similar outdoor recreation or leisure facilities.
- C.** The following accessory uses are permitted, provided that such facilities are managed as part of the building or complex of buildings and restricted in their use to residents of the building or building complex and their guests, and further provided that there are no external advertising signs for such facilities:
1. A common kitchen and dining room.
 2. A beauty and/or barber shop, provided that the maximum floor area devoted to such use is no more than 250 square feet.
 3. A self-service laundry.
 4. A convenience shop for daily needs such as food items, prescription and nonprescription drugs, newspapers and small household items and similar items, provided that the maximum floor area devoted to such use is no more than 400 square feet.
 5. A coin-operated vending machine room, provided that the maximum floor area devoted to such use is no more than 250 square feet.
 6. Office space for a doctor, medical infirmary or clinic and/or social service delivery.
- D. Occupancy restrictions.** Occupancy of dwelling units within a senior citizen housing project shall be for residential purposes only. Occupancy restrictions shall be the subject of restrictive covenants of record that are enforceable by the Town. Occupancy shall be limited to elderly families as defined and described below. The Planning Board shall require the project sponsor to file such covenants, deed restrictions, or other encumbrances deemed necessary to comply with the occupancy provisions of this section, which conditions shall be met prior to the issuance of a building permit for such housing.
- E. Elderly family defined.** Notwithstanding the definition of "family" provided by this chapter, for purposes of this section an elderly family shall consist of:
1. A single person 55 years of age or older;
 2. Two or three persons, all of whom are 55 years of age or older;
 3. A married couple, the husband or wife of which is 55 years of age or older;
 4. One child residing with a parent who is 55 years of age or older, provided that said child is over the age of 18;

5. The surviving spouse of a person 55 years of age or older, provided that the surviving spouse was duly registered as a resident of the development at the time of the elderly person's death; or
 6. One adult, 18 years of age or older, residing with a person who is 55 years of age or older, provided that said adult is essential to the long-term care of the elderly person as certified by a physician duly licensed in New York State.
- F. Temporary occupancy.** The surviving child of a person 55 years of age or older may continue to reside in the development for a period of six months following the death of the elderly or physically handicapped person, provided that said child was duly registered as a resident of the development at the time of the elderly or physically handicapped person's death.
- G. Guests.** Temporary occupancy by guests of families who reside in a senior citizen multifamily dwelling project shall be permitted, provided that such occupancy does not exceed 30 days in any calendar year. The time limits as specified in this subsection shall not apply in instances where temporary occupancy exceeding 30 days is required in the public interest. Guests staying overnight shall be required to register their temporary occupancy with the project manager or building superintendent.
- H. Exceptions.** Notwithstanding the provisions of this section, one unit in a senior citizen dwelling project may be occupied by a building superintendent or project manager and his/her family.
- I. Parking ratio.** Parking spaces shall be provided at the ratio indicated in Article 31. If the Planning Board finds that compliance with the off-street parking requirements will not be necessary for the anticipated use of the site, the Board may reduce the amount of parking required to be constructed, provided that sufficient usable land is set aside to satisfy the parking requirements in the future should the need for such additional parking arise. The Planning Board shall, as a condition of any approval granted, retain the right to require the owner of the property to construct such additional parking whenever it finds that such parking is needed.
- J. Outdoor recreation.** Usable outdoor recreation space shall be provided at the ratio of 50 square feet per dwelling unit. Such space shall consist of both active and passive recreation amenities, such as patio areas, shaded sitting areas, and walking or jogging trails.

§ 128-25.23 SHORT-TERM RENTAL (STR)

A. Local Contact.

1. Each STR operation shall have a designated 24-hour contact.
2. Such contact shall be an authorized agent of the property owner and/or STR operator and shall be responsible for responding to and remedying any issues, complaints, or other conflicts associated with the STR property.
3. The designated individual must be able to be present at the location of the STR within 30 minutes of notification of any issues, complaints, or conflicts.
4. A phone number and email for the designated individual shall be provided to the Town Code Enforcement Officer and conspicuously posted for the use and reference by guests.

B. Maximum Occupancy. The maximum occupancy of an STR shall be limited to two (2) persons per bedroom or 10 people, whichever is less. For the purposes of this section children under the age of four shall not be included in the occupancy calculation.

C. Operational Requirements.

1. Provisions shall be made for weekly garbage and/or recycling removal. Garbage and recycling containers shall be always secured with tight-fitting covers to prevent spilling, odors, and access by pests, and placed where they are not visible from the street or road except around pick-up time.
2. No STR shall be rented out for the purposes of hosting events, weddings, parties, or other gatherings that would cause occupancy of the property to exceed the maximum number of guests permitted.
3. It shall be the responsibility of owners/operators to have and maintain a valid sales tax certificate as required by New York State Law and to collect and remit the applicable occupancy and sales tax as required by law, ordinance, or regulation.
4. The owner/operator shall comply with all applicable health codes, building codes and other applicable laws. Upon request the operator shall provide documentation that all required permits, including but not limited to County Health Department, state, county and local highway permits, etc., have been obtained. Prior to the issuance of a certificate of occupancy, the applicant must show that all applicable permits have been received.

D. Parking Requirements.

1. An STR must be capable of accommodating the minimum number of off-street parking spaces in accordance with the table below.

<i>Configuration</i>	<i>Minimum Number of Parking Spaces</i>
<i>Dwelling, 3 beds or less</i>	2 per Dwelling Unit, + 1 space
<i>Dwelling, 5 beds or less</i>	2 per Dwelling Unit, + 2 spaces
<i>Dwelling, 6 beds or more</i>	See above, + 1 additional space per bedroom over 5

2. Parking of vehicles must be on the property at all times.
3. Parking is prohibited on public streets or in non-designated spaces, such as lawns.

E. Rental Contract. All owners and operators must provide all renters with a rental agreement including, at a minimum, the following information:

1. Maximum property occupancy
2. Operational restrictions
3. Parking restrictions
4. Good Neighbor Guidelines

- a. Be friendly, courteous, and treat your neighbors like you want to be treated. Be considerate of neighbor's right to the quiet, private enjoyment of their home and property.
- b. Be sure to pick up after yourself and keep the property and neighborhood clean, presentable, and free of trash.
- c. Promptly clean-up after pets. Prevent excessive and prolonged barking and keep pets from roaming the neighborhood. Control aggressive pets and keep all pets on a leash when off the STR property. All dogs must be licensed and up to date on their rabies vaccination.
- d. Do not trespass on neighboring properties.

§ 128-25.24 TWO-FAMILY AND MULTI-FAMILY DWELLINGS, BY CONVERSION

- A. No dwelling unit conversion shall exceed the maximum density of the district in which it is located.
- B. No dwelling unit conversion shall be permitted in a structure with less than 1,000 square feet of gross floor area. No dwelling unit conversion shall cause the use to exceed the maximum density requirements of the district in which it is located.
- C. All dwelling units and structures resulting from conversion shall comply with the standards set forth in the NYS Uniform Code. Said standards shall take precedence to this Chapter should there be a conflict.
- D. Any alterations made to the exterior of the building due to the unit conversion shall be completed in such a way to preserve the single- or two-family residential character.
- E. No dwelling unit conversion shall be permitted unless the dwelling, following such conversion, can comply with all off-street parking requirements of this Chapter. Landscaping and screening of off-street parking areas shall be provided as determined necessary in site plan review.
- F. Conversions of dwellings that decrease the number of units or combine units shall be required to ensure the discontinued dwelling unit is permanently and fully integrated into a legal dwelling unit with unimpeded access throughout the legal unit.

§ 128-25.25 TELECOMMUNICATIONS FACILITIES

- A. **Purpose.** It is the purpose of this section to accommodate the communications needs of residents and businesses consistent with the applicable federal and state regulations while protecting the health, safety and general welfare of the residents of the Town of Bethlehem by:
 - 1. Facilitating the provision of wireless telecommunication and other communication services to the residents and businesses of the Town while simultaneously preserving the character, appearance and aesthetic resources of the Town;
 - 2. Minimizing the adverse visual effects of telecommunications towers and facilities through development of locational and approval criteria;
 - 3. Protecting the scenic, historic, environmental, natural and man-made resources of the Town;
 - 4. Preserving the property value of the community;
 - 5. Minimizing the undue proliferation and height of communications towers throughout the community;
 - 6. Avoiding potential harm to adjacent persons and properties from tower failure, noise, falling objects and attractive nuisances through setback and height limitations; and
 - 7. Encouraging the shared use of existing and approved towers in order to reduce the number of towers needed to serve the community where reasonably possible, so as to minimize and mitigate the adverse visual impacts of towers and their facilities.
- B. These regulations are intended to be consistent with the Telecommunications Act of 1996 in that:
 - 1. They do not prohibit, or have the effect of prohibiting, the provision of personal wireless services;

2. They are not intended to be used to unreasonably discriminate among providers of functionally equivalent services; and
 3. They do not regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions.
- C. Telecommunication facilities regulated and covered under these regulations shall include the following: personal wireless radio telecommunication facilities (PWRT) using an automated high-capacity system with two or more multichannel fixed base stations arranged as part of an integrated cellular system providing radio telecommunication from the fixed (immobile) base stations to mobile stations. Such personal wireless radio telecommunication facilities employ low-power transmitting and receiving and automatic handoff between base stations of communications in progress to enable channels to be reused at short distances for the purposes of voice, data or paging transmissions. Cellular systems may also employ digital techniques such as voice encoding and decoding, data compression, error correction and time or code division multiple access in order to increase system capacities. Personal wireless radio telecommunication facilities ("PWRT facilities") shall include cellular services, personal communication services (PCS), specialized mobile radio services, and paging services.
- D. **Definitions.** As used in this section, the following terms shall have the meaning indicated:

ANTENNA

A device that converts radio frequency electrical energy to radiated electromagnetic energy and vice versa.

BASE STATION

A stationary transmitter that provides radio telecommunication services to mobile and fixed receivers, including antennas.

BY-RIGHT FACILITIES

Those PWRT facilities as described herein which may be installed and operated subject only to the securing of a building permit for construction and a certificate of occupancy for operation from the Town Building Inspector upon furnishing the information and plans specified by the Building Inspector and this chapter.

CELLULAR COMMUNICATION SYSTEM

A radio telecommunication service provided using a cellular system.

COLLOCATION

The placement of a wireless communication antenna on an existing telecommunication tower or other permissible structure, usually owned by another entity and supporting antenna from multiple entities. [Amended 2-8-2012 by L.L. No. 1-2012]

EXEMPT FACILITIES

Transmitting and receiving telecommunication facilities which are exempt from regulation under this section, and shall include:

1. Amateur radio and satellite facilities so long as such facilities are operated by a licensed amateur operator;
2. Civil emergency facilities; and
3. Home satellite facilities where installed on residential premises solely for the use of the residents of that premises and not offered for resale to off-premises locations.

LATTICE TOWER

A freestanding tower supported by a series of interconnected struts or stanchions.

MONOPOLE TOWER

A freestanding tower consisting of a single pole.

PAGING SERVICE

A numeric, text and voice messaging service.

PERSONAL COMMUNICATION SYSTEM

Radio telecommunication services that encompass mobile and ancillary fixed communications operating at 1.8 to 2.1 GHz that provide services to individuals and businesses and can be integrated with a variety of competing networks.

SPECIALIZED MOBILE RADIO SERVICES

A radio communication system in which licensees provide land mobile communication services in the 800 MHz and 900 MHz bands on a commercial basis to entities eligible to be licensed under 47 CFR 90, federal government entities and individuals.

STEALTH TECHNIQUE

A method or methods that would hide or conceal an antenna, supporting electrical or mechanical equipment, or any other support structure that is identical to or closely compatible with the color or appearance of the support structure so as to make the antenna and related equipment as visually unobtrusive as possible.

E. By-right facilities.

1. In order to encourage the appropriate location and collocation of telecommunication systems in the Town of Bethlehem, the following PWRT facilities shall be permitted by right:
 - a. On monopole or lattice towers in existence prior to the date of this chapter anywhere in the Town so long as no change or alteration to the height or appearance of the existing structure is required.
 - b. On existing structures located anywhere in the Town so long as no part of the PWRT facility exceeds the height of the existing structure and so long as no change or alteration of the height or appearance of the existing structure is required.
2. Standards. A by-right PWRT facility shall meet the following additional standards and requirements:
 - a. Towers shall not be artificially lighted.
 - b. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment shall be of a neutral color identical to or closely compatible with the color of the supporting structure.
 - c. Except for towers constructed and in use prior to the effective date of this chapter, towers that are no longer in service as part of a PWRT facility network shall be removed within 90 days of the cessation of the use of the tower.
 - d. The applicant shall post a security deposit or bond in an amount satisfactory to the Planning Board and in a form acceptable to the Town Attorney to assure the removal of those portions of the PWRT facility and any base station and ancillary support structures which were not in place prior to the effective date of this chapter.
3. Data. An application for approval of a by-right PWRT facility shall contain the following:
 - a. An application for construction of a PWRT facility shall contain all the information ordinarily required by the Building Inspector for the issuance of the building permit.
 - b. An application for construction of a PWRT facility shall include a report certifying that the electromagnetic emissions from the PWRT facility will be within the threshold limits established by

the Federal Communications Commission and certifying that the proposed facility will not cause interference with existing communication devices.

- c. Upon installation of the PWRT facility the applicant shall submit to the Building Inspector an as-built survey of the PWRT facility, including a certification as to the finished height above ground level of the structure, certified to the Town of Bethlehem by a land surveyor or professional engineer licensed to practice in the State of New York.
- d. Documentation of intent from the owner of the existing PWRT facility to allow collocation and shared use.
- e. An engineer's report certifying that the proposed shared use of an existing structure or tower will not diminish the structural integrity and safety of the existing structure or tower.
- f. A copy of its Federal Communications Commission (FCC) license.

F. Special use permit facilities. All PWRT facilities that do not meet the standards for by-right location shall be subject to the provisions of this section and shall require special use permit and site plan approval by the Planning Board pursuant to Articles 42 and 43 of this chapter. [Amended 2-8-2012 by L.L. No. 1-2012]

- 1. Siting criteria. All applications for a special use permit to construct a PWRT facility shall demonstrate a good-faith effort to locate the facility in accordance with the order of siting preference outlined in § 128-25.25(1)(a) below. No PWRT facility shall be granted a special use permit unless the applicant can demonstrate and the Planning Board finds that it is not practicable to locate the proposed facility at a site having a higher order of preference than the location proposed by the applicant.
 - a. Order of siting preference. Where practicable, PWRT facilities shall be sited and geographically located according to the following order of preference:
 - i. On existing monopoles, lattice towers or structures, as provided at § 128-25.25E(1) of this chapter.
 - ii. On power and transmission towers.
 - iii. In the following order of preference, on property zoned or used for the following purposes:
 - a) Land zoned industrial.
 - b) Land used for agricultural purposes.
 - c) Land zoned commercial.
 - d) Land zoned residential.
- 2. In addition to any other authority conferred under this chapter, the Planning Board is authorized to attach the following conditions on the granting of a special permit/site plan approval for a PWRT facility:
 - a. Increased setback, side line and rear line requirements.
 - b. Measures to ensure the construction of a safe and adequate access road to the facility.
 - c. Utilization of stealth techniques to minimize the visual impact of the facility.
 - d. Measures to secure the facility from intruders, including fences and chained entryways.
 - e. Measures to ensure the proper maintenance and continued vitality of the plantings and landscaping done to properly screen the tower compound from adjacent properties.
- 3. The special use permit shall expire five years from the date of approval unless an application for renewal is made, and approved, prior to the date of expiration.
- 4. The tower and ancillary facilities shall be removed upon expiration of the special use permit, abandonment or decommissioning by the applicant.
- 5. Collocation is required for telecommunication facilities unless:
 - a. There are no other usable existing structures in the area for telecommunication facility services.

- b. Collocation cannot achieve the minimum reasonable technical needs of the proposed telecommunication facility.
 - c. Structural or other engineering limitations, absent reasonable refurbishment, are demonstrated by clear and convincing evidence to be prohibitive.
 - d. The telecommunication operator, after thorough and good faith efforts disclosed to the Town, is unable to secure permission from the tower or structure owner to collocate.
6. The clustering of towers and structures on a common site should be considered if collocation cannot be facilitated.
7. Visual appearance.
- a. Unless such a structure cannot achieve the applicant's purposes as disclosed in its application and supporting data, the Planning Board shall have the authority to require the applicant to furnish an alternative proposal using stealth techniques or some other alternative structure at the proposed site, rather than a conventional tower, in order to better achieve the least impact on the visual environment.
 - b. The height of any new tower shall be the minimum required to establish and maintain adequate service, but in no event shall the height of any new tower exceed three times the maximum building height for the zoning district in which the tower is to be located as set forth in the Schedule of Area, Yard and Bulk Requirements of this chapter.
 - c. All equipment shelters and accessory structures shall be architecturally uniform and shall not exceed 12 feet in height.
 - d. All equipment shelters used shall only be used for housing of equipment related to the particular facility on the particular site.
8. Materials and colors for a proposed utility structure(s) shall be of an appearance that is compatible with any surrounding structures and/or vegetation to the maximum extent practicable and as approved by the Planning Board.
9. All towers and monopoles shall be set back from all property lines, structures habitable by people on the same parcel as the tower or monopole or aboveground power lines a distance equal to 150% of the height of the tower or the minimum setback requirement for the zoning district in which the tower or monopole is located, whichever is greater. Towers may be located on lots of less than the minimum acreage for the district so long as the PWRT facility is unmanned and can meet the setback, side yard and rear yard setback requirements set forth herein.
10. Location.
- a. No tower or monopole shall be located:
 - i. Closer than 500 feet, on a horizontal plane, to any structure existing at the time of application which is, or is able to be, occupied or habitable on the property of any school (both public and private).
 - ii. Closer than 500 feet, on a horizontal plane, to an existing dwelling unit on a parcel other than the parcel on which the subject tower or PWRT facility is located or any day-care center, hospital, nursing home, church, synagogue, or other place of worship.
 - b. Subject to the provisions of Subsection F(10)(a)[1] and [2] above, the Planning Board shall determine appropriate distance setbacks from any school, power line, dwelling unit or other structures, whether on or off the parcel, on which a tower or monopole shall be based. Visibility of the tower or monopole from such structures and consideration for the safety of the users or occupants of such structures in the event of the structural failure of the tower or monopole shall also be considered.
11. Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent properties. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The plantings shall consist of alternately

spaced evergreens having a height of not less than six feet above the height of the ground elevation at the time of installation. The Planning Board may waive these landscaping requirements where the Board determines that the amount and type of existing on-site vegetation is adequate to fully screen the facility.

12. Existing mature trees and natural land forms on the site shall be preserved to the maximum extent possible.
13. The Planning Board shall review and approve the plans for construction of any access road or driveway for the facility. A road and parking plan shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made, provided that said use is consistent with safety and aesthetic considerations. Road construction shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and soil erosion potential. Except to the extent that the Planning Board shall determine to apply its own road criteria as the same may exist from time to time, the applicant shall adhere to the standards for unpaved forest roads set forth in New York State Department of Environmental Conservation Unpaved Forest Road Handbook, ECH-8409.11, as the same may be amended or revised from time to time.

G. Data. In addition to the information required by Articles 42 and 43 of this chapter, an application for approval under this section shall contain the following additional information:

1. A photo simulation of the proposed facility as seen from the north, south, east and west from the facility. The photo simulation shall be keyed to a location map. Photographs for the photo simulation shall be taken during periods when deciduous leaf cover is minimal (i.e., during the late autumn, winter, and early spring months), and shall only be taken when there is no precipitation, fog, or more than 50% cloud cover, in order to present a worst-case scenario for visual impact assessment purposes. Prior to performing the visual test, the applicant shall meet with the Planning Board to obtain the Board's consent as to the date and time on which the visual test will be conducted and photographs for the photo simulation will be taken. The applicant shall also inform the Board as to the manner in which the visual test will be conducted (i.e., a crane test or balloon test). The Board may require the visual test to be performed on more than one day when the Board determines that additional time for the visual test is required in order to provide neighboring and nearby landowners and residents adequate time to observe the test. Notice of the test shall be published in the official newspaper at least five days prior to the date set for testing. The Planning Board may provide that the testing be further advertised in such manner as it deems most appropriate for full public notification, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that a visual test will be conducted. All notices shall include the date, time and manner in which the visual test will be conducted and shall state the reason for the test.
2. An application for construction of a PWRT facility shall include a report certifying that the electromagnetic emissions from the PWRT facility will not exceed the threshold limits established by the Federal Communications Commission and certifying that the proposed facility will not cause interference with existing communication services.
3. A certification by a licensed professional engineer as to wind loading and the ability of the supporting structure to accommodate the facility and any additional users.
4. A statement by the applicant as to all other alternative sites, including other alternative sites not owned or operated by the applicant, in any area considered and the reasons for their rejection.
5. A statement by the applicant that locating the facility in a by-right location is not practical or feasible and the reasons supporting that determination.
6. A graphic depicting the location of all of the applicant's existing wireless communication facilities located in or otherwise serving the Town of Bethlehem.
7. A graphic depicting the geographic area to be served by the proposed facility.
8. A copy of the applicant's FCC operating license.

9. Upon installation of the PWRT facility the applicant shall submit to the Building Inspector an as-built survey of the facility, including a certification as to the finished height above ground level of the structure, certified to the Town of Bethlehem by a land surveyor or professional engineer licensed to practice in the State of New York.
 10. Documentation from an expert qualified in the field of telecommunications and radio frequency engineering showing that the tower and/or facility is needed to provide adequate coverage to an area of the Town that currently has inadequate coverage, including a sealed, graphical depiction of the inadequate coverage area.
- H.** For applications involving tower construction or modification to accommodate a PWRT facility:
1. The applicant shall provide written documentation of any existing and planned facility sites in the Town of Bethlehem and within a seven-mile radius of the proposed site in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. For each such facility site, it shall demonstrate with written documentation that the facility site is not already providing, or does not have the potential to provide, adequate coverage and/or adequate capacity to the Town of Bethlehem. The documentation shall include, for each facility site listed, the exact location (in longitude and latitude, to degrees, minutes and seconds), ground elevation, height of antennas on tower or structure, output frequency, number of channels, power input and maximum power output per channel. Potential adjustments to these existing facility sites, including changes in antenna type, orientation, gain, or power output, shall be specified. Radial plots from each of these facility sites, as they exist, and with adjustments as above, shall be provided as part of the application.
 2. The applicant shall demonstrate with written documentation that it has examined all existing towers or structures located in the Town of Bethlehem and within a seven-mile radius of the proposed site in which the applicant has no legal or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage and/or adequate capacity to the Town of Bethlehem. The documentation shall include, for each site examined, the exact location (in longitude and latitude, to degrees, minutes and seconds), ground elevation, height of tower or structure, type of antennas proposed, proposed antenna gain, height of proposed antennas on tower or structure, proposed output frequency, proposed number of channels, proposed power input and proposed maximum power output per channel. Radial plots from each of these sites shall be provided as part of the application. This report shall demonstrate good faith efforts to secure shared use from the owner of each then existing tower or structure on which a PWRT facility is then located as well as documentation of the physical, technical and/or financial reasons why shared use is not practical in each case. Written requests and responses for shared use shall be provided.
 3. The applicant shall demonstrate with written documentation that it has analyzed the feasibility of repeaters or non-tower-mounted PWRT facilities in conjunction with all sites listed in compliance with Subsection H(1) and (2) above to provide adequate coverage and/or adequate capacity to the Town of Bethlehem. Radial plots indicating such consideration shall be provided as part of the application.
 4. The applicant shall also submit a three-year build-out plan for the proposed and other sites within the Town and within adjacent towns and villages, clearly demonstrating the applicant's plan for other structures, proposed application and building dates, and justification for additional structures. Additionally, the three-year build-out plan must take into consideration known and potential changes in technology.
 5. An applicant for a new tower must demonstrate the structure's ability to handle additional collocators and must identify the maximum number of collocators which could be supported on the structure.
 6. Documentation of intent from the owner and/or lessee of the facility to allow collocation and shared use shall be provided.
- I. Annual certification.** After the issuance of a special permit, the Planning Board may condition its approval on the owner/operator of the facility certifying annually (on January 1 of each year), by an independent licensed engineer, that the facility is operating in compliance with FCC emissions standards and in compliance with the existing special permit and site plan.

- J. Retention of experts and engineers.** Should the Planning Board determine it necessary to retain the services of experts with the requisite technical expertise to assist it in the making of the determinations required by this chapter, or to perform any testing called for hereunder, it may retain such assistance and charge the cost thereof to the applicant. A deposit for the purpose of paying these expenses may be required of the applicant at the time of application for the special permit or building permit, as the case may be. If a deposit is not taken at the time of application and said costs are incurred thereafter, the applicant shall be charged for them and must pay said charges as a condition of retaining its special use permit or by-right use.

ARTICLE 26

SUPPLEMENTAL REGULATIONS

§ 128-26.1 EXCEPTIONS

- A. **Height Exceptions.** The height limitations of this chapter shall not apply to church spires, belfries, cupolas, sirens and loudspeakers for emergency purposes, penthouses and domes not used for human occupancy, chimneys, ventilators, skylights, water tanks, silos, bulkheads and similar features, and necessary mechanical appurtenances usually carried above the roof level. Nothing contained in this chapter shall prevent the erection of an ornamental parapet wall or cornice that extends not more than five feet above the maximum permitted height of the building. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve.
- B. **Projecting Architectural Features.** The space in any required setback shall be open and unobstructed except for the ordinary projection of windowsills, belt courses, cornices, eaves and other architectural features; provided, however, that such features shall not project more than three feet into any required setback.
- C. **Building Entry and Porticos.** Roofed-over but unenclosed stairs and/or landings in the nature of an entryway or portico not more than eight feet wide and extending not more than six feet out from the front wall of the building shall be permitted to encroach on a required front yard setback.

§ 128-26.2 LOT REQUIREMENTS

- A. No lot shall be formed from part of a lot already occupied by a building unless such building, all yards and open spaces connected therewith and the remaining lot comply with all requirements prescribed by this chapter for the district in which said lot is located. No permit shall be issued for the erection of a building on any new lot thus created unless such building and lot comply with all the provisions of this chapter.
- B. Where a lot is divided by a zoning district boundary line so that a part of the lot is located in a residential district and a part is located in a nonresidential district, access to a nonresidential use on the nonresidential part of the property across the residential part of the property is prohibited if the nonresidential part has or can develop legal access on a public road.
- C. On a corner lot, front yards are required on both street frontages, and one yard other than the front yards shall be deemed to be a rear yard and the other or others shall be deemed to be side yards. The minimum district requirements for each shall be complied with.
- D. On a through lot, a front yard setback shall be required on both street frontages.

§ 128-26.3 AMATEUR RADIO COMMUNICATIONS TOWERS

- A. **Review authority.** The Building Inspector is hereby authorized to review applications for a building permit pertaining to the construction of amateur radio communications towers.
- B. **Purpose and intent.** The purpose of this section is to establish regulations for the siting of amateur radio communications towers in order to accommodate such equipment as required by Federal Communications Commission Order dated September 16, 1985, known as "PRB-1," while protecting the public against any adverse impacts on aesthetic resources, assuring public safety and welfare, minimizing visual impacts through proper design, siting and screening, and avoiding potential physical damage to adjacent properties.
- C. **Exemptions.** Preexisting amateur radio communications towers are exempt from the provisions of this section.

- D. Application requirements.** The applicant for a building permit under this section shall be required to provide the following information:
1. A scaled plan or drawing of the proposed tower, with design data and documentation that the tower meets or exceeds applicable federal and state specifications.
 2. A sketch showing the lot or parcel and its dimensions, and all structural improvements thereon, on which the tower is to be located and showing the location of all structures on the lot or parcel, and the location of the proposed tower.
 3. Proof that the applicant is an amateur radio operator licensed by the Federal Communications Commission.
 4. Proof of insurance specifically covering the proposed tower.
 5. If the FCC license holder and operator is not the property owner, the property owner must also sign the application.
- E. Building permit criteria.** The Building Inspector, in reviewing the application for amateur radio communications towers, shall be guided by the following standards:
1. The structural design of the proposed tower shall meet accepted engineering standards including wind-load requirements.
 2. The proposed tower shall be erected only in a rear or side yard.
 3. The proposed tower, including all masts and antennas, shall not exceed a height of ninety-five (95) feet above the ground and in no event shall be closer in horizontal distance than 1.25 the height of the tower to a principal dwelling or structure used for human habitation on any adjacent or neighboring property.
 4. No part of the proposed tower, including stays and guy or supporting wires, shall be in violation of the relevant district setbacks.
 5. If the base of a ground-based tower is visible from any public right-of-way or from adjacent property, then reasonable screening of the base may be required so long as such screening will not interfere with the reception or the transmission of signals.
 6. Towers shall not be located on drainage easements, public utility easements or on any reserved open space.
- F. Approvals.** The federal government has determined that amateur radio communications towers and the activities of a licensed operator are beneficial to the public health, safety and general welfare of the community. If the proposed tower meets the requirements of this section, then the building permit application shall be approved. Any approval shall contain the condition that the Building Inspector may enter the premises at any reasonable time to inspect the tower installation for its construction, stability and maintenance. The applicant shall at all times maintain a valid FCC license to operate the facility and shall provide a valid copy of his or her FCC license to the Building Inspector upon demand.
- G. Abandonment and removal.** The applicant shall remove the tower upon selling the property or when the applicant no longer holds a valid FCC license to operate as an amateur radio operator, unless the purchaser of the property or a member of the purchaser's immediate family is also a licensed amateur radio operator.

§ 128-26.4 FENCES & FREESTANDING WALLS

- A.** Fences or freestanding walls not exceeding four feet in height may be erected anywhere on a lot, except as otherwise provided in this section.
- B.** Fences or freestanding walls in residential districts.
1. Fences or freestanding walls not exceeding four feet in height may be erected in the front yard.
 2. Fences or freestanding walls greater than four feet in height but not more than six feet may be erected in the side and rear yards.

3. For corner lots, one of the front yards may be considered a side yard for the purposes of fence height limitations. Where said fence or freestanding wall in the side yard exceeds four feet in height, it shall have a minimum setback of 15 feet from the property line.
 4. Fences for pools, spas and hot tubs shall encompass the entire perimeter of the pool, spa or hot tub. Fences shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the fence. Fences and appurtenances shall meet or exceed the minimum requirements as set forth for barriers under the Residential Code of New York State and shall be approved by the Building Inspector before installation. Fences for pools, spas and hot tubs shall also meet requirements of § 128-26.8.
 5. Fences constructed for the purpose of enclosing a tennis court shall not exceed 10 feet in height and may not be located closer than 15 feet to any property line.
 6. The use of dangerous materials such as crushed glass and razor wire is prohibited.
 7. Electric fencing and barbed wire are prohibited in residential districts, except when used for the following purposes:
 - a. Confinement of livestock or other farm purposes where permitted.
 - b. Enclosures of public utilities.
 - c. Enclosures of properties or storage by commercial or industrial users.
 8. If barbed wire is used, it shall be canted in.
- C.** Fences or freestanding walls in the Heavy Industrial District, that abut a residential zoning district, shall not exceed eight feet in height, but may include an additional 18 inches of barbed wire at the top. If barbed wire is used it shall be canted in.
- D.** Fences in nonresidential districts.
1. Fences or freestanding walls not exceeding four feet in height may be erected in the front yard.
 2. Fences or freestanding walls greater than four feet in height but not more than six feet may be erected in the side and rear yards.
 3. Notwithstanding the provisions of preceding Subsection D(1) and (2), open-weave chain-link fences not exceeding 10 feet in height, and solid fences not exceeding eight feet in height, shall be permitted in industrial districts. Electric and barbed wire fences are permitted in the CMU, RMU, RLI, and HI districts.
- E.** Fences for agricultural uses may not exceed eight feet in height, shall not be solid (i.e., stockade-style fences or chain link fencing with vinyl slat inserts), and shall allow unimpaired visibility through the fence (i.e., standard chain link or other wire fence without vinyl slat inserts).
- F.** Fences designed to be structurally supported by posts, cross members or rails on one side only shall be erected with the posts, cross members or rails on the fence owner's side, and the finished side of the fence shall face adjacent properties.
- G.** No minimum distance shall be required between a fence or freestanding wall and a lot line, unless otherwise specified in this chapter.
- H.** Fences and freestanding walls in any zoning district shall be maintained in a structurally sound condition.
- I.** No hedge, freestanding wall, fence or other boundary structure, nor trees, shrubs and other landscaping, shall be located so as to cause danger to vehicular and pedestrian traffic by obstructing the view.
- J.** No fence or freestanding wall shall be located in a municipal right-of-way.

§ 128-26.5 FLAG LOTS & SHARED DRIVEWAYS

- A. Flag lot requirements.** Lots which meet the definition of "flag lot" as defined in this chapter shall meet the following additional standards:

1. The access to the flag lot shall be by way of a driveway placed within the flagpole or panhandle portion of the lot or parcel, as recorded.
 2. Only that portion of the lot having adequate width to meet the minimum lot width requirements and allow for provision of meeting the minimum yard and setback requirements of the district shall be counted as part of the minimum lot area. The accessway (i.e., the flagpole or panhandle) shall not be included in the calculation of minimum lot area.
 3. The accessway shall maintain a constant minimum width of not less than the minimum highway frontage as set forth for the district in which the property is located.
 4. The flagpole shall not cross a flowing or intermittent stream, ravine, or similar topographic feature without provision of an adequate structure or fill and culvert to carry traffic.
 5. In no event shall a flag lot be used to access a private road.
 6. The flagpole shall be conveyed with the ownership of the rear lot or parcel and shall be considered a permanent part of that lot or parcel never to be resubdivided or conveyed separately from the parcel to which it provides access.
 7. A flag lot parcel shall not be approved which would create a flagpole that would be generally parallel to a public street, unless the flagpole is separated from the public street by a distance of not less than 200 feet.
 8. Adjoining flag lots. Adjoining flag lots are prohibited. The minimum distance between driveways serving individual flag lots shall be not less than 100 feet as measured along the public road or highway frontage. Lots located in the RMU, RR, and RLI Districts shall be exempt from adjoining flag lot requirements of this subsection.
 9. Flag lots shall be permitted in both major and minor subdivisions at the discretion of the Planning Board. Flag lots must meet all area, yard and bulk requirements for the zoning district applicable and shall be so arranged as to provide suitable all-weather access for passenger and emergency vehicles.
 10. The length of the pole of the flag lot from the roadway to the front yard line shall not be less than 200 feet. See driveway construction requirements as provided in supplemental regulation § 128-26.11.
 11. Where one flag lot parcel is preexisting, the adjoining lot or parcel shall not be divided into a flag lot shape.
 12. Notwithstanding any inconsistent provisions of this chapter, flag lots shall be permitted for the erection and maintenance of single-family dwellings only.
 13. Flag lots may not be further subdivided.
- B. Shared driveways.** A shared driveway may be used to access no more than three buildable lots. In the instance of flag lots, shared driveways may be used to access a flag lot and not more than two lots adjoining the flag lot, provided that each such lot has frontage on a public road or public highway. The establishment of a shared driveway requires an access easement and an agreement or covenant setting forth the rights and obligations of the owners of the lots to share in the cost of maintaining and repairing the shared driveway. Such agreement or covenant is subject to the approval of the Town Attorney.

§ 128-26.6 GRADING, EROSION, & SEDIMENT CONTROL

- A. Purpose.** Uncontrolled disturbance of land and inadequately controlled land clearing activities can lead to failure of slopes and the mass movement of earth; damage to the natural environment, man-made structures and personal safety; and the degradation of aesthetics. In addition, the failure to properly regulate large-scale clear-cutting and land disturbance activities, particularly on steep slope areas, has been shown to have dire short-term and long-term impacts on the wetlands, streams, ponds and lakes that make up the unique environmental landscape of the Town. In particular, uncontrolled runoff carrying soil, organic material, and natural and man-made chemicals, metals and toxins has been shown to have the following deleterious effects on the natural and the built environment:

1. Destroys fish habitat through blanketing of fish spawning and feeding areas.
 2. Kills aquatic organisms required by fish by reducing sunlight penetration through the water column.
 3. Kills fish directly through gill abrasion and fin rot.
 4. Reduces the recreational value of water and makes it less attractive for swimming.
 5. Increases risk to swimmers and boaters by impeding search and rescue efforts as water turbidity increases.
 6. Adds to overall construction cost since new topsoil and base materials must be brought in to make up the lost difference.
 7. Adds to taxpayer cost to remove accumulated soil from catch basins and pipes.
 8. Introduces toxic materials into water bodies that contribute to algae blooms and degradation of drinking water sources, which require the construction of new and/or enhanced water treatment facilities to make water potable.
- B. Intent.** It is the intent of the Town of Bethlehem to ensure that all activities involving land disturbance in all areas of the Town are carried out so as to ensure the maximization of benefits to the public and the residents of the Town and the protection of the natural and man-made environment, by ensuring that soil erosion is controlled to the maximum extent practicable.
- C. Applicability.** All land disturbance activities within any parcel.
- D. Prohibited activities.** The following activities are prohibited:
1. Construction of improvements and land disturbance activities on an area within the angle of repose of 20% or greater of any slope with a vertical rise of 20 feet or more, or 33% or greater of any slope with a vertical rise of 10 feet or more, or 40% or greater of any slope with a vertical rise of five feet or more. A waiver from this prohibition may be granted by the Planning Board in association with its review of a subdivision, site plan and/or special use permit application, or by the Town Engineer in other cases. A waiver may be granted only upon review and acceptance of a report from a professional engineer, who in the judgement and discretion of the Town Engineer has experience in geotechnical engineering, certifying that such construction or land disturbance activities are consistent with generally accepted engineering standards, meet or exceed established factors of safety against slope failure and would not result in undue risk of slope failure or danger to human health, welfare or property. A request for a waiver to the Town Engineer shall be accompanied by an application for a grading, erosion and sediment control permit containing the information outlined in Subsection F below. A request for waiver to the Planning Board shall be made as part of the site plan, subdivision or special permit application and shall contain the pertinent information from Subsection F, as determined by the Planning Board.
 2. Land disturbance activities that would negatively alter or change the direction and/or quantity of water flow within any established drainage channel, or that would change the direction and/or quantity of water flow across neighboring properties.
 3. Uncontrolled land disturbance or clearing activity that results in runoff carrying soil, organic material, and natural and man-made chemicals, metals or toxins being discharged into any waterbody identified in the NYSDEC Waterbody Inventory/Priority Waterbodies List, as amended or revised.
- E. Regulated activities.** The following activities shall require a grading, erosion and sediment control permit (herein referred to as "Grading Permit") pursuant to this section:
1. Land filling , grading, or excavation activity that alters the existing surface topography greater than 4 inches and involves the placement or removal of greater than or equal to 2 cubic yards of material.
 2. Land disturbance of one acre or more shall comply with this section and Chapter 98 of the Code of the Town of Bethlehem.
 3. Land disturbance within 100 feet of the bank of the following streams or within the one-hundred-year flood zone of said streams:

- a. Normans Kill Creek.
 - b. Vloman Kill Creek.
 - c. Onesquethaw Creek.
 - d. Phillipin Kill Creek.
 - e. Dowers Kill Creek south of Route 32.
 - f. Coeymans Creek.
 - g. Krum Kill Creek.
 - h. Binnen Kill Creek.
4. Excavation or filling activity that involves the placement or removal of greater than or equal to 50 cubic yards of material.
 5. Land disturbance within any area designated by the Federal Emergency Management Agency (FEMA) as being a Special Flood Hazard Area.
- F. Exemptions.** No exempt activity shall cause a prohibited activity pursuant to §128-26.6 D. The following activities shall be exempt from the provisions of this section and no Grading Permit shall be required:
1. Activities performed in conjunction with special use permit, site plan, or subdivision approvals granted by the Planning Board following the effective date of this chapter, so long as said activities are not commenced until after the grant of a permit/approval and so long as the application for said activities has been reviewed for conformance with this chapter and Chapter 98 of the Code of the Town of Bethlehem and approval has been conditioned upon compliance with the standards set forth herein, and further provided that the activities shall be subject to and not exempt from the provisions for inspections, enforcement, penalties and revocations set forth herein.
 2. Activities performed in conjunction with special use permit, site plan, or subdivision approvals granted by the Planning Board or Zoning Board of Appeals prior to the effective date of this chapter and Chapter 98 of the Code of the Town of Bethlehem, provided that such activities are commenced within one year of the date of approval.
 3. Activities performed in conjunction with the erection, structural alteration or movement of a structure or building for which a building permit is granted following the effective date of this chapter and Chapter 98 of the Code of the Town of Bethlehem, so long as said activities are not commenced until after the grant of a building permit as provided herein, and so long as the application for said activities has been reviewed for conformance with this chapter and issuance of the building permit has been conditioned upon compliance with the standards set forth herein, and further provided that the activities shall be subject to and not exempt from the provisions for inspections, enforcement, penalties and revocations set forth in herein.
 4. Tree removal for the purpose of cutting firewood for personal use by a single household.
 5. Household gardening.
 6. Repairs to occupied buildings.
 7. Routine road, highway or street maintenance.
 8. Routine maintenance and repair of existing structures or facilities.
 9. The placement, use and maintenance of improvements used in agricultural production.
 10. The removal of trees and vegetation in accordance with a forestry management plan approved by the State Department of Environmental Conservation.
 11. The removal of vegetation as required to establish safe sight line distances for driveway entrances.
 12. The removal of vegetation that threatens resident or public safety and removal of non-native plant species designated as "invasive."
 13. The removal of vegetation to comply with a governmental order.

14. Activities performed in conjunction with the agricultural use of land as defined in §128-25.6 of this Chapter. To be eligible, properties shall be currently receiving an agricultural tax exemption, and/or are located within an Albany County managed agricultural district as provided for by NYS Agriculture and Markets Law Article 25-AA.
15. Land filling or excavation activity involving the placement or removal of two cubic yards of material or less.

G. Permit procedure.

1. The Town Engineer is hereby designated to administer and implement this chapter by granting or denying grading, erosion and sediment control permits in accordance with its provisions.
2. An application for a Grading Permit shall be made to the Town Engineer and shall include the following information:
 - a. A completed application form signed by the applicant and the owner and/or including a notarized statement signed by the owner authorizing the applicant to act as the owner's agent and binding the owner to the terms of this chapter and any permit issued hereunder.
 - b. A plan of the proposed activity, drawn at a scale as determined by the Town Engineer, that adequately depicts the area of proposed improvements and/or disturbance using as a base map a current boundary and topographic survey of the property depicting all existing improvements and prepared by a New York State licensed land surveyor.
 - c. The proposed plan shall depict all proposed improvements to the property and shall be prepared and certified by a professional engineer, a landscape architect, or an architect licensed by the State of New York, showing:
 - iii. The location of the proposed area of disturbance and its relationship to property lines, easements, buildings, roads, walls, and wetlands, if any, within 50 feet of the boundaries of said area.
 - iv. Existing topography of the proposed area of disturbance at a contour interval of not more than two feet. Contours shall be shown for a distance of 50 feet beyond the limits of the proposed area of disturbance, or greater than 50 feet if determined necessary by the Town Engineer in order to fully evaluate the application.
 - v. Proposed final contours at a maximum contour interval of two feet, locations of proposed structures, underground improvements, proposed surface materials or treatment, and dimensional details of proposed erosion and sediment facilities, as well as calculations used in the siting and sizing of sediment basins, swales, grassed waterways, diversions and other similar structures.
 - d. The Town Engineer may also require information depicting the watershed tributary to the proposed area of disturbance, including proposed controls and diversions of upland water.
 - e. Except for applications involving one single-family dwelling, The Town Engineer may also require the depth to bedrock and depth to water table to be identified in all areas of disturbance.
 - f. A soil erosion and sediment control plan designed utilizing the standards and specifications contained in the most recent version of the New York State Department of Environmental Conservation publication titled New York State Standards and Specifications for Erosion and Sediment Control. The design, testing, installation, maintenance and removal of erosion control measures shall adhere to these standards and any conditions of this chapter and the Grading Permit. This plan shall:
 - i. Describe or depict the temporary and/or permanent structural and vegetative measures that will be used to control erosion and sedimentation for each stage of the project, from land clearing to the finished stage;

- ii. Delineate the area of the site that will be disturbed and include a calculation of the acreage or square footage so disturbed;
 - iii. Include a map drawn at a scale as determined by the Town Engineer that adequately depicts the location of erosion and sediment control measures, swales, grassed waterways, diversions and other similar structures;
 - iv. Provide dimensional details of proposed erosion and sedimentation facilities as well as calculations used in the siting and sizing of sediment basins, swales, grassed waterways, diversions and other similar structures;
 - v. Provide an estimate for the cost of implementing all elements of the erosion control plan; and
 - vi. Provide a maintenance schedule for erosion control measures.
 - g. The details of any surface or subsurface drainage systems proposed to be installed, including special erosion control measures designed to provide for proper surface or subsurface drainage, both during the performance of the work and after its completion.
 - h. Any special reports deemed necessary by the Town Engineer to evaluate the application, including but not limited to detailed soils, geotechnical, geologic or hydrologic studies.
 - i. Except for applications involving one single-family dwelling, a written narrative explaining the nature of the proposal, including any future development anticipated for the property and whether alternative locations exist for the proposed activity.
 - j. Copies of all applications, permits and approvals required by any other local, state or federal agency associated with the construction and site work/disturbance proposed by the applicant.
 - k. An application fee in an amount as shall be established by the Town Board.
 - l. Certification from a New York State licensed engineer, landscape architect or surveyor stating that the proposed land disturbance activity does not fall within the angle of repose of 20% or greater of any slope having a vertical rise of 20 feet or more, or 33% or greater of any slope with a vertical rise of 10 feet or more, or 40% or greater of any slope with a vertical rise of five feet or more.
3. Information waiver. Where the Town Engineer finds that due to the specific nature of a proposed land disturbance activity certain information or data is not necessary to conduct the review and render an informed decision on the application, the Town Engineer may waive said information and data requirements.

H. Review. The Town Engineer shall:

- 1. Determine when an application is complete.
- 2. Review the application to determine that the requirements of this section have been satisfied.
- 3. Review each complete application and approve, approve with conditions or deny applications in accordance with this section within 62 days of the receipt of a complete application.
- 4. Require the applicant to execute a statement binding the applicant to the terms of this section and any permit issued hereunder.

I. Criteria for granting permit. In granting a Grading Permit, the Town Engineer shall find that all of the following conditions have been met:

- 1. The proposed activity will not result in creep, sudden slope failure or additional erosion;
- 2. The proposed activity will preserve and protect existing watercourses, floodplains and wetlands;
- 3. The proposed activity will not adversely affect existing or proposed water supplies or sewage disposal systems; and
- 4. The proposed activity will stabilize all earth cut and fill slopes by vegetative or structural means. Maximum exposed soil slopes shall be 33% unless otherwise approved by the Town Engineer.

5. The proposed activity does not negatively alter or change the direction and/or quantity of water flow within any established drainage channel, or negatively change the direction and/or quantity of water flow across neighboring properties.
- J. Surety.** In order to insure the full and faithful completion of all construction activities related to compliance with all conditions set forth by the Town in its issuance of a Grading Permit, the owner/applicant shall provide, prior to construction, a cash escrow account certification or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town as the beneficiary. The security shall be in an amount to be determined by the Town Engineer based on submission of final design plans and shall be in a form acceptable to the Town Attorney. In addition, the owner/applicant shall name the Town of Bethlehem as an additional insured on all workmen's compensation and general liability insurance policies required to perform the work. The Town Engineer may waive the requirement of a surety where it finds that the amount of the surety is disproportionate to the estimated cost of the proposed activity or the work is determined to be low risk and is to be performed by the owner of the land.
- K. Enforcement.** Any activity that violates this section, or requires a Grading Permit as provided herein, and is commenced without one, or is conducted contrary to the approved Grading Permit, shall be deemed a public nuisance and may be restrained by an order to stop work, and/or injunction, and/or direct action by the Town to abate the condition, and/or any other manner provided by law as included in this Chapter.
1. The Building Inspector and/or Town Engineer may issue a notice of violation and/or stop-work order for the entire construction and site work/disturbance project, or any specified portion thereof, if it is determined that any of the following conditions exist:
 - a. The construction or the site work/disturbance is being undertaken without a Grading Permit as provided in this chapter;
 - b. The construction or the site work/disturbance has created a prohibited activity as described in §128-26.6 C.
 - c. The approved Grading Permit has not been fully implemented;
 - d. The approved Grading Permit is not being maintained; or
 - e. Any of the conditions of the Grading Permit are not being met.
 2. Notice of Violation. When the Town of Bethlehem determines that a land disturbance activity is not being carried out in accordance with the requirements of this section, it may issue a written notice of violation to the landowner. The notice of violation shall contain:
 - a. Name and address of the land owner, developer or applicant;
 - b. Address, when available, or a description of the building, structure or land upon which the violation is occurring;
 - c. Statement specifying the nature of the violation;
 - d. Description of the remedial measures necessary to bring the land disturbance activity into compliance with this section and a time schedule for the completion of such remedial action;
 - e. Statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed.
- L.** For purposes of this section, a stop-work order is validly posted by posting a copy of the order on the site of the construction or site work/disturbance activity in reasonable proximity to said construction or site work/disturbance and in a location where the posted order is visible. Additionally, a copy of the order, in the case of work for which a permit has been issued, shall be mailed by first-class mail, certified return receipt, and one copy of the order shall be mailed by regular first-class mail to the address listed by the applicant and to the owner as the case may be. In the case of work for which no permit has been issued, a copy of the order shall be mailed by first-class mail, certified return receipt, and one copy of the order shall be mailed by regular first-class mail, to the person listed as owner of the property according to the latest roll maintained by the Town Assessor's office.

1. In the case of a stop-work order for an activity for which a permit has been issued, if the applicant does not cease the activity and comply with the permit within one day of the date of the order, the permit may be revoked. In addition to revocation of the Grading Permit, the authorized Town official(s) may revoke all or any portion of any other permits issued in accordance with the Town Code, including building permits. Upon a showing of compliance with the terms of the stop-work order and the Grading Permit, the Town official(s) may reinstate the Grading Permit and any other permit that may have been revoked.
 2. In the case of a stop-work order for an activity for which a Grading Permit has not been issued, if the owner does not immediately cease the activity and comply with the provisions of this chapter within one day of the date of the order, the authorized Town official(s) may request that the Town Attorney seek injunctive relief. In addition, the authorized Town official may revoke all or any portion of any other permits issued in accordance with the Town Code, including building permits, affecting the property. Upon a showing of compliance with the terms of this chapter and issuance of a Grading Permit, the Town official may reinstate any other permit(s) that may have been revoked.
- M.** Ten days after posting and mailing of the stop-work order, the authorized Town official may issue a notice of intent to the applicant and the owner of the Town's intent to perform the work necessary to bring the project into compliance with this chapter. Within 14 days of the date of the notice of intent the Town may enter upon the property and commence work to abate the noncompliance and to bring the property into compliance with this chapter.
- N.** In the case of a stop-work order for an activity for which a Grading permit has been issued, the Town may use the surety posted by the applicant to implement the approved provisions of the permit and such other measures as may be required to prevent or minimize soil erosion and sedimentation conditions posing imminent and substantial danger to public health, safety, welfare or natural resources. The applicant, the owner and the contractor shall be jointly and severally liable for any additional costs incurred by the Town to undertake such work over the amount of the posted surety. All such unpaid additional amounts shall be a lien on the property and shall be assessed against the property as a special assessment as provided in the Town Law.
- O.** In the case of a stop-work order for an activity for which a Grading Permit has not been issued, the Town may implement such measures as may be required to prevent or minimize soil erosion and sedimentation conditions posing imminent and substantial danger to public health, safety, welfare or natural resources. The applicant, the owner and the contractor shall be jointly and severally liable for all costs incurred by the Town to undertake such work. All such unpaid amounts shall be a lien on the property and shall be assessed against the property as a special assessment as provided in the Town Law.
- P.** A stop-work order issued pursuant to this section constitutes a determination from which an administrative appeal may be taken to the Town.
- Q.** All construction, land disturbance, and land clearing activities, whether undertaken pursuant to an erosion control permit or otherwise, shall be undertaken in a manner designed to minimize surface runoff, erosion and sedimentation. The construction and site work/disturbance authorized by a permit issued under this section shall be considered to be in conformance with these provisions if soils are prevented from being deposited onto adjacent properties, rights-of-way, public or private storm drainage systems, roads, streets or sidewalks, and wetlands or watercourses.
- R.** Notwithstanding any other provisions of this chapter or conditions of the Grading Permit, the applicant is responsible for the prevention of damage to adjacent and nearby public and private property, wetlands, watercourses, rights-of-way, public streets, and public highways from erosion, sedimentation, settling, cracking and other damage or personal injury that may result from the construction and site work/disturbance undertaken by the applicant. The applicant shall be responsible for the prompt removal and correction of damages resulting from any soil, debris or other materials washed, spilled, tracked, dumped, placed or otherwise deposited onto adjacent and nearby public and private property, wetlands, watercourses, rights-of-way, public streets, and public highways, whether incident to the construction or the site work/disturbance undertaken by the applicant or resulting from the movement of vehicles and persons to and from the site.

- S. The applicant, the landowner, and the contractor are all responsible for the successful implementation of the erosion control plan and the maintenance of all erosion control measures as depicted on the plan for the duration of the construction and site work/disturbance proposed by the applicant. The applicant, the landowner, and the contractor shall be jointly and severally liable for all costs incurred, including environmental restoration costs, resulting from noncompliance with the approved plan. The application for a Grading Permit shall constitute express permission by the applicant and the owner for the Building Inspector or other authorized Town officials to enter the property for the purposes of inspection for compliance with the erosion control plan permit. The application form shall contain a prominent provision advising of this requirement, and by signing the application the applicant, the landowner, and the contractor expressly waive any objection to authorized Town official(s) entering the property for the purpose of conducting an inspection.
- T. At all times during the construction and site work/disturbance the erosion control plan shall be maintained in compliance with the permit, and the applicant, the owner, and the contractor shall be fully responsible for said maintenance. The Town Engineer may require that a new application for a Grading Permit be filed if it finds that the prior approved plan was not properly implemented, or that the construction plans have been revised or altered, or that the site work/disturbance plans have been revised or altered. Changes to a plan for which a permit has been issued shall receive the prior review and approval of the Town Engineer before such changes may be implemented.
- U. All Grading Permits issued shall expire on the earlier of the completion of the work specified or one year from the date the permit is issued, unless otherwise renewed by the Town Engineer.
- V. Where the activity subject to this chapter also requires a building permit, the Building Inspector shall not issue a building permit until the building permit application has been reviewed and approved by the Town Engineer for conformance with this section and Chapter 98 of the Code of the Town of Bethlehem.
- W. Limitations on liability of Town. No action for damages may be maintained against the Town by reason of its failure to comply with any of the provisions of this section.

§ 128-26.7 SATELLITE DISHES & ANTENNAS

Satellite dishes and antennas mounted on structures shall be securely attached to the building to withstand wind loads. The mast on which a satellite dish or antenna is mounted shall not exceed a height of 15 feet. Satellite dishes and antennas are allowed as accessory uses only.

§ 128-26.8 SWIMMING POOLS, SPAS, & HOT TUBS

- A. Building permit.** No person or persons, association or corporation shall erect or install, or dismantle or abandon, a swimming pool, spa or hot tub within the Town of Bethlehem without first obtaining a building permit.
- B. Fee.** Building permit shall include a fee as set by the Town Board.
- C. Accessory to dwelling.** Swimming pools, spas or hot tubs may be erected or installed only as an accessory to a dwelling and for the private use of the owner or occupants and their family and guests.
- D. Installation.** Installation shall meet or exceed the requirements as set forth in the Residential Code of New York State as well as the provisions set forth in this section.
- E. Location.** No swimming pool, spa or hot tub shall be installed, constructed or maintained in a front yard, within 10 feet of any side or rear property lines, or on any easement or right-of-way. Pools shall be located away from overhead power lines.
- F. Water.** Swimming pools, spas and hot tubs may be filled from a private water source (i.e., private well or water service company) or domestic water supply. Hydrant filling is prohibited. Enclosures must be complete, including fencing if required, before water is put into the pool, spa or hot tub.
- G. Prohibited connections.** Installation of a permanent or temporary plumbing connection between a potable public or private water supply system and a pool, spa or hot tub is prohibited.
- H. Electric.** A third party inspection shall be performed by a Town-approved, certified electrical inspection agency for compliance with the National Electrical Code and recorded in the Building Department.
- I. Fencing.** Fencing shall comply with § 128-26.4. Fences shall be structurally sound, durable and must be maintained in such condition to prevent and prohibit accidental or unauthorized entrance to the pool. A permanent protective fence shall be installed so as to encompass the entire perimeter of the pool, spa or hot tub. Fences shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the fence. Fences and appurtenances shall meet or exceed the minimum requirements as set forth for barriers under the Residential Code of New York State and shall be approved by the Building Inspector before installation.
 - 1. In-ground pools, spas or hot tubs. Fences shall be a minimum of four feet in height and a maximum of six feet in height above grade, measured on the side of the fence that faces away from the swimming pool. Spas or hot tubs with lockable tops shall be exempt from said requirements.
 - 2. Aboveground pools, spas or hot tubs. The provisions for fencing shall not apply to aboveground pools, spas or hot tubs less than 24 inches in height. Pools greater than four feet in height are also exempt, provided that the stairs are removable or designed to be secured in a manner to prevent access. Where the top of the pool is above grade, the fence is authorized to be at ground level or mounted on top of the pool. The maximum vertical clearance between the top of the pool and the bottom of the fence shall be four inches.
 - 3. Pool structures used as a fence. Where an aboveground pool structure is used as a fence or where the fence is mounted on top of the pool structure and the means of access is a ladder or steps, then the ladder or steps shall be capable of being secured locked or removed to prevent access or the ladder or steps shall be surrounded by a fence. When the ladder or steps are secured, locked, or removed, any opening created shall not allow the passage of a four-inch-diameter sphere.
 - 4. Dwelling unit wall as a fence. Where a wall of a dwelling serves as part of a fence, one of the following shall apply:
 - a. Doors with direct access to the pool, spa or hot tub through a dwelling unit wall shall be equipped with an alarm which produces an audible warning when the door and its screen are opened. The alarm shall be capable of being heard throughout the house during normal household activities; or
 - b. The pool shall be equipped with a powered safety cover. Spas or hot tubs with a lockable top or safety cover which complies with the state code shall be exempt; or

- c. Other means of protection, such as self-closing doors with self-latching devices, which are approved by the administrative authority.
- J. **Access gate.** Access gates shall open outward away from the pool, spa or hot tub and shall contain a self-closing, self-latching, lockable device. Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate, the release mechanism shall be located on the pool, spa or hot tub side of the gate at least three inches below the top of the gate.
- K. **Existing pools.** The Building Inspector is hereby authorized and directed to inspect swimming pools, spas and hot tubs existing at the time of the adoption of this chapter. If a fence is required, the Building Inspector shall verify that said fence is in compliance with the foregoing provisions. If a fence does not comply with the provisions of this chapter, alterations or repairs shall be made within 30 days. If a required fence is not in place at the time of the inspection, immediate action shall be taken to erect a temporary fencing, and permanent fencing shall be installed within 30 days.
- L. **Lighting.** Lighting shall be permitted in, on, or about a pool, spa or hot tub, except that said lighting shall cast no light, glare or reflection onto abutting properties as required in Article 35.
- M. **Area of pools.** Swimming pools shall not occupy more than 10% of the total area of the premises.
- N. **Grading, erosion and sediment control.** An application for a swimming pool shall also be subject to requirements of § 128-26.6. When regrading a lot with on-site excavated materials, the applicant shall submit a grading plan showing the existing and proposed finished grades.
- O. **Subsurface drainage.** All subsurface drainage from a swimming pool, spa or hot tub shall be directed in a manner so as to prevent sewage from being siphoned, flooded or otherwise discharged into said swimming pool.
- P. **Surface drainage.** All areas immediately surrounding the pool, spa or hot tub shall have positive drainage away from the structure or shall be routed to a pool gutter as applicable. Drainage shall not be directed to adjoining lots or properties or interfere with existing and/or natural drainage patterns.
- Q. **Abandonment of pool.** Should the owner abandon a swimming pool, the area occupied by the swimming pool shall be returned to its original grade and approximately to the same condition as before the swimming pool was constructed, and the owner shall obtain a building permit for and notify the Building Inspector of the abandonment so that an inspection of the site may be made and the records of the permit marked accordingly.
- R. **Exempt pools.** This chapter shall not apply to a wading pool or to a portable pool that contains less than 24 inches of water, or to any pool or spa with a power safety cover that is in compliance with the Residential Code of New York State, or to any facility to which the regulations of the State Sanitary Code apply.

§ 128-26.9 TEMPORARY SHELTERS

- A. **Vehicle, trailer or vessel serving as building.** Any movable vehicle, trailer or dockside vessel that is used or occupied for the purpose of providing shelter to persons, animals or property shall be subject to the regulations contained in this chapter applicable to its particular use.
- B. **Residential use.** Camping trailers and recreational vehicles shall be occupied for residential purposes in campgrounds or trailer camps only. Dockside vessels may be occupied for residential purposes within a marina only. It shall be unlawful for any person to occupy a camping trailer or recreational vehicle on any lot, other than in a campground or trailer camp, for more than 30 days in any twelve-month period.
- C. **Commercial use.** Any construction office trailer shall be identified in the applicable building permit issued by the Building Inspector and shall be removed from the premises prior to the issuance of a certificate of occupancy. Such trailer may have electric and heating capable of temporary connection to site utilities. Each construction office trailer shall be subject to the fee set forth in the current fee schedule adopted by the Town Board, which shall be due and payable at the time that an application for a certificate of occupancy is made.

D. Temporary storage.

1. Commercial trailers may be placed on any lot for the purpose of storage, accessory to any permitted commercial use, provided that a permit is first obtained from the Building Inspector.
2. Dockside vessels may be used for the purpose of storage, accessory to any permitted commercial or industrial use, provided that a permit is obtained from the Building Inspector.
3. The permit referred to in Subsection A(3)(a) and (b) above shall be valid for the length of time specified thereon not to exceed nine months. Such permit shall not be renewable. The fee for such permit shall be as set forth in the current fee schedule adopted by the Town Board.

E. Permanent storage. Commercial trailers may be placed on any lot in the RMU District or industrial districts for the purpose of permanent (i.e., greater than nine months) storage, accessory to any permitted nonresidential, nonagricultural use, provided that a permit is first obtained from the Building Inspector.

§ 128-26.10 TERRACES, PATIOS, DECKS, PORCHES, BAY WINDOWS, & FIRE ESCAPES

- A. Terraces and patios.** A ground-level terrace or patio shall not be considered in the determination of lot coverage or the minimum setbacks to the property lines, provided that such terrace or patio is unroofed and without walls, parapets or other forms of enclosure and does not extend above the elevation of the ground on which it is located. Such terrace or patio may have an open guard railing not more than three feet in height and shall not project into any yard to a point closer than four feet to any lot line.
- B. Decks.** A deck that is structurally supported by piers or other structural means shall be considered in the determination of the minimum setback to the property line but not in lot coverage so long as it remains uncovered.
- C. Porches.** Any open or enclosed porch shall be considered a part of the building in the determination of minimum setback to the property line or lot coverage.
- D. Bay windows.** Bay windows, including their cornices and eaves, may project into any required setback not more than three feet; provided, however, that the sum of such projections on any wall does not exceed 1/3 of the length of said wall.
- E. Fire escapes.** Open fire escapes, exit landings and exit stairs may extend into any required setback not more than four feet six inches.

§ 128-26.11 DRIVEWAY CONSTRUCTION

- A.** Driveways over 100 feet in length shall be constructed in accordance with Town specifications.
 1. Minimum width of driveway shall be 11 feet.
 2. All turns in the driveway shall have turning radii, or widened width, to accommodate emergency vehicles.
 3. Driveway grades shall not exceed 10%.
 4. Construction of driveway shall be in accordance with Town Highway Specifications and accommodate emergency vehicle loadings for the soil conditions present. Asphalt surfacing is optional; however, the driveway must be paved from the edge of existing roadway pavement to the limits of the public road right-of-way.
 5. When necessary, adequately designed driveway culverts shall be installed in all driveways to accommodate local drainage patterns.
 6. A placard identifying the house number of the residence shall be installed, adjacent to the driveway, at the public road right-of-way line. The numerals shall not be less than four inches in size.
- B.** Driveways over 200 feet in length shall be constructed in accordance with Town specifications.

1. Refer to specifications outlined in Subsection A for driveways over 100 feet.
2. A water meter pit shall be installed by the property owner. It shall be located adjacent to and outside of the public road right-of-way. All water meters are radio read meters and are furnished and installed by the Town.

ARTICLE 27

ENERGY SYSTEMS REGULATIONS

§ 128-27.1 SOLAR PV SYSTEMS

A. Purpose.

1. It is the purpose of this section to encourage and promote the safe, effective and efficient use of installed solar photovoltaic (PV) systems that reduce on-site consumption of utility-supplied energy while protecting the health, safety and welfare of adjacent and surrounding land uses and properties.
2. It is the intent of this section to:
 - a. Meet the goal of the 2005 Bethlehem Comprehensive Plan to promote energy efficiency and conservation, and the use of renewable energy in the Town;
 - b. Support green economy innovations as adopted in the 2009 Bethlehem Climate Smart Community Resolution; and
 - c. Support New York State in meeting its renewable energy goals established by the 2015 New York State Energy Plan as implemented through the Reforming the Energy Vision Initiative.
3. Solar energy is an abundant and renewable energy resource, and its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the greenhouse gas emissions that result from the use of conventional energy sources.

B. Applicability.

1. This section applies to building-mounted, building-integrated and ground-mounted solar photovoltaic systems installed and constructed after the effective date of this section.
2. This section also applies to any upgrade, modification or structural change that alters the physical size, electric generation capacity, location or placement of an existing solar PV system.
3. Nonconforming solar PV systems. Nonconforming solar PV systems existing on the effective date of this section may be altered or expanded provided such alteration or expansion does not increase the extent or degree of nonconformity.
4. Properties with approved site plan. Notwithstanding the requirements of Article 42 of this chapter, for any lot that has an approved site plan, the installation of a "by-right" solar PV system on the lot shall not be considered a change to the approved site plan. This provision shall not be interpreted to exempt lots with an approved site plan from other requirements of this section.
5. Prohibition. Solar PV systems attached to the side of a building are prohibited unless they are designed as a building integrated system.

- C. Definitions.** For the purpose of this section the following terms shall have the meanings indicated.

BUILDING-INTEGRATED SOLAR PV SYSTEM

A solar PV system that is designed and constructed as an integral part of a principal or accessory building. Components of a building-integrated system are designed to replace or substitute for architectural or structural elements of a building and generally complement, blend with or form part of a building's architectural appearance. Such components will generally maintain a uniform plane with, and/or form a part of, the walls, window openings, roofing and/or other building elements into which they are integrated. Such a system is used in lieu of a separate solar PV system where components of the system are designed and attached to a building independent of building architecture. A building-integrated system may occur within vertical facades, replacing view glass, spandrel glass or other facade material; within semitransparent

skylight systems; within roofing systems, replacing traditional roofing materials; or within other building envelope systems.

BUILDING-MOUNTED SOLAR PV SYSTEM

A solar PV system that is attached to the roof of a building.

GROUND-MOUNTED SOLAR PV SYSTEM

A solar PV system, including its specialized solar racking or other mounting system, which is installed on the ground and not attached to any other structure.

GROUND-MOUNTED SOLAR PV SYSTEM, LARGE-SCALE

A ground-mounted solar PV system that has a system capacity greater than 12kW or generates more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.

GROUND-MOUNTED SOLAR PV SYSTEM, SMALL-SCALE

A ground-mounted solar PV system that is limited to a system capacity of 12kW and generates no more than 110% of the kWh's of electricity consumed over the previous twelve-month period by land use(s) existing on the lot where the system is located. In applying this standard, electricity consumption shall be determined by submission of utility bills showing electric usage over said twelve-month period.

KILOWATT (KW)

A unit of electrical power equal to 1,000 watts, which constitutes the basic unit of electrical demand. A watt is a metric measurement of power (not energy) and is the rate (not the duration) at which electricity is used; 1,000 kW is equal to one megawatt (MW).

KILOWATT-HOUR (KWH)

A unit of energy equivalent to one kilowatt of power expended for one hour of time.

LOT COVERAGE

Notwithstanding the definition of lot coverage found elsewhere in this chapter, for the purpose of this section lot coverage shall also include the area covered by a solar panel (or physically connected group of panels) as measured on a horizontal plane projected from the perimeter of said panel (or group of panels) vertically to the ground. For panels where the tilt angle is adjusted by week, month, season or other time period, lot coverage shall be determined by the tilt angle producing the greatest lot coverage.

NET METER

A meter used to measure the flow of electricity from the solar PV system to the electric utility grid for the purposes of net metering.

REMOTE NET METERING

An arrangement with the electric utility that allows for the kilowatt hours (kWh) generated from a solar PV system located at a specific site to be credited towards kWh of consumption at a different location.

SOLAR ARRAY

Any number of electrically connected solar photovoltaic (PV) panels that are connected to the same inverter.

SOLAR PANEL

A large, flat piece of equipment containing photovoltaic cells that use the sun's light or heat to create electricity.

SOLAR PHOTOVOLTAIC (PV) SYSTEM

A solar energy collection system consisting of solar photovoltaic cells, panels and/or arrays, and solar-related equipment, which rely upon solar radiation as an energy source for collection, inversion, storage and distribution of solar energy for electricity generation. A solar PV system may be building-mounted, ground-mounted or building-integrated.

D. Facilities Permitted By Right.

1. By-right solar PV systems. In order to encourage use of solar PV systems in the Town of Bethlehem, the following systems shall be permitted by right in any zoning district in the Town, provided the system is generating electricity only for the land use(s) located on the same lot as the system, and further provided that the system meets the standards for by-right systems identified in Subsection D2 below. By-right systems require a building permit.
 - a. Building-integrated solar PV systems. Building-integrated solar PV systems are permitted to face any rear, side and front yard area.
 - b. Building-mounted solar PV systems. Building-mounted solar PV systems are permitted to face any rear, side and front yard area.
2. Standards for by-right systems.
 - a. Accessory use. By-right solar PV systems shall be considered an accessory use.
 - b. Maximum system size. By-right solar PV systems shall be limited to a system capacity of 25kW.
 - c. By-right facilities shall comply with all applicable New York State Building Codes.
3. Building-mounted solar PV systems.
 - a. For a building-mounted system installed on a sloped roof:
 - vii. The highest point of the system shall not exceed the highest point of the roof to which it is attached.
 - viii. Solar panels shall be parallel to the roof surface, or tilted with no more than an eighteen-inch gap between the module frame and the roof surface.
 - b. For a building-mounted system installed on a flat roof, the highest point of the system shall not extend more than five feet above the height of the roof.
 - c. For a building-mounted system, solar panels shall be set back no less than three feet from the edge of the roof to allow for fire access and ventilation. On sloped roofs, this requirement does not apply along that portion of the bottom edge located more than three feet from a side edge. In the event New York State shall adopt regulations that govern the placement of roof-mounted solar panels for fire prevention purposes, said regulations shall supersede this setback provision.

E. Facilities Requiring a Special Use Permit.

1. Solar PV systems requiring a special use permit. Except as provided in Subsection D above, facilities permitted by right, preceding, no solar PV system shall be constructed or installed without first obtaining a special use permit and site plan approval from the Planning Board pursuant to Articles 43 and 42 of this chapter. Solar photovoltaic systems that include battery energy storage systems are subject to 128.27.2. A separate application is not required. In addition, all solar PV systems shall require a building permit. Solar PV systems requiring a special use permit and site plan approval shall include, but not be limited to:
 - a. Ground-mounted solar PV systems.
 - b. Building-mounted and building-integrated solar PV systems that have a system capacity greater than 25kW.

- c. Solar PV systems, regardless of size, that generate and provide electricity, through a remote net-metering agreement or other arrangement, to an off-site user or users located on a lot(s) other than the lot on which the system is located.
 - d. Solar PV systems, regardless of size, mounted on carports or canopy structures covering parking facilities.
2. Classification: Solar PV systems requiring a special use permit may be classified as either an accessory use or a principal use as set forth below.
- a. Principal use. A solar PV system constructed on a lot and providing electricity to an off-site user or users through a remote net-metering agreement or other arrangement, shall be considered a principal use. All ground-mounted solar PV systems that are classified as a principal use shall adhere to the area, yard and bulk requirements of the zoning district in which the system is located, unless modified herein by Subsection E3 below.
 - b. Accessory use/accessory structure. A solar PV system shall be considered an accessory use/accessory structure when generating electricity for the sole consumption of a principal use(s) or building(s) located on the same lot as the system. Notwithstanding the location and maximum coverage provisions for accessory uses/accessory structures found elsewhere in this chapter, all large-scale ground-mounted solar PV systems that are classified as an accessory use/accessory structure shall adhere to the minimum area, yard and bulk requirements for principal uses within the zoning district in which the system is located, unless modified herein by Subsection E3 below.
3. Standards for Facilities Requiring a Special Use Permit.
- a. Small-scale ground-mounted solar PV systems as accessory use. Notwithstanding the location and height standards for accessory structures and accessory uses found elsewhere in this chapter, the following height, location and minimum yard/setback standards shall apply to small-scale ground-mounted solar PV systems that are classified as an accessory use:
 - i. Location. Small-scale ground-mounted solar PV systems may be located within the side or rear yard. Location in a front yard is prohibited, including location in any front yard of a corner lot, except when a solar canopy is utilized in a parking lot.
 - ii. Rear and side yard. Small-scale ground-mounted solar PV systems shall be permitted in a required minimum side yard or rear yard setback, provided that such system shall be set back not less than 10 feet from any rear or side lot line.
 - iii. Height. Small-scale ground-mounted solar PV systems shall not exceed a height of 15 feet.
 - iv. Lot coverage. Small-scale ground-mounted solar PV systems shall comply with the lot coverage requirements of Subsection C above and the district in which it is located.
 - b. Large-scale ground-mounted solar PV systems and ground-mounted systems classified as a principal use.
 - i. Setbacks. Large-scale ground-mounted solar PV systems are subject to the minimum yard and setback requirements for the zoning district in which the system is located. No part of a ground-mounted system shall extend into the required yards and/or setbacks due to a tracking system or short-term or seasonal adjustment in the location, position or orientation of solar PV-related equipment or parts.
 - ii. Setback to residential district. If a large-scale ground-mounted solar PV system is located on a lot that adjoins a residential district, an additional setback shall be provided between the residential district and all site improvements associated with the system. The additional setbacks are intended to provide a visual buffer between the residential district and ground-mounted system. The additional setback, as well as the minimum setback area, shall be planted with a mixture of evergreen and deciduous plantings at a height so as to provide, as much as practicable, a visual screen of the ground-mounted system from residential uses. The species

type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.

- iii. Large-scale ground-mounted solar PV systems located in a residential district shall be set back an additional 120 feet from the minimum yard setback along all property lines that abut a lot located in a residential district. This additional setback dimension shall also apply to the front yard setback when the lot on the opposite side of the street is located in a residential district.
 - iv. Large-scale ground-mounted solar PV systems located in commercial and mixed-use districts shall be set back an additional 110 feet from the minimum yard setback along all property lines that abut a lot located in a residential district. This additional setback dimension shall also apply to the front yard setback when the lot on the opposite side of the street is located in a residential district.
 - v. Utility connections. Utility lines and connections from a large-scale ground-mounted solar PV system shall be installed underground, unless otherwise determined by the Planning Board for reasons that may include poor soil conditions, topography of the site, and requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
 - vi. Fences. Notwithstanding the provisions found in § 128-26.4 of this chapter, fences not exceeding eight feet in height, including open-weave chain-link fences and solid fences, shall be permitted for the purpose of screening or enclosing a large-scale ground-mounted solar PV system regardless of the district in which the system is located, provided said system is classified as a principal use. In instances where the provisions of § 128-26.4 would allow a fence greater than eight feet in height, the less restrictive provision shall apply.
 - vii. Barbed wire. Notwithstanding provisions for barbed wire found in § 128-26.4 of this chapter, fences intended to enclose a large-scale ground-mounted solar PV system may contain barbed wire canted out.
 - viii. Height. Large-scale ground-mounted solar PV systems may not exceed 12 feet in height.
 - ix. Minimum lot size. Large-scale ground-mounted solar PV systems shall adhere to the minimum lot size requirements for the zoning district in which the system is located, except that for residential districts, the minimum lot size shall be one acre.
 - x. Lot coverage requirements. Large-scale ground-mounted solar PV systems shall adhere to the maximum lot coverage requirement for principal uses within the zoning district in which they are located. The lot coverage of a large-scale ground-mounted solar PV system shall be calculated based on the definition of lot coverage found in Subsection C above.
 - xi. Signs. Large-scale ground-mounted solar PV systems classified as a principal use shall adhere to the sign requirements for the zoning district in which they are located.
 - xii. Location in front yard prohibited. Notwithstanding the requirements regulating location of accessory structures found elsewhere in this chapter, large-scale ground-mounted solar PV systems classified as an accessory use shall be prohibited in a front yard, including location in any front yard of a corner lot.
- c. Building-mounted solar PV systems.
- i. For a building-mounted system installed on a sloped roof, the highest point of the system shall not exceed the highest point of the roof to which it is attached. Solar panels shall be parallel to the roof surface, or tilted with no more than an eighteen-inch gap between the module frame and the roof surface.

- ii. For a building-mounted system installed on a flat roof, the highest point of the system shall not extend more than five feet above the height of the roof.
- iii. For a building-mounted system, solar panels shall be set back no less than three feet from the edge of the roof to allow for fire access and ventilation. On sloped roofs, this requirement does not apply along that portion of the bottom edge located more than three feet from a side edge. In the event New York State shall adopt regulations that govern the placement of roof-mounted solar panels for fire prevention purposes, said regulations shall supersede this setback provision.

F. Placement on Nonconforming Buildings. Notwithstanding the area, lot and bulk requirements of this chapter, building-mounted and building-integrated solar PV systems may be installed:

- 1. On the roof of a nonconforming building that exceeds the maximum height restriction, provided the building-mounted system does not extend above the peak or highest point of the roof to which it is mounted.
- 2. On a building that does not meet the minimum setback or yard requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.
- 3. On a building that exceeds the maximum lot coverage requirements, provided there is no increase in the extent or degree of nonconformity with said requirement.

G. Abandonment and Decommissioning.

- 1. Applicability and purpose. This section governing abandonment and decommissioning shall apply to large-scale ground-mounted solar PV systems with a rated capacity of 200 kW or more, hereinafter referred to as "commercial solar PV systems." It is the purpose of this section to provide for the safety, health, protection and general welfare of persons and property in the Town of Bethlehem by requiring abandoned commercial solar PV systems to be removed pursuant to a decommissioning plan. The anticipated useful life of such systems, as well as the volatility of the recently emerging solar industry where multiple solar companies have filed for bankruptcy, closed or been acquired creates an environment for systems to be abandoned, thereby creating a negative visual impact on the Town. Abandoned commercial systems may become unsafe by reason of their energy-producing capabilities and serve as an attractive nuisance.
- 2. Abandonment. A commercial solar PV system shall be deemed abandoned if the system fails to generate and transmit electricity at a rate of more than 10% of its rated capacity over a continuous period of one year. A commercial solar PV system also shall be deemed abandoned if following site plan approval initial construction of the system has commenced and is not completed within 18 months of issuance of the first building permit for the project.
- 3. Extension of time. The time at which a commercial solar PV system shall be deemed abandoned may be extended by the Planning Board for one additional period of one year, provided the system owner presents to the Board a viable plan outlining the steps and schedules for placing the system in service or back in service, at no less than 80% of its rated capacity, within the time period of the extension. An application for an extension of time shall be made to the Planning Board by the commercial solar PV system owner prior to abandonment as defined herein. Extenuating circumstances as to why the commercial solar PV system has not been operating or why construction has not been completed may be considered by the Board in determining whether to grant an extension.
- 4. Removal required. A commercial solar PV system which has been abandoned shall be decommissioned and removed. The commercial solar PV system owner and/or owner of the land upon which the system is located shall be held responsible to physically remove all components of the system within one year of abandonment. Removal of the commercial solar PV system shall be in accordance with a decommissioning plan approved by the Planning Board.
- 5. Decommissioning and removal.
 - a. Decommissioning and removal of a commercial solar PV system shall consist of:

- i. Physical removal of all aboveground and below-ground equipment, structures and foundations, including but not limited to all solar arrays, buildings, security barriers, fences, electric transmission lines and components, roadways and other physical improvements to the site;
 - ii. Disposal of all solid and hazardous waste in accordance with local, state and federal waste disposal regulations;
 - iii. Restoration of the ground surface and soil;
 - iv. Stabilization and revegetation of the site with native seed mixes and/or plant species (excluding invasive species) to minimize erosion.
 - b. Upon petition to the Planning Board, the Board may permit the system owner and/or landowner to leave certain underground or aboveground improvements in place, provided the owner can show that such improvements are part of a plan to redevelop the site, are not detrimental to such redevelopment and do not adversely affect community character or the environment.
6. Special use permit conditions. The following conditions shall apply to all special use permits issued for a commercial solar PV system. No special use permit shall be issued unless the Planning Board finds that the conditions have been or will be met.
- a. Decommissioning plan. All applications for a commercial solar PV system shall be accompanied by a decommissioning plan to be implemented upon abandonment and/or in conjunction with removal of the system. The decommissioning plan shall address those items listed in Subsection 5 above and include:
 - i. An estimate of the anticipated operational life of the system;
 - ii. Identification of the party responsible for decommissioning;
 - iii. Description of any agreement with the landowner regarding decommissioning;
 - iv. A schedule showing the time frame over which decommissioning will occur and for completion of site restoration work;
 - v. A cost estimate prepared by a qualified professional engineer, estimating the full cost of decommissioning and removal of the solar PV system;
 - vi. A financial plan to ensure that financial resources will be available to fully decommission the site.
 - b. Financial surety. Prior to the issuance of a building permit and every three years thereafter, the commercial solar PV system owner and/or landowner shall file with the Town evidence of financial security to provide for the full cost of decommissioning and removal of the solar PV system in the event the system is not removed by the system owner and/or landowner. Evidence of financial security shall be in effect throughout the life of the system and shall be in the form of an irrevocable letter of credit, bond or other security acceptable to the Planning Board. The irrevocable letter of credit or bond shall include an auto extension provision, to be issued by an A-rated institution solely for the benefit of the Town. The Town shall be entitled to draw on the letter of credit or bond in the event that the commercial solar PV system owner and/or landowner is unable or unwilling to commence decommissioning activities within the time periods specified herein. No other parties, including the owner and/or landowner shall have the ability to demand payment under the letter of credit or bond. Upon completion of decommissioning, the owner and/or landowner may petition the Town to terminate the letter of credit or bond. In the event ownership of the system is transferred to another party, the new owner (transferee) shall file evidence of financial security with the Town at the time of transfer, and every three years thereafter, as provided herein.
 - c. Amount. The amount of the surety shall be determined by the Town Engineer based upon a current estimate of decommissioning and removal costs as provided in the decommissioning plan and

subsequent annual reports. The amount of the surety may be adjusted by the Town upon receipt of an annual report containing an updated cost estimate for decommissioning and removal.

- d. Annual report. The commercial solar PV system owner shall on a yearly basis provide the Town Building Inspector a report showing the rated capacity of the system and the amount of electricity that was generated by the system and transmitted to the grid over the most recent twelve-month period. The report shall also identify any change in ownership of the solar PV system and/or the land upon which the system is located and shall identify any change in the party responsible for decommissioning and removal of the system upon its abandonment. The annual report shall be submitted no later than 45 days after the end of the calendar year. Every third year, to coincide with the filing of evidence of financial security, the annual report shall also include a recalculation of the estimated full cost of decommissioning and removal of the commercial solar PV system. The Town may require an adjustment in the amount of the surety to reflect any changes in the estimated cost of decommissioning and removal. Failure to submit a report as required herein shall be considered a violation subject to the penalties of this chapter.
7. Decommissioning and removal by Town. If the commercial solar PV system owner and/or landowner fails to decommission and remove an abandoned facility in accordance with the requirements of this section, the Town may enter upon the property to decommission and remove the system.
 - a. Procedure.
 - i. Upon a determination by the Building Inspector that a commercial solar PV system has been abandoned, the Building Inspector shall notify the system owner, landowner and permittee by certified mail: a] in the case of a facility under construction, to complete construction and installation of the facility within 180 days; or b] in the case of a fully constructed facility that is operating at a rate of less than 10% of its rated capacity, to restore operation of the facility to no less than 80% of rated capacity within 180 days, or the Town will deem the system abandoned and commence action to revoke the special use permit and require removal of the system.
 - ii. Being so notified, if the system owner, landowner and/or permittee fails to perform as directed by the Building Inspector within the one-hundred-eighty-day period, the Building Inspector shall notify the system owner, landowner and permittee, by certified mail, that the solar PV system has been deemed abandoned and the Town intends to revoke the special use permit within 60 days of mailing said notice. The notice shall also state that the permittee may appeal the Building Inspector's determination of abandonment to the Planning Board and request a hearing on the matter.
 - iii. Said appeal and request for hearing must be made and received by the Town within 20 days of mailing notice. Failure by the permittee to submit an appeal and request for hearing within the twenty-day period will result in the special use permit being deemed revoked as stated herein.
 - iv. In the event the permittee appeals the determination of the Building Inspector and requests a hearing, the Planning Board shall schedule and conduct said hearing within 60 days of receiving the appeal and request. In the event a hearing is held, the Planning Board shall determine whether the solar PV system has been abandoned, whether to continue the special use permit with conditions as may be appropriate to the facts and circumstances presented to the Board, or whether to revoke the permit and order removal of the solar PV system.
 - v. Upon a determination by the Building Inspector or Planning Board that a special use permit has been revoked, the decommissioning plan must be implemented and the system removed within one year of having been deemed abandoned or the Town may cause the removal at the owner and/or landowner's expense. If the owner and/or landowner fails to fully implement the decommissioning plan within one year of abandonment, the Town may collect the required surety and use said funds to implement the decommissioning plan.

8. Removal by Town and reimbursement of Town expenses. Any costs and expenses incurred by the Town in connection with any proceeding or work performed by the Town or its representatives to decommission and remove a commercial solar PV system, including legal costs and expenses, shall be reimbursed from the financial surety posted by the system owner or landowner as provided in Subsection G5(b) above. Any costs incurred by the Town for decommissioning and removal that are not paid for or covered by the required surety, including legal costs, shall be assessed against the property, shall become a lien and tax upon said property, shall be added to and become part of the taxes to be levied and assessed thereon, and shall be enforced and collected, with interest, by the same officer and in the same manner, by the same proceedings, at the same time and under the same penalties as are provided by law for the collection and enforcement of real property taxes in the Town.

§ 128-27.2 BATTERY ENERGY STORAGE SYSTEM (BESS)

- A. **Purpose.** This Battery Energy Storage System Law is adopted to advance and protect the public health, safety, welfare, and quality of life of Town of Bethlehem by creating regulations for the installation and use of battery energy storage systems, with the following objectives:
 1. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems;
 2. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems;
 3. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources; and
 4. To create synergy between battery energy storage system development and other stated goals of the community pursuant to the Comprehensive Plan.

B. Applicability.

1. The requirements of this Local Law shall apply to all battery energy storage systems permitted, installed, or modified in the Town of Bethlehem after the effective date of this Local Law, excluding general maintenance and repair.
2. Battery energy storage systems constructed or installed prior to the effective date of this Local Law shall not be required to meet the requirements of this Local Law.
3. Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this Local Law.

C. Definitions. As used in this Section, the following terms shall have the meanings indicated:

ANSI

American National Standards Institute

BATTERY(IES)

A single cell or a group of cells connected together electrically in series, in parallel, or a combination of both, which can charge, discharge, and store energy electrochemically. For the purposes of this law, batteries utilized in consumer products are excluded from these requirements.

BATTERY ENERGY STORAGE MANAGEMENT SYSTEM

An electronic system that protects energy storage systems from operating outside their safe operating parameters and disconnects electrical power to the energy storage system or places it in a safe condition if potentially hazardous temperatures or other conditions are detected.

BATTERY ENERGY STORAGE SYSTEM

One or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time, not to include a stand-alone 12-volt car battery or an electric motor vehicle. A battery energy storage system 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 600kWh and, if in a room or enclosed area, consist of only a single energy storage system technology.
2. Tier 2 Battery Energy Storage Systems have an aggregate energy capacity greater than 600kWh or are comprised of more than one storage battery technology in a room or enclosed area.

CELL

The basic electrochemical unit, characterized by an anode and a cathode, used to receive, store, and deliver electrical energy.

COMMISSIONING

A systematic process that provides documented confirmation that a battery energy storage system functions according to the intended design criteria and complies with applicable code requirements.

DEDICATED-USE BUILDING

A building that is built for the primary intention of housing battery energy storage system equipment, is classified as Group F-1 occupancy as defined in the Uniform Code, and complies with the following:

1. The building's only use is battery energy storage, energy generation, and other electrical grid-related operations.

2. No other occupancy types are permitted in the building.
3. Occupants in the rooms and areas containing battery energy storage systems are limited to personnel that operate, maintain, service, test, and repair the battery energy storage system and other energy systems.
4. Administrative and support personnel are permitted in areas within the buildings that do not contain battery energy storage system, provided the following:
 - a. The areas do not occupy more than 10 percent of the building area of the story in which they are located.
 - b. A means of egress is provided from the administrative and support use areas to the public way that does not require occupants to traverse through areas containing battery energy storage systems or other energy system equipment.

ENERGY CODE

The New York State Energy Conservation Construction Code adopted pursuant to Article 11 of the Energy Law, as currently in effect and as hereafter amended from time to time.

FIRE CODE

The fire code section of the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

NATIONALLY RECOGNIZED TESTING LABORATORY (NRTL)

A U.S. Department of Labor designation recognizing a private sector organization to perform certification for certain products to ensure that they meet the requirements of both the construction and general industry OSHA electrical standards.

NEC

National Electric Code.

NFPA

National Fire Protection Association.

NON-DEDICATED-USE BUILDING

All buildings that contain a battery energy storage system and do not comply with the dedicated-use building requirements.

NON-PARTICIPATING PROPERTY

Any property that is not a participating property.

NON-PARTICIPATING RESIDENCE

Any residence located on non-participating property.

OCCUPIED COMMUNITY BUILDING

Any building in Occupancy Group A, B, E, I, R, as defined in the International Building Code, including but not limited to schools, colleges, daycare facilities, hospitals, correctional facilities, public libraries, theaters, stadiums, apartments, hotels, and houses of worship.

PARTICIPATING PROPERTY

A battery energy storage system host property or any real property that is the subject of an agreement that provides for the payment of monetary compensation to the landowner from the battery energy storage system owner (or affiliate) regardless of whether any part of a battery energy storage system is constructed on the property.

UNIFORM CODE

the New York State Uniform Fire Prevention and Building Code adopted pursuant to Article 18 of the Executive Law, as currently in effect and as hereafter amended from time to time.

D. General Requirements.

1. A building permit shall be required for installation of all battery energy storage systems.
2. Issuance of permits and approvals by the Planning Board shall include review pursuant to the State Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].
3. All battery energy storage systems, all Dedicated Use Buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town of Bethlehem Town Code.

E. Facilities Permitted By Right: Tier 1 Battery Energy Storage Systems.

1. Tier 1 Battery Energy Storage Systems shall be permitted in all zoning districts by right subject to the Uniform Code and a Town Building Permit and exempt from site plan review. A Tier 1 Battery Energy Storage System shall provide electricity only for the land use(s) located on the same lot as the system.
2. Requirements for Outdoor Tier 1 battery energy storage systems:
 - a. The outdoor Tier 1 battery storage system is permitted as an accessory structure.
 - b. The outdoor Tier 1 battery storage system height is limited to ten (10) feet.
 - c. The outdoor Tier 1 battery storage system is not the primary use of the property.
 - d. The outdoor Tier 1 battery storage system is not allowed within the front yard.
 - e. The outdoor Tier 1 battery energy storage system shall comply with the minimum setbacks for principal structure setbacks applicable to the zoning district in which the battery energy storage backup system is sited.
 - f. Placement of any outdoor Tier 1 battery energy storage system shall meet the system's manufacturer's recommendations for placement in relation to the dwelling or commercial structure.
 - g. Screening of the outdoor Tier 1 battery energy storage system from adjacent properties through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area shall be required.

F. Facilities requiring a special use permit: Tier 2 Battery Energy Storage Systems.

1. Tier 2 Battery Energy Storage Systems are permitted through the issuance of a special use permit and site plan within the Rural Light Industrial, Heavy Industrial and Rural Mixed Use zoning districts, and shall be subject to the Uniform Code and the site plan application requirements set forth in this Section.
2. Applications for the installation of Tier 2 Battery Energy Storage System shall be:
 - a. Reviewed for completeness under §128-40 General Application Procedures.
 - b. Subject to a public hearing as per §128-40.9.
 - c. Referred to the County Planning Department pursuant to General Municipal Law § 239-m and §128-40.7, if required.
3. Requirements.

- a. Utility Lines and Electrical Circuitry. All on-site utility lines shall be placed underground unless otherwise determined by the Planning Board for reasons that may include poor soil conditions, topography of the site, and requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.
- b. Signage.
 - i. The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and 24-hour emergency contact information, including reach-back phone number.
 - ii. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
 - iii. Signs shall adhere to the sign requirements for the zoning district in which the battery energy storage system is located.
- c. Lighting. Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties, and adhere to Town Lighting requirements as found in §128-XX.
- d. Vegetation and tree-cutting. Areas within a minimum of [10] feet on each side of Tier 2 Battery Energy Storage Systems shall be cleared of combustible vegetation and other combustible growth. Additional clearance may be required depending on the condition of surrounding vegetation and its potential for damaging BESS equipment in a storm.
- e. Noise. The noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of [65] dBA as measured at the property line, in adherence with Town Code Chapter§81 Noise Abatement and Containment. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide Operating Sound Pressure Level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.
- f. Peer Review by NY State Energy Research & Development (NYSERDA). A Peer Review Report by NYSERDA shall be provided to the Town prior to the issuance of a building permit to demonstrate compliance with the Uniform Code requirements.
- g. Decommissioning.
 - i. Decommissioning Plan. The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan shall include:
 - a) A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components, structures, equipment, security barriers, and transmission lines from the site;
 - b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations;
 - c) The anticipated life of the battery energy storage system;
 - d) The estimated decommissioning costs and how said estimate was determined;
 - e) The method of ensuring that funds will be available for decommissioning and restoration;
 - f) The method by which the decommissioning cost will be kept current;

- g) The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
 - h) A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- ii. Decommissioning Fund. The owner and/or operator of the energy storage system, shall continuously maintain a fund or bond payable to the Town of Bethlehem, in a form approved by the Town of Bethlehem for the removal of the battery energy storage system, in an amount to be determined by the Town of Bethlehem for the period of the life of the facility. This fund may consist of a letter of credit or bond from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant.
- h. Site plan application. For a Tier 2 Battery Energy Storage System requiring a Special Use Permit, site plan approval shall be required. In addition to the requirements set forth in 128-42, a site plan application for Tier 2 Battery Energy Storage System shall include the following information:
 - i. A [three-line] electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
 - ii. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
 - iii. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
 - iv. Commissioning Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where commissioning is required by the Uniform Code, Battery energy storage system commissioning shall be conducted by a New York State (NYS) Licensed Professional Engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning.
 - v. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to [Code Enforcement/Zoning Enforcement Officer or Reviewing Board] prior to final inspection and approval and maintained at an approved on-site location.
 - vi. Fire Safety Compliance Plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.
 - vii. Operation and Maintenance Manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
 - viii. Emergency Operations Plan. A copy of the approved Emergency Operations Plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code

officials, and emergency responders. The emergency operations plan shall include the following information:

- a) Procedures for safe shutdown, de-energizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
- b) Procedures for inspection and testing of associated alarms, interlocks, and controls.
- c) Procedures to be followed in response to notifications from the Battery Energy Storage Management System, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
- d) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, de-energizing equipment, and controlling and extinguishing the fire.
- e) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
- f) Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
- g) Other procedures as determined necessary by the Town of Bethlehem to provide for the safety of occupants, neighboring properties, and emergency responders.
- h) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

4. Special Use Permit Standards.

- a. Setbacks. Tier 2 Battery Energy Storage Systems shall comply with the setback requirements of the underlying zoning district for principal structures.
- b. Setback to residential district. If a Tier 2 Battery Energy Storage System is located on a lot that adjoins a residential district, an additional setback shall be provided between the residential district and all site improvements associated with the system. The additional setbacks are intended to provide a visual buffer between the residential district and battery energy storage system. The additional setback, as well as the minimum setback area, shall be planted with a mixture of evergreen and deciduous plantings at a height so as to provide, as much as practicable, a visual screen of the ground-mounted system from residential uses. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.
- c. Tier 2 Battery Energy Storage Systems shall be set back an additional 110 feet from the minimum yard setback along all property lines that abut a lot located in a residential district. This additional setback dimension shall also apply to the front yard setback when the lot on the opposite side of the street is located in a residential district.
- d. Height. Tier 2 Battery Energy Storage Systems located in structures shall comply with the building height limitations for principal structures of the underlying zoning district and systems located outside shall be limited to 15 feet.
- e. Fencing Requirements. Notwithstanding the provisions found in §128-XX(previous code 128-47 (fences)) of this chapter Tier 2 Battery Energy Storage Systems, including all mechanical equipment, shall be enclosed by a [8-foot-high] fence with a self-locking gate to prevent

unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports.

- f. Barbed wire. Notwithstanding provisions for barbed wire found in §128-XX(previous code 47B(6)(b)) of this chapter, fences intended to enclose a Tier 2 battery energy storage system may contain barbed wire canted out.
 - g. Screening and Visibility. Tier 2 Battery Energy Storage Systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.
5. Ownership Changes. If the owner of the battery energy storage system changes or the owner of the property changes, the special use permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of the special use permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the [Code Enforcement/Zoning Enforcement Officer] of such change in ownership or operator within [30] days of the ownership change. A new owner or operator must provide such notification to the [Code Enforcement/Zoning Enforcement Officer] in writing. The special use permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the [Code Enforcement/Zoning Enforcement Officer] in the required timeframe. Reinstatement of a void special use permit will be subject to the same review and approval processes for new applications under this Local Law.

G. Safety.

1. System Certification. Battery energy storage systems and equipment shall be listed by a Nationally Recognized Testing Laboratory to UL 9540 (Standard for battery energy storage systems and Equipment) or approved equivalent, with subcomponents meeting each of the following standards as applicable:
 - a. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail Applications),
 - b. UL 1642 (Standard for Lithium Batteries),
 - c. UL 1741 or UL 62109 (Inverters and Power Converters),
 - d. Certified under the applicable electrical, building, and fire prevention codes as required.
 - e. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540(or approved equivalent) and applicable codes, regulations and safety standards may be used to meet system certification requirements.
2. Site Access. Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department.
3. Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

H. Permit Time Frame and Abandonment.

1. The Special Use Permit and site plan approval for a battery energy storage system shall be valid as per the requirements under 128-40.8.
2. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town of Bethlehem may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2 Battery Energy Storage System and restoration of the site in accordance with the decommissioning plan.

- I. **Enforcement.** Any violation of this Battery Energy Storage System Law shall be subject to the same enforcement requirements, including the civil and criminal penalties, provided for in the zoning or land use regulations of The Town of Bethlehem.
- J. **Severability.** The invalidity or unenforceability of any section, subsection, paragraph, sentence, clause, provision, or phrase of the aforementioned sections, as declared by the valid judgment of any court of competent jurisdiction to be unconstitutional, shall not affect the validity or enforceability of any other section, subsection, paragraph, sentence, clause, provision, or phrase, which shall remain in full force and effect.