

PART I – PROPOSED LANGUAGE AMENDMENTS TO THE TOWN ZONING LAW AND SUBDIVISION REGULATIONS

<u>Code Section</u>	<u>Item</u>	<u>Issue Summary</u>
01. 103-15(J)	Performance Surety	(Major Final Plat Procedure).
<p><u>Comment:</u> Code requires Town Engineer to submit a cost estimate for improvements to the Planning Board. The procedure is not followed as currently written.</p> <p><u>Response:</u> Amend §103-15(J) as follows:</p> <p>J) <i>Performance surety and estimate of cost of improvements. The Planning Board may require as a condition of final plat approval that the owner/applicant establish or provide a cash escrow account, performance bond or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the required public improvements associated with development of the plat. The surety shall name the Town as beneficiary, shall be in a form satisfactory to the Town Attorney or his/her designee and shall be in an amount as determined by the Town Engineer based on an estimate of the cost of the required public improvements. Based on the conditions of final approval the Town Engineer, or other designated Town official, shall prepare an estimate of the cost of the required improvements. The estimate shall be submitted to the Planning Board and the applicant along with any recommendations on the final plat. The surety to guarantee completion of the improvements shall be in accordance with the requirements of §103-16(B) of this Chapter</i></p>		
02. 103-16(B)	Surety for Public Improvements	(Required Public Improvements)
<p><u>Comment:</u> Wording of the Code requires applicant to complete a number of tasks related to public improvements prior to issuance of a Building Permit. As written, it conflicts with subsequent language in the section and actual practice.</p> <p><u>Response:</u> Amend §103-16(B) as follows:</p> <p>B) <i>Surety. As outlined below, the Town may require that A performance surety in the form of a bond, cash, or an irrevocable letter of credit, as determined by the Town, shall be delivered to the Town to guarantee that the applicant will faithfully cause to be constructed and completed, within a reasonable period of time, the required public improvements and <u>will</u> convey the required lands and improvements to the Town free and clear of encumbrances. As a condition of final plat approval and before issuance of building permits, the applicant shall follow the procedures set forth below:</i></p> <p>1) <i>In an amount set by tThe Planning Board <u>may require as a condition of final plat approval, based upon from</u> an estimate prepared by the Town Engineer, <u>that</u> the applicant shall file with the Town Clerk Department of Economic Development and Planning either a <u>performance bond, a certified check to cover the full cost of the required improvements cash escrow account,</u> or an irrevocable letter of credit, from a bank having a credit acceptable to the Town, <u>to cover the cost of the required public improvements.</u> Any such surety shall comply with the requirements of §277 of the Town Law and, further, shall be satisfactory to the Town Board and Town Attorney <u>or his/her designee</u> as to form, sufficiency, duration, renewability, and manner of execution. The term of the surety shall be sufficient, as determined by the Town, to permit the completion of improvements by the applicant.</i></p>		

- 2) The required public improvements shall not be considered to be completed until the ~~installation of the improvements have been approved by the~~ Town Engineer has approved the improvements as installed and an as-built-~~survey~~ map has been submitted to the Town. The ~~survey map~~ shall indicate the location of monuments marking all underground utilities as actually installed. The performance surety shall not be released until the improvements have been accepted by the Town Board upon the recommendation of the Town Engineer, ~~and Town Attorney.~~
- 3) The applicant shall complete all public improvements required for the lots, or part thereof, to the satisfaction of the Town ~~Board~~, before any certificate of occupancy may be issued.
- 4) If the Town Board decides at any time during the term of the performance surety that the extent of the building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such performance surety, or that required improvements have been installed in sufficient amount to warrant reduction in the face amount of said surety, or that the character and extent of such development require additional improvements previously waived for a period stated at the time of fixing the original terms of such surety, the Town Board may modify its requirements for any or all such improvements, and the face value of such performance surety shall thereupon be reduced or increased by an appropriate amount so that the new face value will cover the cost in full of the amended list of improvements required by the Town Board and any security deposited with the surety may be reduced or increased proportionately.

03. 103-16(B)(1) Surety for Public Improvements (Required Public Improvements)

Comment: Code gives the Planning Board the authority to set the amount of the surety bond to guarantee improvements. In practice the Board does not set the amount.

Response: See Item 2 above.

04. 103-21(A) Lot Line Revisions (Lot Line Revisions)

Comment: Ambiguous code language. Need to clarify that lot line revisions apply to plats previously approved by the Planning Board.

Response: Amend §103-21(A) as follows:

- A) *Planning Board Approval Required.* Planning Board approval shall be required for Any changes in the location of a lot line shown on an ~~approved and~~ filed final plat that was previously approved by shall require approval from the Planning Board

05. 103-36(A) Digital Copies (Final Plat Submission)

Comment: Add requirement for submission of digital copy of the plan set in accordance with Town's digital submission standards.

Response: Amend §103-36(A) to add a new subparagraph 5 to read as follows:

- 5) A digital copy of the final plat and plan set, prepared in accordance with the Town's digital submission standards.

Response: Amend §103-35(D) to add a new subparagraph 5 to read as follows:

5) If requested by the Department of Economic Development and Planning, the applicant shall provide a digital copy of the preliminary plat and plan set. Said submission will be prepared in accordance with the Town's digital submission standards.

06. 128-40(C)(6)(a) SEQR Time Frame (PDD Application)

Comment: Code requires that after referral by Town Board, the Planning Board has 60 days to make a recommendation on a SEQR Determination of significance. This may be extended an additional 60 days by mutual consent of the Planning Board and applicant. Should these time frames be eliminated? Experience suggests that these time periods are insufficient to complete a SEQR review.

Response: Amend §128-40(C)(6)(a) as follows:

- a) *SEQRA recommendation and review period. The Planning Board shall, within ~~sixty (60)~~ one hundred twenty (120) days of the date of referral, issue a report to the Town Board recommending a SEQRA determination of significance, and shall provide supporting reasons for its recommendation. In making its recommendation, the Planning Board shall consider the guidelines and criteria for determining significance found at 6 NYCRR part 617.7. If the Planning Board determines that there is insufficient information upon which to base a recommendation it shall so notify the Town Board within ~~sixty (60)~~ one hundred twenty (120) days of the date of referral and shall specify the additional information that it will require to make such recommendation. Notwithstanding the provisions of this paragraph, the Planning Board and applicant may by mutual consent agree to an extension of the ~~sixty (60) day~~ period for Planning Board review. Where an extension of time has been granted by the Planning Board, or where the Planning Board has notified the Town Board that there is insufficient information upon which to base its recommendation, the time frames for action by the Planning Board and Town Board shall be extended accordingly.*
 - i) *Exception. The Planning Board may forego consideration and issuance of a recommendation on the SEQRA determination of significance in instances where the Planning Board has determined that it will recommend denial of the zone change request. In such instances, the Planning Board shall issue its recommendation on the proposed zone change within the above noted ~~sixty (60)~~ one hundred twenty (120) day time period.*
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07. 128-89(R) Time Limit on Validity (ZBA Variance Procedure)

Comment: Code says that any use or area variance granted by the ZBA will become void if construction is not commenced within one year of approval of the variance and completed within two years. Town may want to consider an exception for projects that need site plan or subdivision approval.

Response: Amend paragraph (R) as follows:

- R) *Time Limit. Any area variance or use variance which has been granted by the Zoning Board of Appeals pursuant to this Article shall be void if construction is not started within one (1) year of the date of approval, and completed within two (2) years of the date of such approval. In addition, the variance shall be void if the associated use shall have ceased for more than twelve (12) consecutive months for any reason.*
 - 1) *Exception. Notwithstanding the time limitations placed on the start and completion of construction in Paragraph R above, for any project requiring site plan approval subsequent to the granting of an area variance or use variance, said variance shall be void if construction is not started within two (2) years of the date of approval, and completed within three (3) years of the date of such approval.*
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08. 128-99 Special Use Permits (Schedule of Uses)

128-73

Accessory Apartments

(SUP & SP Review)

Comment: Code currently requires that all special permit uses must also obtain site plan approval. Are there certain uses where this may not be necessary (e.g., accessory apartments, conservancy)?

Response: Issue concerned whether certain special use permits, most notably accessory apartments should require site plan review as part of the special use permit review. Add the following paragraph to §128-73:

C) Special Use Permit and Site Plan Review. For any accessory apartment requiring a special use permit and site plan review, said reviews shall be limited in scope to the physical improvements, impacts and mitigation that are directly caused by and/or related to establishment of the accessory apartment. In no instance shall the approval of a special permit or site plan for an accessory apartment be construed to prevent alterations to the premises that are unrelated to the accessory apartment, or to require an amendment to the approved special permit and site plan for such unrelated alterations.

09. 128-100

Setbacks for Accessory Uses

(Lot and Bulk Schedule)

Comment: Lot and bulk schedule does not indicate any differentiation between setback requirements for principal and accessory structures. Should be a notation to this effect in the schedule.

Response: Insert the following notation immediately following the lot and bulk table and prior to footnotes:

Note: Accessory Uses – See individual zoning district regulations in Article V for setback, height and coverage requirements relating to accessory structures.

10. 128-100

Home Occupation Footnotes

(Schedule of Uses)

Comment: May want to revise footnote number 5 to indicate that de minimus home occupations are exempt from site plan approval. Code is ambiguous as to whether or not they are exempt

Response: Amend footnote # 5 as follows:

5. Subject to criteria in Section 128-50. Note: Site Plan Approval is not required for a home occupation that constitutes a de minimis use. See §128-50(E).

Response: Amend §128-50(E) to read as follows:

- E) De Minimis Use: Registration ~~is~~ and site plan approval are not required for a Home Occupation use which meets each of the following standards:*
 - 1) No physical change to the exterior of a principal or accessory structure is required to accommodate the Home Occupation; and*
 - 2) The use is conducted on the site solely by persons utilizing the home as their primary residence; and*
 - 3) The Home Occupation has no non-resident employees.*
 - 4) There is no sign or other exterior advertisement of the existence of the Home Occupation use; and*
 - 5) There is no exterior storage of materials, equipment, vehicles or other supplies used in conjunction with the Home Occupation*

11. 128-57(I)(2) Column Heading (Park Fee Amount)

Comment: Typo in fee amount column of table. Should read, “cost per dwelling unit”.

Response: Amend fee table in §128-57(I)(2) as follows:

<i>Unit Type</i>	<i>Fee Amount (square feet (per dwelling unit))</i>
a) <i>Single-family detached</i>	<i>\$1,550.00</i>
b) <i>Single-family attached⁵</i>	<i>\$1,100.00</i>
c) <i>Two- to four-family units⁶</i>	<i>\$1,150.00</i>
d) <i>Multifamily units⁷</i>	<i>\$925.00</i>

12. 128-56(H) Restaurant Parking (Parking Schedule)

Comment: Parking schedule lists restaurants under three different headings, clubs and restaurants; drive thru restaurant, and restaurant no drive thru. Each has a different parking requirement. Should the requirements be consistent – particularly the club and restaurant vs. restaurant no drive thru standards.

Response: Amend parking schedule as follows:

SCHEDULE OF OFF-STREET PARKING

<i>Uses</i>	<i>Spaces Required</i>
Residential Uses	
<i>One, two, three and four family dwelling</i>	<i>2 for each dwelling unit</i>
<i>Multifamily dwelling</i>	<i>1.5 for each dwelling unit</i>
<i>Multifamily dwelling - senior citizen/ subdivided</i>	<i>1.1 for each dwelling unit</i>
<i>Bed & Breakfast, Inn, Motel, Hotel</i>	<i>1 for each guest room</i>
Non-Residential Uses	
<i>Bank, financial business</i>	<i>1 for each 400 square feet of office space and customer area</i>
<i>Bowling alley</i>	<i>5 for each alley</i>
<i>Church or temple</i>	<i>1 for each 5 seating spaces in main assembly room</i>
<i>Clubs and restaurants</i>	<i>1 for each 50 square feet of gross floor area</i>
<i>Funeral home</i>	<i>5 for each 1000 square feet of gross floor area</i>
<i>Industrial or manufacturing</i>	<i>1 for each 2 employees on maximum working shift</i>
<i>Medical Office</i>	<i>1 for each 200 square feet of gross floor area</i>
<i>Motor Vehicle Repair</i>	<i>1 for each 3 repair bays</i>
<i>Nightclub (including w/ restaurant)</i>	<i>1 for each 50 square feet of gross floor area</i>

13. 128-22 “Clinic” (Definitions)

Comment: The definition of clinic as currently written includes such uses as a doctor’s office, dentist office, medical group office, etc. This is not mutually exclusive with the definitions of professional office or office park and should be revised. (For example, in MED zones it is unclear whether a doctor’s office is a secondary use or a primary use. Clinics are allowed as a secondary use only. In contrast, office parks, the definition of which also incorporates doctor and dentist offices, are allowed as a primary use.)

Response: Delete the definition of “Clinic” from §128-22 and delete “Medical Clinic” from the “Schedule of Use Regulations” §128-99.

14. 128-22 “Food Processing” (Definitions)

Comment: Food processing is listed as a permitted use in industrial zones. A definition is needed. It is unclear what activities constitute food processing.

Response: Add the following definition to §128-22.

FOOD PROCESSING -- The preparation, processing, or canning and packaging of food products.

FOOD PROCESSING ESTABLISHMENT – A manufacturing establishment that produces, processes, cans and/or packages food for off-site consumption, where: (1) the gross floor area of the establishment exceeds 2,500 square feet, and/or (2) less than 25 percent of gross floor area is devoted to on-site display and retail sale of such products to the general public. Food processing establishments may include, but are not limited to facilities involved in the production, processing, canning or packaging of bakery products, sugar and confectionary products, dairy products, fats and oil products (exclusive of rendering plants), fruit and vegetable products, grain mill products, meat and poultry products (excluding facilities that slaughter animals), seafood products, and miscellaneous food preparation from raw products, but excluding restaurants, food stores and similar establishments where such activity is customarily carried on as a secondary part of the business.

Amend the “Schedule of Use Regulations” §128-99 by changing the listed land use “Food Processing” to “Food Processing Establishment”.

15. 128-40(H)(1)(b) Minimum Yard Dimension (Planned Development District)

Comment: Code requires a minimum 50 ft setback from the district boundary of a Planned Development District. Should there be flexibility added to the PDD regs that would allow the Town Board to reduce the requirement where the Board finds it would “improve project design” and “not detract from the aesthetic character of the area”?

Response: Some staff favor a provision, which would allow the Town Board to reduce the 50 ft district boundary setback requirement on a case-by-case basis where it finds that project design would be improved. Others oppose the change and see it as a watering down of a provision designed to protect/buffer adjoining property owners from externalities produced by dissimilar land use and increased density associated with PDD.

Amend §128-40(H)(1)(b) as follows:

- b) Yard dimensions. Except as may otherwise be determined by the Town Board, ~~the~~ the minimum setback along the perimeter of the PDD shall not be less than fifty (50) feet. This setback shall apply to parking areas, buildings and other similar structures. Where the PDD abuts a Residential A, Residential B, Residential C, Core Residential or Rural Riverfront 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 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 right-of-way or similar crossings that the Planning Board determines necessary in providing access to the PDD.

16. 128-40(H)(1)(c) Minimum Front Yard Setback (Planned Development District)

Comment: Code requires a minimum 60 ft. cl / 35 ft pl front yard setback for buildings in a PDD, Should there be flexibility added to the PDD regs that would allow the Town Board to reduce the requirement where the Board finds it would “improve project design” and “not detract from the aesthetic character of the area”?

Response: Agreement that flexibility should be maintained along roads that are internal to the PDD. Disagreement over whether the setback flexibility should also apply to roads that are external to the PDD.

Amend §128-40(H)(1)(c) as follows:

- c) *Front yard.*
 - (i) *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 sixty (60) feet from the center line of the pavement or roadway of the street or highway on which the building fronts or thirty-five (35) feet from the street or highway property line of the street or highway on which the building fronts, whichever develops the greater front yard.*
 - (ii) *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 sixty (60) feet measured from the center line of the pavement or roadway of said side street or highway or thirty-five (35) feet from the street or highway property line of said side street or highway, whichever develops the greater front yard.*
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17. 128-48 Code Format (Flag Lots and Shared Driveways)

Comment: Code combines shared driveways and flag lots into one section of the code. Should each topic be treated as a separate section?

Response: Amend §128-48(A) to read as follows:

A) Flag Lot Requirements. Lots which meet the definition of "flag lot" as defined in this Chapter, shall meet the following additional standards:

Response: Amend §128-48(B) to read as follows:

B) Modification of Flag Lot Requirements. The Planning Board is authorized to modify the requirements for flag lots as set forth in paragraph "A" above provided the Board determines that such modification will result in an improved project design; will be protective of the environment; and will ensure the protection of the public health, safety and welfare.

Response: Amend §128-48(C) to read as follows:

C) Shared Driveways. A shared driveway may be used to access no more than three (3) buildable lots. In the instance of flag lots, Shared driveways may be used to access a flag lot and not more than

two (2) lots adjoining the flag lot provided 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.

18. 128-49 Consistency Update (Grading, Erosion & Sedimento...)

Comment: Town recently adopted a local law dealing with erosion and sediment control. The zoning language needs to be updated for consistency with the new local law adopted 11/14/07.

Response: The Town has since adopted language addressing this issue.

19. 128-73(A) Accessory Apartments (Rural Riverfront Areas)

Comment: Code allows accessory apartments within single-family homes in residential districts and within principal or accessory buildings in Rural and Rural Industrial Districts. Should they also be permitted in principal and accessory buildings in Rural Riverfront Districts (RRD)? The code is currently silent on where they are allowed in the RRD.

Response: Amend paragraph A as follows.

- A) *Accessory Apartment. One (1) dwelling unit serving as an accessory apartment shall be permitted as an accessory use within a single-family dwelling in any residential district subject to special use permit approval by the Planning Board. The accessory apartment shall be located within the principal building. Notwithstanding the foregoing, within the Rural District, Rural Riverfront District and the Rural Light Industrial District, the accessory apartment may be located within the principal building, or within a detached or attached accessory building on the same lot. The Certificate of Occupancy for the principal use shall clearly identify such accessory dwelling unit and its floor area.*
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20. 128-76(B) Minimum Lot Area (Kennels)

Comment: Code currently requires a minimum lot area of 10 acres for kennels. Is this excessive? Is 5 acres more reasonable?

Response: Amend Paragraph B as follows.

- B) *The minimum lot area is ~~ten (10)~~ five (5) acres. In addition, no dog kennel, runway or exercise pen shall be located within two hundred (200) feet of any lot line*
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21. 128-99 Outdoor Theaters (Schedule of Uses)

Comment: Outdoor drive-in theaters are currently allowed in Rural and Rural Light Industrial Districts after site plan approval. Should they also be permitted in the Rural Hamlet District by site plan/special use permit? (Note: Jericho drive in is located in a Rural hamlet zone.)

Response: Amend the "Schedule of Use Regulations" §128-99 by allowing outdoor drive-in theaters in Rural Hamlet Districts by Special Use Permit (SUP).

22. 128-71(M) Surety (Site Plan Approval)

Comment: Language in zoning law needs to be amended to comply with Town Law – as noted in Sub Regulations (103-16(B)).

Response: Amend §128-71(M)

M) *Surety.* ~~In order to insure the full and faithful completion of all construction activities related to compliance with all conditions set forth by the~~ The Planning Board may require in its issuance of a Site Plan Approval, that the owner/applicant shall establish or provide, prior to construction, a cash escrow account, certification performance bond or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and/or required public improvements associated therewith, 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 or his/her designee. 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.

23. 128-56(D) Unregistered Vehicles (Parking Requirements)

Comment: Consider adding provision that cross-references Section 128-75(B) Junkyards. This section permits only one unregistered vehicle in a location visible from adjoining properties

Response: Amend Paragraph D as follows.

D) *Prohibited Parking.* In any commercial district, no vehicles, trailers, portable signs, or any device capable of being or designed to be towed by a vehicle shall be parked on a lawn or landscaped area in a front or side yard, unless specifically approved by the Planning Board, Town Board, or Zoning Board of Appeals. (Also see §128-75(B), Junkyards, regarding the parking of unregistered vehicles.)

24. 128-50(D)(1)(a) Taxi Service (Home Occupations)

Comment: Code prohibits the land use taxi service as a home occupation in a residence. Should the Town consider allowing taxi service as a home occupation in order to accommodate potential demand for such service in the Hamlets. (e.g. senior housing, business professionals, medical appointments, intermodal access to airport, etc)

Response: No change is recommended at this time to home occupations. Instead, add "Taxi Service" to the "Schedule of Use Regulations", §128-99, as a permitted use requiring site plan approval in the following zoning districts: Rural, Commercial Hamlet, Rural Hamlet, General Commercial, Heavy Industrial, Rural Light Industrial.

25. 128-71(K) Typo (Site Plan Decision)

Comment: This paragraph requires the Planning Board to consider the standards of Sec. 128-71(F) in reaching a decision on a site plan application. Paragraph 128-71(F) contains no standards; it deals with site plan fees. It appears that the correct reference would be to 128-71(E), which deals with site plan design criteria.

Response: Amend Paragraph K to reflect the proper citation as follows:

K) *Decision.* In rendering its decision concerning any site plan application, the Planning Board shall consider the standards of §128-71~~(F)~~(E) and the applicable design standards of Article V of this Chapter, and shall consider the nature, arrangement and appearance of all proposed structures,

improvements and uses of the lot, including their potential impact on adjacent properties, architectural features and land uses such that:

26. 128-33(E)(5) Grammatical (Hamlet District Design)

Comment: Parenthesis should be removed from the phrase “if building is not built to the sidewalk edge”.

Response: Amend Paragraph 5 to remove parenthesis as follows:

E) Design Guidelines.

- 5) The incorporation of small, landscaped, front yards should be encouraged with any new residential or commercial use ~~(if building is not built to the sidewalk edge)~~.*
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27. 128-82(A) Requirement for Building Permit (Building Permits)

Comment: Language of current code appears to require a building permit for any alteration of a structure: “No person shall alter or add to any structure ... without a valid zoning or building permit.” Should there be a qualification in the language such as: “not required for routine/ordinary maintenance”.

Response: Amend Paragraph A as follows:

- A) Building Permits. Building Permits shall be required and issued pursuant to Chapter 53, “Building Construction and Fire Prevention Administration” of the Town Code. No person shall alter or add to any existing structure, or construct a new structure or part thereof, nor change the use of any building without a valid zoning and building permit as required by Chapter 53 and issued by the Building Inspector.*
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28. 128-60(I)(1) Pool Fencing (Pools, Hot Tubs, Spas)

Comment: Paragraph requires a 4 ft high fence around in-ground pools, spas or hot tubs. Should there be an exception for spas or hot tubs with lockable tops?

Response: Amend § 128-60(I)(1) as follows:

I) Fencing. Fencing shall comply...

- 1) In-ground pools, spas or hot tubs. Fences shall be a minimum of four (4) feet in height and a maximum of six (6) 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.*

Response: Amend § 128-60(I)(4) as follows:

- 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.*
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29. 128-60(Q) Abandonment of Pool (Pools, Hot Tubs, Spas)

Comment: Paragraph requires that when a pool is abandoned the area occupied by the pool must be returned to its original grade and approximately the same condition as existed prior to placement of the pool. Owner is required to notify the building inspector of the abandonment. Should this require a building permit?

Response: Amend § 128-60(A) as follows:

- 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.*

Response: Amend § 128-60(Q) as follows:

- 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.*
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30. 128-100 Density & Lot Size (Rural District & Rural Light Industrial District)

Comment: In the case of major subdivisions, the lot and bulk schedule allows a maximum density of 1 dwelling unit per 2 acres of unconstrained land in the Rural District. This applies regardless of whether or not the parcel is served by public water and sewer. For minor subdivisions, however, (1) where there is no public water and sewer service available, maximum density is determined by ACHD requirements and (2) where public water and sewer are available, there is no maximum density requirement. (Note: Although there is no minimum lot size requirement, a de facto minimum lot size is created by applying all the other setback requirements of the district to the lot. This creates a minimum lot size of 9,000 sq. ft.) At face value, the code does not appear to make sense. If water and sewer is available, the code requires lower density. If water and sewer is not available, the code allows higher density. As an example, the code allows by right 4-unit buildings in the Rural zone yet, for a 4 unit building there is no minimum lot size. Consider revising code to a more rational relationship between intensity of land use/availability of services/permitted density.

Response: Amend § 128-100, Schedule of Area, Yard and Bulk Requirements, by revising footnote 12 to read as follows:

12. *Each proposed lot shall meet the minimum area and bulk standards as set forth in Section 128-100, as applicable. For the Rural District and Rural Light Industrial District, the minimum lot size requirement for residential uses shall be the same as that required in the Residential "C" District. In addition, for all Districts, if the site is not served by a public water supply and 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 Albany County Health Department.*
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31. Chapter 115 Trailer Ordinance

Comment: Language in the trailer ordinance still references the zoning districts that existed under the previous zoning code. This needs to be updated to reflect the current code.

Response: Amend Town Code Section 115-12.B.(1) as follows:

- (1) *Any owner of land who intends to build a dwelling house upon a parcel of land located in a ~~rural-zoned or a rural-not-zoned~~ Rural, Rural Riverfront or Rural Light Industrial District in the Town of Bethlehem may make application to the Town Board for a permit to park a house trailer upon said parcel of land during the erection of said dwelling. After such investigation as the Town Board deems proper, the Town Board may authorize the Town Clerk to issue a permit for a period not in excess of one-year from the date of issuance thereof or until the said dwelling house has been completed, whichever is the shorter period. Said permit may be extended by the Town Board for a period not in excess of one additional year from the date of expiration. Upon the expiration of the said permit or any extension thereof, said trailer shall be vacated as living quarters and disconnected from its water supply and sewage disposal system and removed from the premises.*

Response: Amend Town Code Section 115-12.B.(3) as follows:

- (3) *Any owner or occupant of a house trailer desiring to place or park the same in the Town of Bethlehem outside a licensed trailer camp other than an owner or occupant as set forth in Subsection B(1) and (2) of this section shall make written application to the Town Board. The Town Board may, in its discretion, upon such terms and conditions as it deems advisable and after compliance with the provisions of this chapter, authorize the issuance of a permit for such house trailer. Said permit shall be valid for a term of not to exceed four weeks. Nothing contained in this Subsection B(3) shall be construed to prevent the owner of a trailer who resides in a ~~rural-district-zoned or a rural-district-not-zoned~~ Rural, Rural Riverfront or Rural Light Industrial District³ from parking his unoccupied trailer on his own property in such district without the necessity of obtaining a permit. [Amended 12-26-1961; 3-23-1988 by L.L. No. 2-1988]*

32. 128-56 4 Corners Parking (Off-street Parking and Loading)

Comment: Businesses in 4 corners area consist largely of older structures on small lots. For many, there is insufficient land area to meet parking schedule requirements on the site. (1) It is unclear from code whether these structures would need to meet parking requirements if they are remodeled. (2) In the event they must comply with the parking schedule, the Code does not appear to allow shared parking or joint parking in the four corners to allow businesses to meet the requirements. (In addition, the terms joint parking and shared parking are undefined.)

Response: Amend Section 128-56(A) as follows:

- A) *Off-street parking spaces shall be required for all structures and uses that are established constructed or rebuilt after the effective date of this Chapter, except that parking spaces shall not be required for structures and uses in existence on the effective date hereof that are rebuilt or repaired as a result of damage or destruction by causes beyond the control of the owner or lessee. This exception shall not permit the rebuilding or repair of a building having a greater number of stories or square feet of ground space than the building damaged or destroyed unless provision is made for off-street parking as provided in this Chapter.*

1) Notwithstanding the provisions of Paragraph A above, structures that are existing on the effective date of this Chapter and located on a lot in a Hamlet District shall be exempt from the off-street parking requirements relating to the number of required parking spaces, as such is found in the "Schedule of Off-Street Parking" in Paragraph H of this Section, provided there is no increase in the floor area of the building(s) on the lot, and further provided that there is no reduction in the number of parking spaces located on the lot, as each existed on the effective date of this Chapter.

Response: Amend Section 128-56(J) as follows:

- J) *Nothing contained in this Chapter shall be interpreted to prevent, in any Hamlet or commercial district, the provision of joint parking lots for one (1) or more uses located on separate lots or on common lots. Parking spaces located in a joint parking lot may be used to satisfy the off-street parking requirements of this article, provided said spaces are located within six hundred (600) feet walking distance of the lot containing the land use they are intended to serve, as measured along the public right-of-way, and further provided that said spaces shall be subject to appropriate deed restrictions (or other legal instrument), as approved by the Planning Board Attorney, binding the owner of the parking spaces and his/her heirs and assigns to provide and maintain the required number of spaces for the land use that they are intended to serve either throughout the existence of such land use, or until such spaces are provided elsewhere. In no instance shall parking spaces in a joint parking lot that are devoted to meeting the parking requirements of one (1) land use be used to meet the parking requirements of another land use.*

Response: Add the following definitions to §128-22:

PARKING LOT, JOINT – A parking lot shared by and serving two or more land uses in instances where said land uses are not located on the same building lot. Joint parking lots may be located on a building lot(s) independent of the use(s) it is intended to serve, or on one or more of the lots so served.

REBUILT – For the purpose of interpreting the off-street parking regulations found at §128-56 of this Chapter, the term rebuilt shall mean to tear down or demolish a building, including its major structural components, and to build it again. The term rebuilt shall not apply to activities such as remodeling, rehabilitation, restoration or repair to a building, even if such activity is extensive.

33. **Various** **Distance Between Buildings** **(Accessory Uses)**

Comment: Code requires 10 ft. separation between a principal and an accessory structure. State Code requires 3 ft without fire rated. Has created a few variance requests. Has made it difficult to locate a shed on some properties.

Response: Amend Sections 128-27(C)(1), 128-28(C)(1) and 128-30(C)(1) as follows:

- C) *Accessory uses. Uses customarily accessory to and subordinate to a principal use.*
- 1) *Location. An accessory building shall not be located in a front yard. For corner lots, a structure accessory to a single family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than twenty (20) feet to the front property line. An accessory building may be located within the required side yard or rear yard setback, provided:*
- a) *Such accessory buildings shall be set back not less than five (5) feet from any side or rear lot line and shall be located not less than ~~ten (10)~~ three (3) feet from the principal building unless fire rated as per applicable New York State Building Codes.*

Response: Amend Sections 128-29(C)(1), 128-32(C)(1), 128-35(C)(1) as follows:

- C) *Accessory uses. Uses customarily accessory to and subordinate to a principal use.*
- 1) *Location. An accessory building shall not be located in a front yard. For corner lots, a structure accessory to a single family or a two family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than twenty (20) feet to the front property line. An accessory building may be located within the required side yard or rear yard setback, provided:*

- a) *Such accessory buildings shall be set back not less than five (5) feet from any side or rear lot line and shall be located not less than ~~ten (10)~~ three (3) feet from the principal building unless fire rated as per applicable New York State Building Codes.*

Response: Amend Sections 128-33(C)(1) as follows:

C) *Accessory uses. Uses customarily accessory to and subordinate to a principal use.*

- 1) *Location. An accessory building shall not be located in a front yard setback. For corner lots, a structure accessory to a single family or a two family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than twenty (20) feet to the front property line. An accessory building may be located within the required side yard or rear yard setback, provided:*

- a) *Such accessory buildings shall be set back not less than five (5) feet from any side or rear lot line and shall be located not less than ~~five (5)~~ three (3) feet from the principal building unless fire rated as per applicable New York State Building Codes.*

34. 128-68(D) Exemptions (Site Plan Approval)

Comment: Section 128-68(D) lists exemptions to site plan approval requirements. Provide a cross-reference to 128-71(B). The latter provision deals with application waivers for site plan approval that may be granted by the Planning Board.

Response: Amend Paragraph D as follows:

- D) *Exemptions. The following activities are exempt from Site Plan Approval: (Also, see §128-71(B), Application Waiver.)*

35. 128-47 Missing Language? (Fences and Walls)

Comment: Section 128-47 is titled “Fences and Walls”, but has limited applicability to walls. For example, a front yard fence cannot exceed 4 ft. in height, but there is no limitation in the code on the height of a wall. Should these types of restrictions be extended to walls as well?

Response: Amend §128-47 as follows:

§128-47. Fences and Walls

- A) *Fences or freestanding walls not exceeding four (4) 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 (4) feet in height may be erected in the front yard.*
- 2) *Fences or freestanding walls greater than four (4) feet in height but not more than six (6) feet may be erected in the side and rear yards.*
- 3) *For corner lots, fences or freestanding walls not exceeding six (6) feet in height may be located in the front yard, opposite the side yard, as determined by the Building Inspector. Said fence or freestanding wall shall have a minimum setback of fifteen (15) feet from the determined front yard 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 § 128-60.*
- 5) *Fences constructed for the purpose of enclosing a tennis court shall not exceed ten (10) feet in height and may not be located closer than fifteen (15) feet from any property line.*
- 6) *The use of dangerous materials such as crushed glass and razor wire is prohibited. Electric fencing and barbed wire is 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.*
 - i) *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 (8) feet in height, but may include an additional eighteen (18) inches of barbed wire at the top. If barbed wire is used it shall be canted in.*
- D) *Fences in Mixed Use and Commercial Districts,*
 - 1) *Fences or freestanding walls not exceeding four (4) feet in height may be erected in the front yard.*
 - 2) *Fences or freestanding walls greater than four (4) feet in height but not more than six (6) feet may be erected in the side and rear yards.*
- E) *Fences for agricultural uses may not exceed eight (8) 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.*

36. 128-22 “Garage” / “Cold Storage” (Definitions)

Comment: Definition of “Garage, Commercial Storage” is incomplete. Need definition of “Cold Storage”

Response: Amend the definition of “Garage, Commercial Storage” as follows:

GARAGE, COMMERCIAL STORAGE -- A principal building or structure used for the storage of commercial motorized vehicles and equipment, including commercially registered passenger vehicles and equipment, ~~where such vehicles and equipment~~

Response: Add the following definition of “Cold Storage” in its proper alphabetical place to §128-22:

STORAGE, COLD – The storage of materials, commodities or goods in a cold and typically refrigerated place for the purpose of preserving such materials, commodities or goods.

37. 128-63(A) Lot Coverage (Terrace and Patios)

Comment: This Section requires that the square footage of terraces and patios (even uncovered) be included in the calculation of lot coverage. They were not included in the previous zoning code in the calculation of “building area” unless they were roofed. Town may wish to consider reverting to the old requirement. Possible that it could be creating unnecessary nonconformity in some areas. (Note: The definition of lot coverage in Sec. 128-22 does not include patios and terraces.)

Response: Amend Paragraph A as follows:

(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 (3) feet in height and shall not project into any yard to a point closer than four (4) feet to any lot line. ~~However, terraces and patios shall be considered in determining lot coverage.~~*

38. 128-55(E) Time Limit on Rebuilding (Nonconforming Structure)

Comment: Paragraph allows reconstruction of a non-conforming structure in the event of its total or partial destruction. However, the code does not have an attached time limitation. Under the code, such reconstruction can occur years later.

Response: Amend Paragraph E as follows:

E) *Rebuilding. A prior non-conforming structure may be rebuilt in the event of its total or partial destruction, provided the reconstruction commences within twenty four (24) months of said destruction, to occupy and further provided that the rebuilt structure occupies the same or a lesser amount of footprint, ~~but may and does~~ not exceed the original height of the totally or partially destroyed structure. In the case of a structure of four thousand (4,000) gross square feet or greater and which is used for non-residential purposes, such rebuilding shall require site plan review and approval by the Planning Board. The rebuilding of a residential or a non-residential structure of less than four thousand (4,000) gross square feet shall be exempt from site plan review and approval.*

39. 128-99 Amateur Radio Towers (Schedule of Uses)

Comment: Section 128-44 authorizes the Planning Board to review site plans for amateur radio towers. However, the Schedule of Uses does not list amateur radio towers as a permitted use that requires site plan approval. Should this be added to the Schedule of Uses? (Note: Planning Board Attorney has submitted draft language rewriting the amateur radio tower section of the code.)

Response: The Planning Board Attorney has submitted draft language to amend the amateur radio provisions of the Zoning Law. See attachment A.

40. 128-50(C)(1)(b) C.O. Requirement (Home Occupations)

Comment: The cited paragraph requires that the portion of the residence used for the Home Occupation must have a valid Certificate of Occupancy. Many of the older dwellings in Town do not have a C.O. Need to address what happens in these instances.

Response: Amend § 128-50(C)(1)(b) as follows:

- 1) *Requirements. All Home Occupations shall meet each of the following conditions:*
 - b) *Except for de minimis uses as provided in paragraph E below, the portion of the dwelling unit that is used for the Home Occupation shall have or obtain a currently valid Certificate of Occupancy or eCompliance.*

Response: Amend § 128-50(E) by adding a new subparagraph 6 as follows:

- E) *De Minimis Use: Registration is not required for a Home Occupation use which meets each of the following standards:*
 - 6) *The Home Occupation meets the conditions listed under §128-50(C)(1) above.*
-

41. 128-100 Accessory Structures (Area, Lot and Bulk Schedule)

Comment: The lot and bulk table does not contain the setback and other requirements for accessory structures. It would be helpful to add a note regarding requirements for accessory structures and directing the reader to the appropriate section of Article V.

Response: See item 15 above.

42. 128-59(L) Temporary Advertising Banners (Sign Prohibitions)

Comment: Clarify that temporary advertising banners are not permitted by adding banners to the list of prohibited signs.

Response: Amend paragraph L by adding a new subparagraph 6 as follows:

- 6) *Temporary advertising banners shall be prohibited.*
-

43. ----- Expansion of 1-Family Homes (Heavy Industrial District)

Comment: Single family homes are not a permitted use in Heavy Industrial Districts. As such, existing homeowners must obtain a variance in order to expand. Consider an amendment that would allow the expansion of these homes without the need for a variance.

Response: Amend Section 128-38(B) by adding a new sub-paragraph a as follows:

- B) *Principal uses.*

1) See Schedule of Uses, §128-99.

a) Exemption. Existing single-family homes shall be considered a permitted use, shall be permitted to expand and shall be exempt from the maximum floor area requirements.

44. 128-22 Permitted Uses (Definitions)
128-99

Comment: Many of the permitted uses in 128-99 are undefined. Consider developing definitions that correspond to the list of permitted uses.

Response: Amend §128-22 by adding or amending the following definitions:

WELLNESS CENTER – A facility offering a range of services including activities, programs, training, treatments and/or therapies designed to promote and/or maintain a healthy lifestyle and physical, spiritual, intellectual, social and/or emotional well being. Such facilities may offer, but are not limited to, activities and programs in exercise and physical fitness, stress management, diet and nutrition, weight management, lifestyle counseling, health screening, and social, spiritual or emotional guidance, and may also offer alternative treatments and therapies such as hydrotherapy, acupuncture, acupressure, massage therapy, neuromuscular therapy, chiropractic care, energy healing, kinesiology, and reiki therapy.

HOUSE OF WORSHIP -- A structure, together with its accessory structures and uses, where persons regularly assemble for religious ceremonies and related activities, and where such facilities are controlled and maintained by a religious organization. Accessory structures and uses may include, but are not limited to, a rectory, convent, school, meeting hall, administrative office, licensed daycare, playground, cemetery or other related accessory use commonly associated with a house of worship, where said accessory use(s) is sponsored and operated by the religious organization.

HOSPITAL – An institution, licensed by the state health department, providing primary health care services and medical, surgical, nursing and related care to persons, including inpatients who are housed overnight, suffering from illness, disease, injury or abnormal physical or mental condition, and including related in-house facilities such as laboratories, pharmacies, outpatient facilities and clinics, training facilities, central service facilities, staff offices, cafeterias, gift shops and similar facilities commonly associated with a hospital. Accessory structures and uses may also include, ~~Unless otherwise specified, includes~~ medical buildings, health care offices, a sanitarium or sanatorium, preventorium, clinic, rest home, nursing home, convalescent home and any other place for medical, surgical, diagnostic and therapeutic treatment on an in- and out-patient basis, together with all ancillary support services, for the treatment or other care of human ailments.

LABORATORY, MEDICAL - - A facility for obtaining samples and conducting scientific laboratory analysis of human blood, tissue, waste or pathogens, particularly as it relates to the diagnosis and treatment of illness or disease.

LAUNDRY – An establishment which launders or dry cleans articles of clothing or fabric dropped off on the premises directly by the customer, or where articles are dropped off, and picked by the customer but where laundering or dry cleaning is done elsewhere.

DRY CLEANING SERVICE -- An establishment which launders or dry cleans articles of clothing or fabric dropped off on the premises directly by the customer, or where articles are dropped off, and picked by the customer but where laundering or dry cleaning is done elsewhere.

45. 103-28(B) Easement Width (Easements)
103-35(E)(13)

Comment: Internal conflict in Subdivision Regulations regarding the minimum required easement width. One section requires 20 ft. while another requires 30 ft. Engineering recommends 30 ft.

Response: Amend Section 103-28, Paragraph (B) as follows:

B) Utility and drainage easements. Where topography or other conditions are such as to make impractical the inclusion of utilities or drainage facilities within a street right-of-way, perpetual unobstructed easements ~~at least 20 feet in width~~ shall be provided to the Town for such utilities or drainage facilities located outside of the street right-of-way. Said easements shall be a minimum 20 feet in width unless otherwise recommended by the Town of Bethlehem, Engineering Division and approved by the Planning Board.

Response: Amend Section 103-35(E)(13) as follows:

13) Easements. The boundaries of proposed utility easements located over or under private property, which easements shall not be less than ~~30~~ 20 feet in width unless otherwise recommended by the Town of Bethlehem, Engineering Division and approved by the Planning Board, and which shall provide satisfactory access to an existing public highway or other public highway or public open space for the purpose of maintenance and repair of the utility.

46. 103-28(C) Easement Width (Pedestrian Access Easements)

Comment: This paragraph authorizes the Planning Board to require a pedestrian access easement “at least 20 ft. in width” across private lands. Typically, the Town has in the past required sidewalk easements of 10 ft. in width. Consider whether the 20 ft. minimum is appropriate.

Response: Amend Section 103-28, Paragraph (C) as follows:

C) Easements for pedestrian access. The Planning Board may require, in order to facilitate pedestrian access from streets to schools, parks, playgrounds or other nearby streets, perpetual unobstructed easements at least ~~20~~ 10 feet in width along the street right-of-way or at such other locations as the Board deems appropriate.

47. 128-44 Various Amateur Radio Towers (Amateur Radio Towers)

Comment: Town Planning Board Attorney proposes various amendments to the zoning regulations governing amateur radio towers. See attached.

Response: See attached proposed amendments submitted by Town Planning Board Attorney.

48. 103-20 Stormwater Management (Various)
103-26
103-34
103-35

Comment: Engineering Division proposes various changes to Subdivision Regulations to implement new storm water regulations.

Response: Previously adopted by Town Board.

49. 128-40 Stormwater Management (Various)
128-49
128-69
128-71

Comment: Engineering Division proposes various changes to Zoning Law to implement new storm water regulations.

Response: Previously adopted by Town Board.

50. 128-52 Vehicle Headlights (Lighting)

Comment: This code section addresses site lighting but does not address potential impacts of vehicle headlights from parking and internal circulation on adjoining properties. Consider whether the lighting section should be amended to address vehicle headlights in both stationary and moving situations. A potential option is to require that applicants analyze “vehicle lighting and vehicle movement around or through a site”.

Response: Amend Section 128-71(E) “Site Plan Criteria”, Paragraph 6 “Parking and Loading” by adding a new Subparagraph (e) as follows:

e) Parking stalls and access driveways should be oriented, arranged and/or screened such that headlights from parking vehicles and those traversing the site do not shine directly or cause undue glare upon adjoining residential structures.

51. 128-71 Enforcement of Approval Conditions (Site Plan Approval)

Comment: Appears at times to be a disconnect between Planning Board approval conditions and what occurs in the field. Examples include (1) the planting of landscaping that does not meet approval specifications and (2) landscaping that’s allowed over time to change from the original approval because of non-maintenance or replacement with different materials. Consider ways to improve clarity of approval documents and communication between the Planning Board and Building/Zoning enforcement officials.

Response: Amend Section 128-71(N) “Site Plan Amendments” as follows:

N) Site Plan Amendments. All conditions and required improvements associated with a site plan approved by the Planning Board shall remain in full force and effect until such time that the Board grants an amendment to the approved site plan. The Planning Board shall review any amendment to a previously approved site plan by following the procedures specified in this section and may, grant waivers from the information and procedures specified herein where the Board has determined that the proposed amendment does not warrant a full site plan review or a public hearing. In addition, an amendment of a site plan that was approved as part of an application for special use permit approval shall be reviewed by following the procedures specified in this section without the necessity of following the procedures in §128-69 where the use for which the special use permit was granted has not and will not change as a result of the site plan amendment.

52. 128-22 Density Unit Calculation/ (Various)
128-100 Unconstrained Land Determination
103-08
103-18(J)
103-25(A)

Comment: Ambiguity exists in the method for determining how many dwelling units are permitted on a parcel under the maximum density units per acre provision of Zoning Code § 128-100. The Code speaks in terms of maximum units per acre of “unconstrained land.” However, the term “unconstrained land” is not defined. “Constrained land” is defined, but does not include in its definition land that is occupied by public improvements. This conflicts with the definition of the term “buildable yield”, which does include in its definition the deduction of land occupied by public improvements. It also conflicts with the Subdivision Regulations, which provide a formula for determining the maximum density unit calculation. This formula is located under the provisions for conservation subdivisions and factors out the acreage of required public improvements. In brief, it is unclear whether areas proposed for public improvements are to be considered constrained land or unconstrained land.

Response: Amend the following definitions in § 128-22 as shown and add a definition of unconstrained land:

ACREAGE:

- GROSS -- The total acreage of a parcel or parcels of land proposed for subdivision and/or development, as determined by a certified survey.
- NET -- The gross acreage of a parcel of land minus the acreage of constrained land ~~and lands that are proposed to be occupied by public utility easements and/or central services (i.e. storm water, water supply, and/or sewage disposal facilities)~~. It is this figure into which the minimum lot size per dwelling unit is to be divided to determine the buildable area and the buildable yield of a lot or property proposed for development.

BUILDABLE YIELD -- ~~The number of potential building lots or the~~ maximum unit density for a proposed subdivision after deduction of constrained land areas, ~~and public improvements on the parent parcel and the minimum yard, area and bulk requirements for each proposed lot have been met.~~

DENSITY UNIT -- ~~The number of~~ dwelling units per acre.

UNCONSTRAINED LAND – Land area that does not contain constrained land as defined in this Chapter.

Response: Amend the following definitions in § 103-08 as shown:

BUILDABLE YIELD -- ~~The number of potential building lots or the~~ maximum unit density for a proposed subdivision after deduction of constrained land areas, ~~and public improvements on the parent parcel and the minimum yard, area and bulk requirements for each proposed lot have been met.~~

Response: Amend § 103-18(J) and §103-18(J)(1) as follows:

- J) *Maximum Density Unit Calculation. The maximum number of Density Units (i.e. units per acre or “DU”) in a conservation subdivision shall not exceed the maximum allowable DU for a conventional subdivision in the district in which the property is located prior to the application of incentive densities pursuant to §128-51 of the Town Zoning Law. Any regulations contained in this Chapter and in Chapter 128 restricting the number of dwelling units permitted in a conventional subdivision shall also restrict the number of dwelling units permitted in a conservation development. The calculation of Buildable Yield for a conservation subdivision shall be based on the following formula which shall also be applicable to the maximum density unit calculation for all major conventional subdivisions as defined in this Chapter. The Buildable Yield (BY) shall be used to determine the allowable Density Units per the area, yard and bulk chart, §128-100 of the Zoning Law.*

- 1) The BY calculation shall be determined by subtracting the Constrained Land areas of the property (i.e. NYSDEC and USACOE regulated wetlands, and lands within the 100 year Flood Plain area, and steep slope areas of greater than 20%) for which the applicant has not secured and has not submitted to the Planning Board permits or approvals that would allow development in such Constrained Land areas, ~~and the areas required for public improvements (i.e. roads, sidewalks, storm water management facilities, etc.)~~, as follows:

$$T - (W+F+S+I) = BY \quad \text{Where:}$$

- T* = Total acreage inside the boundary lines of the project parcel.
- W* = Total acreage inside the boundary lines of the project parcel and within a NYSDEC or USACOE regulated wetland (exclusive of any buffer area).
- F* = Total acreage inside the boundary lines of the project parcel and within the 100 Year Flood Plain area where the base elevations and flood hazard are determined exclusive of any flood area within a regulated state or federal wetland.
- S* = Total acreage inside the boundary lines of the project parcel and containing slopes of 20 percent or greater.
- ~~*I* = The total acreage of required public improvements (i.e. roads, sidewalks, storm water management facilities).~~
- BY* = Maximum number of acres that can be developed and that form the basis for determining the maximum number of residential dwellings that may be created per the area, yard and bulk chart.

Response: Amend § 103-25(A) and §103-25(A)(1) as follows:

- A): The maximum number of Density Units (i.e. units per acre or DU) shall not exceed the maximum allowable DU for a subdivision in the district in which the property is located. Any regulations contained in this Chapter and in Chapter 128 restricting the number of dwelling units permitted in a subdivision shall apply. The calculation of Buildable Yield for a major subdivision shall be based on the following formula. The Buildable Yield (BY) shall be used to determine the allowable Density Units per the area, yard and bulk chart, §128-100 of the Zoning Law.

- 1) The BY calculation shall be determined by subtracting the Constrained Land areas of the property (i.e. NYSDEC and USACOE regulated wetlands, and lands within the 100 year Flood Plain area, and steep slope areas of greater than 20%) for which the applicant has not secured and has not submitted to the Planning Board permits or approvals that would allow development in such Constrained Land areas, ~~and the areas required for public improvements (i.e. roads, sidewalks, storm water management facilities, etc.)~~, as follows:

$$T - (W+F+S+I) = BY \quad \text{Where:}$$

- T* = Total acreage inside the boundary lines of the project parcel.
- W* = Total acreage inside the boundary lines of the project parcel and within a NYSDEC or USACOE regulated wetland (exclusive of any buffer area).
- F* = Total acreage inside the boundary lines of the project parcel and within the 100 Year Flood Plain area where the base elevations and flood hazard are determined exclusive of any flood area within a regulated state or federal wetland.
- S* = Total acreage inside the boundary lines of the project parcel and containing slopes of 20 percent or greater.
- ~~*I* = The total acreage of required public improvements (i.e. roads, sidewalks, storm water management facilities).~~
- BY* = Maximum number of acres that can be developed and that form the basis for determining the maximum number of residential dwellings that may be created per the area, yard and bulk chart.

53. 128-37(A)(1) De Facto Restriction on Business Expansion (MED District)

Comment: In-as-much as the MED regulations require a Development Master Plan for any development project on a parcel of land 5 acres in size or more it places an additional hurdle on the expansion of existing businesses in the district.

Response: Amend Section 128-37(A)(2) as follows to add a second exception to the Development Master Plan requirement:

2) Exceptions.

a) A development master plan shall not be required for a development project on a parcel or collection of contiguous parcels of less than five (5) acres provided said project does not involve a subdivision. ~~However, such development project shall be subject to site plan review and approval by the Planning Board in accordance with §128-71 of this Chapter.~~

b) On a parcel or collection of contiguous parcels of 5 acres or more, a development master plan shall not be required for the construction of a building(s) intended to house the expansion of an existing use on the parcel, provided said use is a conforming primary or secondary use permitted in the MED District, and further provided that the floor area of the building(s) devoted to the expansion does not exceed 10,000 square feet. The 10,000 square foot restriction shall be cumulative, commencing on the effective date of this Chapter.

c) All development projects and expansions of existing uses that are proposed as exceptions under paragraphs a or b above shall be subject to site plan review and approval by the Planning Board in accordance with §128-71 of this Chapter.

54. 128-100 Unnecessary Footnote Reference (Area Lot & Bulk Table)

Comment: The heading in the “Rural” column of the Schedule of Area, Lot and Bulk Requirements contains an unnecessary superscript referencing footnote 1 to the table, which deals with side yards on corner lots. The reference to this footnote is already taken care of elsewhere in the table.

Response: Amend the Schedule of Area, Lot and Bulk Requirements, §128-100, by removing the superscript ¹ in the heading for the Rural column such that the column reads as follows: RURAL

55. 128-22 Retail / Take Out Food (Definitions)

Comment: The previous zoning code had a provision that allowed retail stores, such as a convenience store, to provide a limited amount of table seating for on site consumption of food products sold in the establishment, and to distinguish such activity so that it did not fall within the definition of a restaurant.

Response: Amend the definition of “Retail Use, Retail Business, Store or Shop” in § 128-22 as follows:

RETAIL USE, RETAIL BUSINESS, STORE OR SHOP -- Traditional establishments, such as florists, lumber and hardware stores, pharmacies, grocery stores, convenience stores, stationary stores, book stores, video-rental stores, clothing stores, department stores, shoe stores, antique stores, etc., that sell goods or merchandise to the general public for personal or household consumption, but not including an Adult Business Use. Take out food establishments shall also be considered a retail use provided they have no more than 12 seats for on- site consumption by customers.

56. 128-89(R) Time Limit on Construction (Variances)

Comment: Current zoning law requires that an applicant commence construction within one year of obtaining a variance and that construction be completed within two years of that date. The time frame is sometimes unrealistic for obtaining design services, financing, other regulatory reviews and approvals, et cetera.

Response: Amend § 128-89(R) as follows:

R) *Time Limit.* Any area variance or use variance which has been granted by the Zoning Board of Appeals pursuant to this Article shall be void if construction is not started within ~~one (1)~~ two (2) years of the date of approval, and completed within ~~two (2)~~ three (3) years of the date of such approval. In addition, the variance shall be void if the associated use shall have ceased for more than twelve (12) consecutive months for any reason. Notwithstanding the time limitations cited herein, the Zoning Board of Appeals may grant an extension to the time limits on the start and completion of construction, not to exceed two (2) years, where the Board finds that the applicant has exercised due diligence in pursuing construction of the project.

57. 128-69(N) Exemptions to Albany County Referral (Various)
128-71(H)
128-89(O)

Comment: The Zoning Law does not reflect that there are exemptions to General Municipal Law requirements for referral to Albany County Planning Board.

Response: Amend § 128-69(N) as follows:

N) *County Referral.* Prior to action on an application for special use permit approval under this section, and except as may be provided as per inter-municipal agreement between the Town of Bethlehem and Albany County, a copy of said application shall be forwarded to the Albany County Planning Board for review pursuant to General Municipal Law 239-m if the boundary of the property that is the subject of the application is located within five hundred (500) feet of:

Response: Amend § 128-71(H) as follows:

H) *County Referral.* Prior to action on an application for site plan approval under this section, and except as may be provided as per inter-municipal agreement between the Town of Bethlehem and Albany County, a copy of said application shall be forwarded to the Albany County Planning Board for review pursuant to General Municipal Law 239-m if the boundary of the property that is the subject of the application is located within five hundred (500) feet of:

Response: Amend § 128-89(O) as follows:

O) *County Referral.* Prior to action on an application for an area variance or a use variance under this section, and except as may be provided as per inter-municipal agreement between the Town of Bethlehem and Albany County, a copy of said application shall be forwarded to the Albany County Planning Board for review pursuant to General Municipal Law 239-m if the boundary of the property that is the subject of the application is located within five hundred (500) feet of:

58. 128-65(I) Parking for Senior Projects (Senior Citizen Housing)

Comment: There is a conflict between the parking space requirement for senior housing found at §128-65(I) and the requirement in the “Schedule of Off Street Parking” found at §128-56(H).

Response: Amend § 128-69(N) as follows:

D) *Parking ratio. Parking spaces shall be provided at the ratio ~~of 1.5 spaces per dwelling unit indicated in the "Schedule of Off-Street Parking" found at §128-56(H) of this Chapter.~~ 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.*

59. 128-56(H) Parking Schedule Typo (Schedule of Off Street Parking)

Comment: A typo error in the parking schedule incorrectly identifies subsidized senior housing as “subdivided”.

Response: Amend the parking schedule found at § 128-56(H) as follows:

SCHEDULE OF OFF-STREET PARKING

<i>Uses</i>	<i>Spaces Required</i>
Residential Uses	
<i>One, two, three and four family dwelling</i>	<i>2 for each dwelling unit</i>
<i>Multifamily dwelling</i>	<i>1.5 for each dwelling unit</i>
<i>Multifamily dwelling - subdivided senior citizen subdivided</i>	<i>1.1 for each dwelling unit</i>
<i>Bed & Breakfast, Inn, Motel, Hotel</i>	<i>1 for each guest room</i>

60. 128-22 Theater Arts (Definitions / Schedule of Uses)
128-99

Comment: The current schedule of uses does not accommodate theater arts or other cultural activities in the Hamlet District.

Response: Amend the definition of “Theater, Indoor” in § 128-22 as follows:

THEATER, INDOOR -- A building or part of a building devoted to the showing of moving pictures, or for the rehearsal or presentation of live dramatic, operatic, dance, musical or similar performances, on a paid-admission basis.

Response: Amend §128-22 by adding the following definition:

THEATER, OUTDOOR – A theater, with open-air seating for audiences, devoted to the presentation of live dramatic, operatic, dance, musical or similar performances.

Response: Amend the “Schedule of Use Regulations” §128-99 by adding “Theater, Outdoor” to the list of uses and by permitting this use in Hamlet Districts by Special Use Permit (SUP).

Response: Amend the “Schedule of Use Regulations” §128-99 by adding “Library, Museum or Art Gallery” to the list of uses and by permitting these uses in Hamlet Districts, Commercial Hamlet Districts and General Commercial Districts subject to site plan approval (SP).

61. 128-22 Inns (Definitions)

Comment: Current definition of Inn limits the provision of services to guests. Inns regularly hold functions such as banquets and weddings that are not for on-site guests and many have restaurants that are open to the public.

Response: Amend the definition of “Inn” in § 128-22 as follows:

INN -- A building or portion thereof, kept, used, maintained, advertised or held out to the public, containing forty (40) or fewer units used for sleeping accommodations for guests, and providing meals, and other incidental services to guests and the public. ~~-in which there are certain public rooms and service for the use of guests.~~

Attachment A – Proposed Amendments to Amateur Radio
Communication Towers

128-44. Amateur Radio Communications Towers

- A) Review authority. The ~~Building Inspector Planning Board~~ is hereby authorized to review applications for ~~a building permit site plan review~~ pertaining to the construction of amateur radio communications towers. ~~The Planning Board shall also have the authority to require reasonable conditions and restrictions as are directly related to and incidental to the proposed application.~~
- 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, assure public safety and welfare, minimize visual impacts through proper design, siting and screening, and avoid potential physical damage to adjacent properties.
- C) Pre-existing amateur radio communications towers are exempt from the provisions of this section.
- D) Application requirements. The applicant for ~~abuilding permit site plan approval~~ under this section shall be required to provide the following information: ~~in addition to any other information the Planning Board may require pursuant to Article VIII of this Chapter:~~
- 1) A scaled plan or drawing of the proposed tower, with design data ~~and documentation , certified by a professional engineer or the manufacturer~~ that the tower meets or exceeds applicable federal and state specifications.
 - 2) A ~~sketch plot plan~~ 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, ~~be present at all Planning Board meetings unless excused by the Planning Board, and will be bound by laws of this section.~~
- E) ~~Building Permit Planning Board review~~ criteria. The ~~Building Inspector Planning Board~~, in reviewing the application for amateur radio communications towers, shall be guided by the following standards: ~~instead of those contained in §128-69 of this Chapter:~~
- 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 , located at the rear of the lot or parcel unless such location would impair signal transmission or receipt.~~
 - 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 one and one-quarter (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 - site plan review application~~ shall be approved, ~~with such reasonable conditions as the Planning Board may impose in accordance with the provisions herein.~~ 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 ~~and restore the property to its original state~~ 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.