



TOWN OF BETHLEHEM  
Chapter 128. Zoning Code

# Part 4. Administrative & Review Procedures

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Department  
of State

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# ARTICLE 40

## GENERAL APPLICATION PROCEDURES

### § 128-40.1 APPLICABILITY

- A. Review Required.** Any person seeking to erect, construct, enlarge, alter, improve a building or structure; or establish, operate, convert, or change the nature of the use or occupancy of any building or structure within the Town of Bethlehem may first be required to submit one or more of the following applications and secure all necessary approvals and permits as required by this Zoning Law.
1. Special use permit (See Part 2 District & Use Regulations and Article 43)
  2. Site plan approval (See Article 42)
  3. Subdivision approval (See Article 44)
  4. Zoning amendment (See Article 48) or other local law change
  5. Planned development district (See Article 45)
  6. Use variance, area variance, interpretation, or appeal application (See Article 47)
- B. Application Form.** Applications must be submitted in a form and in such numbers as outlined herein. Checklists of application submittal and review requirements may be made available within the Town’s Department of Economic Development and Planning.
- C. Review Body.** For the purposes of this Zoning Law the terms “reviewing body” or “review body,” shall refer to the Town board, commission, committee, official, or other designated decision-making body that is charged with review and/or approval authority as authorized under this Zoning Law and by NYS Law. This may include, but is not limited to the Building Inspector, Director of Planning, Town Board, Planning Board, and Zoning Board of Appeals.
- D. Properties in Violation Prohibited.**
1. No applications that include a building, structure, property, or use that is in violation of this Zoning Law, other laws of the Town of Bethlehem, or NYS laws, rules, and/or regulations shall be accepted or processed.
  2. Applications which, in whole or in part, include a proposal to rectify violations on such property may be considered in accordance with this Zoning Law.

### § 128-40.2 PRE-APPLICATION MEETING

- A. Purpose.** The purpose of a pre-application meeting is to provide the applicant with the opportunity to seek nonbinding, advisory direction from the Town to better prepare the applicant and project application and materials for the development review process. Discussion in such meetings may include concepts and will allow for the consideration and identification of application alternatives. This process is optional and has no bearing on action on a formal application.
- B. Conference Recommended.** It is recommended that applicants request a pre-application meeting prior to entering the formal application review process to discuss the nature of the proposed application and to determine the best course of action for submittal. Meetings may be held with the Town Economic Development and Planning Department Staff to be scheduled at the discretion of the Director.

- C. **Advisory Opinion.** In no way shall any comments or feedback provided by the Town Staff during a pre-application meeting be construed as an indication of decision or be legally binding in any way. Nothing herein shall be construed to prevent an applicant from submitting a formal application for review and approval.
- D. **Application Material.** Materials presented during the pre-application meeting may be incomplete and/or conceptual in design. A formal, complete application is required to be considered for approval prior to action.
- E. **Abutting Land.** Although not required, applicants are encouraged to commence discussions with the owners of land abutting, or in proximity, to the project site to ascertain local concerns and local development issues early in the project design process.

### § 128-40.3 OPTIONAL SKETCH PLAN REVIEW - DEVELOPMENT PLANNING COMMITTEE

- A. **Purpose.** Applicants are strongly encouraged to submit a preliminary sketch plan to the Town Economic Development and Planning Department for review by the Development Planning Committee prior to the preparation of a formal application. The purpose of this review is to:
  1. Provide guidance on the review and approval process and generally determine the information necessary for formal review of a land use application.
  2. Advise the applicant as to potential problems and concerns with the proposal.
  3. Discuss plans for the applicant's entire holdings, including phasing, and define the project and phases to be submitted for review.
  4. Reduce the review time of the reviewing body by allowing early review of the plan.
- B. **Advisory Opinion.**
  1. Discussion held as part of sketch plan review may include concepts and will allow for the consideration and identification of application alternatives.
  2. Feedback on the sketch plan will be provided as to whether the basic concept of the proposal aligns with the Town Comprehensive Plan, any other approved plans and studies, overall site layout, environmental elements, utility/infrastructure needs, and the dimensional and use requirements of the district in which the property is located.
  3. To the extent feasible, the Town shall provide the applicant with an indication of whether the proposal, in its major features, is acceptable or offer recommendations for modifications before expenditures for more detailed plans are made.
  4. The Town may also provide details about internal and external referrals or parallel approval processes anticipated during the development review process, including the possibility or likelihood that Town Designated Engineer review services may be needed.
  5. In no way shall any comments or feedback provided by the Town during sketch plan review be construed as an indication of approval by the review body or be legally binding in any way.
- C. **Sketch Plan Review Procedure.**
  1. A request for sketch plan review shall be submitted to the Town Economic Development and Planning Department for review by the Development Planning Committee.
  2. All applicants wishing to be placed on the Development Planning Committee agenda shall contact the Department with the request. Requests are placed on the agenda in the order they are received.
  3. The Development Planning Committee meeting is held.
  4. Town Planning Staff on behalf of the Development Planning Committee shall report to the Planning Board the result or outcome of the meeting, including any disputes between the applicant and the Committee as to the information required to complete the application and any interpretation of this chapter.

5. After the sketch plan review, nothing herein shall be construed to prevent an applicant from submitting a formal application to the appropriate review body.
6. Although not required, applicants are encouraged to commence discussions with the owners of land abutting or in proximity to the project site to ascertain local concerns and local development issues early in the project design process.

**D. Sketch Plan Materials.**

1. The applicant shall provide at least three copies and one digital copy of the following information at a date specified by the Director of Planning prior to the scheduled meeting date.
2. The sketch plan initially submitted to the Department shall be based on tax map information or some other accurate base map at a scale (preferably not less than 100 feet to the inch) which permits the entire tract to be shown on one sheet.
3. Required sketch plan materials shall include, but is not limited to the following:
  - a) The name and address of the owner of record and the name and address of the applicant.
  - b) The name and address of the map preparer.
  - c) Topographic contours at intervals of not more than 10 feet based on United States Geological Survey data and extending not less than 100 feet beyond the boundaries of the parcel.
  - d) The tax map section, block and lot numbers.
  - e) The general location of all utilities and all streets which are either proposed, mapped or built.
  - f) The proposed subdivision and/or site layout, including the location of buildings; pattern of lots; lot width and depth; street layout; recreation areas; and systems of drainage, sewerage and water supply, not only within the subdivided area but also in relation to surrounding properties and street patterns.
  - g) All existing restrictions on the use of land, including easements and covenants.
  - h) A location map, at a minimum scale of one inch equals 1,000 feet, to indicate the relationship of the proposed site to significant existing community facilities which will serve or influence the layout, such as major traffic arteries, shopping areas, schools, parks, employment centers, churches, etc. This map shall be drawn to a scale suitable to indicate the above features. It shall show North point, scale and date.
  - i) Existing drainage features (e.g., culverts, marshes, ponds and streams) on the site and within 100 feet thereof.
  - j) Zoning district or districts.
  - k) Acreage of each land use and proposed density with supporting calculations, if required.

- E. State and County Consultation.** Developers of land adjoining state or county highways are advised to consult with the New York State Department of Transportation or County Department of Public Works at the sketch plan stage to resolve problems of street openings or stormwater drainage at the earliest possible stage in the design process.

## § 128-40.4 APPLICATION SUBMITTAL & PROCESSING

**A. Submittal.** All applications considered under this Chapter shall:

1. Be submitted to and processed by the Town's Department of Economic Development and Planning.
2. Require the signature of the owner(s) of the subject property. Where there are multiple land owners, a written consent agreement among all land owners must be included. Tenants may submit applications with written consent of the property owner(s).
3. Be provided in the required number and form as listed on the application, including both hard copies and one electronic copy (digital PDF).

4. Include all application fees as established by §128-40.10 and as may be required elsewhere in this Chapter.
  5. Include an environmental assessment form.
- B. Applicant Responsibilities.**
1. The applicant and/or their agent is expected to attend all meetings at which the application is to be discussed.
  2. In all cases, the burden is on the applicant to show that their application complies with the Town of Bethlehem local laws and regulations, and any other applicable NYS laws, rules, and regulations.

- C. Waiving Application Requirements.** A reviewing body is authorized to waive or modify, in whole or in part, required application material if in their opinion one or more of the following apply:
1. Any such material, or part thereof, is not requisite in the consideration of impact to public health, safety, or general welfare;
  2. Any such material is inappropriate or irrelevant to the proposal;
  3. Any such material is deemed unnecessary for an adequate, informed review.
- D. Additional Application Requirements.** A reviewing body may require the applicant to provide additional application material if it is found to be necessary for a complete, adequate, and informed review.

## § 128-40.5 REVIEW BODY ACTION

- A. Initiation of Review.** The review process(es) provided herein shall begin once there is application acceptance by the Town's Department of Economic Development and Planning. The review and decision period does not begin until such time that the Town's Department of Economic Development and Planning notifies the applicant that the application is ready for processing and the materials submitted are acceptable for review.
- B. Public Hearing.** Where required by this Chapter and NYS Law, the review body shall hold at least one public hearing prior to the issuance of a decision.
- C. State Environmental Quality Review (SEQR).** Where required by NYS Law, the review body shall complete all required documentation and procedures in accordance with the State Environmental Quality Review Act (SEQRA). No application shall be deemed complete until a negative declaration has been issued or until a draft environmental impact statement has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy.
- D. Issuance of Decision.**
1. Within 62 days following the close of a public hearing, or within 62 days of receipt of a complete application for which a public hearing is not held, the reviewing body shall issue a decision to approve, approve with conditions or modifications, or deny the proposed application.
  2. The time period in which a decision must be rendered on the application may be extended by mutual consent of the applicant and the reviewing body.
- E. Written Decision.**
1. A written decision shall be provided by the Town explaining the rationale and findings of the reviewing body based upon the standards and review criteria contained in this Zoning Law. The written decision shall also make note of any conditions or modifications of the approval, where applicable.
  2. A copy of the decision shall be filed in the office of the Town Clerk within five days of the date of such decision, and a copy sent to the applicant.
- F. Findings.** The findings of the review body may be based on evidence submitted or the personal knowledge of the review body to show that:
1. It has made an intelligent review of the question.
  2. It has considered all the information or evidence.
  3. It has heard all parties in question.
  4. Any intimate knowledge it has of the subject under question has been considered.
  5. It has made a personal inspection of the parcel in question and from this examination certain findings were ascertained.
- G. Additional Considerations.** In addition to the review criteria contained in this Chapter, the reviewing body in rendering its decision shall also consider the planning recommendations as set forth in the mostly recently

adopted Town of Bethlehem Comprehensive Plan, Local Waterfront Revitalization Program (LWRP), and other relevant plans and studies, including but not limited to:

1. "Town of Bethlehem Agricultural and Farmland Protection Plan," dated September 2009.
2. "US 9W Corridor Transportation Planning Assessment, Advancing the Town of Bethlehem's Comprehensive Plan and Economic Development Goals," dated December 2008.
3. "Town of Bethlehem Evaluation Process for New Pathway Investment Procedures / Users Guide" including the "Town of Bethlehem Bicycle and Pedestrian Priority Network," both dated October 26, 2010.
4. "Resolution in Support of Climate Smart Community," adopted by the Town Board on April 22, 2009.
5. "Complete Streets" resolution, adopted by the Town Board on August 12, 2009.
6. "Delaware Avenue Hamlet Enhancement Study Streetscape and Hamlet Design Standards and Guidelines" Final Report, dated October 26, 2010.
7. "Delaware Avenue Hamlet Enhancement Study Transportation Improvement Plan" Final Report, dated February 7, 2011.
8. "Delaware Avenue Complete Streets Feasibility Study", dated December 2017.
9. "US 9W Corridor Cumulative Traffic Assessment Update" Final Technical Report, dated February 2018.

## § 128-40.6 COORDINATED REVIEWS

- A. Concurrent Reviews.** In some cases, an application may require multiple approvals and individual permits by this Chapter and the Town of Bethlehem Code. Where deemed appropriate by the Director of Planning to streamline the application review process the following reviews may be conducted concurrently:
1. Site Plans. In accordance with Article 42.
  2. Special Use Permits. In accordance with Article 43.
  3. Subdivisions. In accordance with Article 44 of this Chapter and Chapter 103 of the Town of Bethlehem Code.
  4. Variances. In accordance with Article 47.
  5. Amendments. In accordance with Article 48.
- B. Application Requirements.** Where applicable, duplicate application materials may be combined to satisfy submittal requirements.
- C. Conditions of Approvals.**
1. Special Use Permit. If obtained prior to site plan approval, the special use permit shall be conditioned upon the applicant obtaining site plan approval. In the event that a site plan application is denied, the special use permit shall be considered null and void. A denied site plan application must be deemed substantially different by the Director of Planning in order to be eligible for resubmittal.
  2. Subdivision. Where a subdivision application is considered alongside a site plan application, the Planning Board shall first issue a decision on the subdivision plat. Should the subdivision application be denied, the site plan shall be considered null and void.
  3. Variance. Where a site plan, special use permit, or subdivision application requires a variance, approval of said variance must be obtained first. Should the variance be denied, the associated site plan, special use permit, and/or subdivision application shall be amended accordingly.

## § 128-40.7 REFERRALS

- A. Internal Referral.** The reviewing body may refer any application to another Town board, committee, department, or official for review, comment, and advisement.
- B. Professional Referral.**
  - 1. The reviewing body may seek the opinion of any engineering, architectural, historical, planning, technical, environmental, legal consultant or attorney, or other expert or professional to aid in the review of an application.
  - 2. The applicant shall reimburse the Town for any costs incurred as part of such professional review in accordance with §128-40.10.
- C. County Referral.** The Town shall refer applications to the Albany County Planning Board pursuant to NYS GML 239-m and 239-n, except as may be provided as per intermunicipal agreement between the Town of Bethlehem and Albany County.
- D. Waterfront Application Referrals.** Applications in the Waterfront Revitalization Area (WRA) of the Local Waterfront Revitalization Program (LWRP) may be referred to the NYS Department of State.
- E. Other Local, Regional, and State Referrals.** Referrals to other local, regional, and state agencies shall also be made in accordance with Town, County, and NYS Law.

## § 128-40.8 EXPIRATION, REVOCATION OF APPROVAL OR PERMIT

- A. Expiration.** Except for subdivision approval granted in accordance with NYS Law, the approval of an application shall expire as provided by this section.
- B. Special Use Permits.** Should one or more of the following occur:
  - 1. Construction has not been commenced within one year and has not been completed within four years of the date special use permit approval is granted. If no construction is involved, approval shall expire if the use or uses have not been commenced within one year of the date special use permit approval is granted.
  - 2. The approved use(s) cease operation for more than 12 consecutive months for any reason.
  - 3. The special use permit has expired.
- C. Site Plan Approval.**
  - 1. Granted by the Planning Board shall expire 180 days after the granting of said approval unless all conditions and requirements established by said Board as a prerequisite to endorsement of the site plan have been satisfied and said site plan has been endorsed by the Planning Board stamp and the signature of the authorized representative of the Board.
  - 2. Shall be void if construction is not started within one year and completed within 4 years of Planning Board Chair's endorsement of the site plan.
  - 3. Applications where site plan improvements will take longer than four years to complete must include a construction staging/phasing plan. Such staging/phasing plan shall be submitted to the Planning Board along with a formal request for extended expiration period. The Planning Board shall have the authority to review such a request and determine the expiration period.
- D. Variance Approval.**
  - 1. 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 year of the date of approval and completed within four years of the date of such approval. In addition, the variance shall be void if the associated use shall have ceased for more than 12 consecutive months for any reason.
  - 2. Exception. Notwithstanding the time limitations placed on the start and completion of construction in Subsection 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 three years of the date of approval and completed within five years of the date of such approval.

- E. Extensions.** The reviewing body may grant an extension for any condition in Subsection A upon written request by the applicant, where the review body finds that the applicant has exercised due diligence in pursuing completion of modifications and conditions of the approval and/or construction of the project. Prior to its expiration and upon request of the applicant, the approval may be extended by the review body for up to four additional 90-day periods. The applicant shall include the reasoning for requesting the extension. A fee may be required to process extension requests in accordance with §128-40.10.
- F. Revocation.** The Building Inspector may revoke the building permit associated with an approved project if the applicant violates the conditions of the approval or engages in any construction, alteration, or operation not authorized by the approval and/or related permit(s). Such action shall include the revocation of any special use permit or other zoning authorization issued under this Zoning Law.

## § 128-40.9 PUBLIC HEARINGS & NOTICES

- A. Public Hearing Required.** The reviewing body shall schedule, notice, and conduct a public hearing for applications as noted in Articles 42, 43, 44, 45, 46, 47, and 48, as well as Chapter 103 and where otherwise required by NYS Law.
- B. Joint Hearings.** Where there are multiple applications for a single property or use before the reviewing body concurrent or joint public hearings may be held.
- C. Public Notices.** Public notice of public hearings shall be made in accordance with this Zoning Law and NYS Law, this may include mailed, media, and posted notice.
- D. Media Notices.** The Town Clerk or designee shall cause publication of a notice in the Town’s official newspaper and official website.
- E. Mailed Notices.**
  1. Written notice of public hearings to adjacent and nearby properties, and adjoining municipalities shall be provided where required by NYS Law.
  2. Written notice of public hearings shall be provided to property owners and occupants within 200 feet of the subject property. At the discretion of the Planning Board, the notice radius may be increased. Applications involving a structure over 100 feet in height or 200,000 square feet in area shall require written notice to all property owners and occupants within 500 feet of the subject property, unless due to the nature of the application it is determined by the Planning Board that the 500-foot notice radius is not necessary.
  3. If an application contains an agricultural data statement, written notice of such application, including a description of the proposed project and its location, shall be mailed to the owners of land as identified by the applicant in the agricultural data statement.
  4. The Town may require the applicant to reimburse the Town for the cost of any mailed notice to adjacent properties, unless otherwise covered by the application fee.
- F. Posted Notices.**
  1. It shall be the responsibility of the applicant to prepare a sign of public notice and post said sign on the property in question at least 10 business days prior to the scheduled public hearing.
  2. The size and contents of such sign shall comply with Public Notice Sign Guidelines, which includes a template, available at the Department of Economic Development and Planning on the Town’s website.
  3. The applicant shall post one public notice sign per 300 linear feet of frontage on each street upon which the subject property fronts. No more than two signs per frontage shall be required. Posted notices shall be set back no more than 10-feet back from the front property line.

4. At least 24 hours prior to the public hearing, the applicant shall submit to the Department of Economic Development and Planning an affidavit stating the applicant has posted a sign meeting the requirements of the Public Notice Sign Guidelines, along with a photograph of the posted sign(s).
5. The applicant shall maintain the sign and ensure that it remains plainly visible and legible while the application is pending. In the event the applicant shall appear before more than one review body, the sign shall be revised accordingly.
6. In the event the applicant fails to comply with the posted notices, the review body shall reschedule the public hearing and all noticing provisions shall recommence.
7. Exceptions. Posted notices are not required for area variances in residential districts associated with additions; and sheds, fences, pools, decks, and any other minor accessory structure of a similar nature.

## § 128-40.10 FEES

- A. Fee Schedule Established.** A schedule of fees for all permits, applications, and deposits as required in this Zoning Law shall be provided in a Fee Schedule, approved by the Town Board. Such schedule may be amended from time to time as deemed necessary by the Town Board.
- B. Engineering, Legal, and Consultant Fees.**
1. The Town Board, ZBA, Planning Board, Town Economic Development and Economic Development and Planning Department Staff, or other such review body may refer any application presented to them for professional review services including, but not limited to, engineering, architectural, historical, planning, technical, environmental, landscaping, surveying or legal consultation, or attorney, and related professionals as shall be deemed reasonably necessary to enable an adequate, informed review. The applicant is required to deposit an initial sum of money into a hold on deposit account in advance of the review of the application.
  2. Said sum shall be based on the estimated cost to the review body of securing professional consultant services to review the application.
  3. The review expenses provided for herein are in addition to application or administrative fees required pursuant to other provisions of this chapter and the Town Code. Money deposited by applicants pursuant to this section shall not be used to offset the Town's general expenses of professional services for the several boards of the Town or its general administrative expenses. The review and escrow requirements governed by this section shall include environmental review pursuant to the State Environmental Quality Review Act (SEQRA).
  4. The initial deposit by the applicant shall be in an amount as determined by the reviewing body, but in no case shall it exceed the estimated total cost of consultant review. The applicant shall be required to deliver said amount to the reviewing body for deposit in a Town of Bethlehem non-interest-bearing hold on deposit account maintained by the Town of Bethlehem for custody of funds collected pursuant to this section. Said escrow deposit must be paid prior to the first appearance before any board.
  5. In the event that the previously established deposit is insufficient to pay for the necessary cost of review, then the reviewing body shall require the applicant to make additional payments, and until such payment is made by the applicant review of the application shall be suspended.
  6. Upon receipt and approval by the reviewing body of itemized vouchers from consultants for services rendered on behalf of the Town regarding a particular application, the Town shall cause such vouchers to be paid out of the moneys so deposited and shall debit the separate record of such account accordingly. The consultant shall make copies of such vouchers available on request to the applicant at the same time the vouchers are submitted to the Town.
  7. The Town shall review and audit all such vouchers and shall approve payment of only such consultant charges as are reasonable in amount and necessarily incurred by the reviewing body in connection with the review and consideration of applications. A charge, or part thereof, is reasonable in amount if it bears a reasonable relationship to the average charge by consultants to the reviewing body for services performed in connection with the review of a similar application. A charge, or part thereof, is necessarily incurred if it was charged by the consultant for services rendered in order to protect or promote the health, safety, or other vital interests of the residents of the Town and protect public or private property from damage. In no event shall any applicant make direct payment to any Town consultant.
  8. If at any time during the processing of an application there shall be insufficient moneys on hand to the credit of an applicant to pay the approved vouchers in full, or if it shall reasonably appear to the reviewing body that such moneys will be insufficient to meet vouchers yet to be submitted, the reviewing body shall cause the applicant to deposit additional sums as the review body deems necessary or advisable in order to meet such expenses or anticipated expenses.
  9. In the event the applicant fails to provide the requested review fees, any application review, approval, permit or certificates of occupancy shall be withheld or suspended by the reviewing body, officer or employee of the Town until such moneys are deposited. There will be no conditional approvals given on

the basis of future payments to be made. Payment in full must be made prior to the granting of preliminary and final approval. Any costs incurred by the Town for professional services in processing a certificate of occupancy shall be recovered as a fee before said certificate shall be issued. No application to any reviewing body shall be accepted, nor shall any building permit or certificate of occupancy be issued, if said applicant has outstanding any fees due the Town from any previous applications.

10. The reviewing body, as applicable, shall not make any final determination in a matter pending before it until all applicable fees and reimbursable costs imposed by the reviewing body on the applicant under authority of this section have been paid to the Town.
11. Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the reviewing body have been paid and deducted from the hold on deposit account, any balance remaining in the account shall be refunded within 60 days after the applicant's request.

**C. Exceptions.** This section shall not apply to area variance applications for single-family residential uses.

**D. Failure to Reimburse.** In the event of an applicant's failure to reimburse to the Town funds expended to consultants for professional review fees as provided herein, the following remedies may apply:

1. The Town may seek recovery of billed and unreimbursed fees by bringing an action venue in a court of appropriate jurisdiction, and the applicant shall be responsible to pay the Town's reasonable attorney fees in prosecuting such action in addition to any judgment.
2. Alternatively, and at the sole discretion of the Town Board, an applicant's failure to reimburse the Town for professional review fees expended by the reviewing body shall be collected by charging such sums against the real property that is subject to the permit application and by adding that charge to and making it a part of the next real property tax bill associated with the subject property. Such charges shall be levied and collected at the same time and in the same manner as general Town taxes and such fees shall be paid by the Receiver of Taxes to the Town Supervisor to be applied to the escrow fund from which the costs for consultants' fees are paid. Prior to incorporating such delinquent fees into the real property tax bill, the Town shall send written notice to the applicant's address as contained in the permit application and to the property owner, if other than the applicant, at the owner's address of record as contained in the current assessment roll. Such written notice shall be sent by the Town Supervisor by certified mail, return receipt requested. Such notice shall inform the owner and applicant of the delinquent amount of fees owed to the Town and shall set a date for the owner-applicant's objections to be heard by the Town Supervisor. Such notice shall be mailed or delivered no later than 10 calendar days from the hearing date set forth in the notice unless such time period is waived by the owner-applicant in writing. After the hearing, the Supervisor shall be empowered to correct any errors in the fees owed by the owner or applicant and to extend terms of payment and adequate security of the debt and enter into a written agreement with the owner or applicant to facilitate the payment in full of the fee.

**E. Determination of Payment.** In the event of a rezoning of property or other local law by request of the owner, the Town Clerk shall determine from the Town Supervisor if all outstanding professional review fees have been paid by the applicant prior to submitting such rezoning or other local law to the New York State Secretary of State. Such local law shall not be filed with the Secretary of State until such outstanding fees have been reimbursed to the Town or the Town Supervisor has entered into a written agreement with the applicant extending the time of payment of such fees.

**F. Site Plan Approval.** In the event of a site plan approved by the Planning Board pursuant to § 274-a of the Town Law of New York State and this chapter, the Planning Board Chair shall determine from the reviewing department if all outstanding professional review fees have been paid by the applicant. All such outstanding consultant fees billed to the applicant during the application process shall be paid in full to the Town prior to the Planning Board Chair affixing their signature to the site plan.

**G. Subdivision Approval.** In the event of a subdivision plat approved by the Planning Board pursuant to § 276 of the Town Law of New York State and this chapter, the Planning Board Chair shall determine from the reviewing department if all outstanding professional review fees have been paid by the applicant prior to affixing their signature to the final plat. All such outstanding consultant fees billed to the applicant during the

application process shall be paid in full to the Town prior to the Planning Board Chair affixing their signature to the site plan.

- H. Variance Approval.** In the event of a variance approval or interpretation decision by the Zoning Board of Appeals pursuant to § 276 of the Town Law of New York State and this chapter, the Zoning Board of Appeals Chair shall determine from the reviewing department if all outstanding professional review fees have been paid by the applicant prior to affixing their signature to the approval document. All such outstanding consultant fees billed to the applicant during the application process shall be paid in full to the Town prior to the Zoning Board of Appeals Chair affixing their signature to the approval document.

## § 128-40.11 SURETY

- A.** The reviewing body may require in its issuance of approval that the owner/applicant establish or provide, prior to construction, a cash escrow account, 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.
- B.** 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 their 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.
- C.** Inspection. Prior to commencement of any work in a development with a road that has site plan approval, the developer shall deposit into a hold on deposit account a sum of money to be determined by the reviewing body. Said sum shall be based on the estimated cost to the Town of professional inspection of the proposed road construction work. The Town Board may consider available surveys of professional review expenses in determining the initial sum of money to be deposited in an escrow account by the developer. Said sum of money shall be used to cover the reasonable and necessary costs of professional inspection of the road construction work. Costs may include consultant fees for engineering, legal and other professional technical services required for a proper and thorough inspection of the road construction. Said moneys shall be deposited in a hold on deposit account and governed pursuant to the provisions of this chapter.

# ARTICLE 41

## PERMITS REQUIRED

### § 128-41.1 BUILDING PERMITS

- A. Permit Required.** 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.
- B. Review.** Building permits shall be required and issued pursuant to Chapter 53, Building Construction and Fire Prevention Administration, of the Town Code.
- C. Application Requirements.** The Building Inspector shall require that the application for a building permit shall be accompanied by a plot plan, building plans and specifications, which shall contain all the information necessary to enable him to ascertain whether the proposed building complies with the provisions of this chapter.
- D. Compliance.** No building permit shall be issued until the Building Inspector has certified that the proposed building or alteration complies with the provisions of this chapter.

### § 128-41.2 CERTIFICATES OF OCCUPANCY

Certificates of occupancy shall be issued pursuant to Chapter 53, Building Construction and Fire Prevention Administration, of the Town Code. No person shall occupy or use any structure that has been issued for that structure or building where a valid building permit has been issued. No certificate of occupancy or certificate of compliance will be issued until all required inspections are conducted by the Inspector or his assistants and any engineering reports or other required documentation has been provided to the Building Inspector for his or her approval.

### § 128-41.3 VIOLATIONS

In case any building or structure is erected, constructed, reconstructed, altered, converted or maintained, or any building, structure or land is used, or any land is divided into lots in violation of this chapter or Chapter **103**, Subdivision Regulations, or in violation of any approvals granted pursuant to this chapter or Chapter **103**, the Building Inspector, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use or division of land, to restrain, correct or abate such violation, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises. In addition to any other remedies the Building Inspector is hereby authorized to issue a cease and desist order or stop-work order as may be required to enforce this chapter and to enforce any approvals granted pursuant to this chapter. The Building Inspector shall notify the Town Board of the issuance of any appearance ticket or any other action. In addition to the above-mentioned penalties and punishment, the Town Board may also maintain an action or a proceeding in the name of the Town in a court or competent jurisdiction to compel compliance with or to restrain by injunction any violation of this chapter.

### § 128-41.4 PENALTIES FOR OFFENSES

A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 or by imprisonment for a period not to exceed 15 days, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine of not less than

\$350 nor more than \$700 or by imprisonment for a period not to exceed 15 days, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine of not less than \$700 nor more than \$1,000 or by imprisonment for a period not to exceed 15 days, or both. Each day's continued violation shall constitute a separate, additional violation.

# ARTICLE 42

## SITE PLAN REVIEW

### § 128-42.1 AUTHORITY

- A. This Article is enacted pursuant to the authority granted to the Town Board of the Town of Bethlehem in Article 16 NYS Town Law and Section 10 of NYS Municipal Home Rule Law.
- B. This Article now supersedes and modifies §274-a of NYS Town Law in that authority and procedures are included herein for a sketch plan review process, administrative site plan review process, and site plan review process.

### § 128-42.2 PURPOSE & INTENT

- A. The purpose of this Article is to define procedures for the Town Economic Development and Planning Department Staff and Planning Board for review of development actions proposed throughout the Town to ensure that design elements are in compliance with the protection of the health, safety and overall welfare of the community.
- B. The intent of site plan review is to evaluate site plans and require changes consistent with minimizing conflicts which may result between the site layout and design of proposed uses and natural site conditions and features and/or existing or planned adjacent uses.
- C. Site plan review also serves the purpose of ensuring applications comply with clearly defined planning goals and policies such as are provided in the Town's Comprehensive Plan and other land use plans and studies.
- D. These regulations provide site plan review application submission requirements and evaluation criteria to allow the Town Economic Development and Planning Department Staff and Planning Board to make a fair and informed decision as to whether the development, as proposed, is in compliance with concern for the health, safety and welfare of the environment, Town residents, and adjacent uses.
- E. For the purposes of this Chapter, a site plan shall refer to all materials necessary and required for administrative and/or site plan review of development actions in accordance with this Article.

### § 128-42.3 APPLICABILITY

- A. **Review Required.** No construction or site improvement work may commence without site plan review and approval in accordance with the following site plan review table.
- B. **Exempt Actions.** Actions exempt from site plan review shall still require the issuance of a building permit in accordance with Article 41.
- C. **Site Plan Review Waiver.** In the case of a use conversion which does not require additional construction or site modifications, or in the case of a minor site plan change requiring a building permit, the reviewing body may determine that the administrative or site plan application procedures outlined herein are not applicable and may waive the requirement of a full site plan review and approval, provided that the reviewing body determines that the proposed change in use or site plan change would not result in significant additional traffic generation, wastewater flows, or water consumption and would not otherwise adversely affect pedestrian and traffic circulation, eliminate parking, or alter the height of the exterior facade. This determination shall be made to the Building Inspector, in writing, after decision of the reviewing body.
- D. **Site Plan Review Table.** Site plan review shall be required as noted in the table below.



ACTION	EXEMPT	ADMIN REVIEW	PLANNING BOARD REVIEW
<b>CONSTRUCTION / EXPANSION</b>			
<b>Residential Use</b>			
Single-Family Dwelling on an Approved Lot			
Two-Family Dwelling, on an Approved Lot			
Multi-Family Dwelling			
<b>Nonresidential or Mixed Use</b>			
Expansion Up to 4,000 sf or 25% of Existing Gross Floor Area <sup>2,6</sup>			
New Construction including expansion over 4,000 sf or 25% of Existing Gross Floor Area <sup>2</sup>			
<b>Accessory Use or Structure <sup>1</sup></b>			
Residential			
Nonresidential <sup>7</sup>			
Accessory Dwelling Unit			
Nonresidential Outdoor Seating, Sales, Display, or Storage Area			
<b>Landscaping, Exterior Lighting, Mechanical Equipment, or Stormwater/Green Infrastructure</b>			
Residential Use, up to 4 units			
Multi-Family Use, 5 + units			
Nonresidential or Mixed Use			
<b>Off-Street Parking / Loading Area</b>			
10 Spaces or Less			
Over 10 Spaces			
<b>Driveway</b>			
Residential Use, up to 4 units			
Multi-Family Use, 5 + units			
Nonresidential Use, Requiring New or Altered Curbcut, Apron, or Opening			
<b>Telecommunications Equipment</b>			
<b>OTHER ACTIONS</b>			
Uses Requiring a Special Use Permit, including Accessory Uses			
Activities Associated with an Approved Use Variance			
Nonagricultural and Nonresidential Uses in the TH, CH, CMU, RMU, RLI, or HI Districts, where located within 100 ft of an LDR, CR, MDR, or RR District			
Change of Use <sup>3, 4, 8</sup>			
Expansion, Enlargement, or Addition(s) to Use Otherwise Not Exempt			
Ordinary Repair, Maintenance, or Replacement In-Kind			
Interior Building Alteration			
Alterations to a Building Facade			
Improvement in Accordance with a Previously Approved Plan			
Modification or Amendment to Approved Site plan	Return to Original Issuing Review Body		
Planned Development (PD) District			
Seasonal Planting of Crops within an Agricultural District			
Agricultural Structure <sup>5</sup>			

- NOTES:**
- (1) Accessory use or structure includes decks, patios, porches, garages, sheds, pools, fence, etc. For full list see §128-25.4 of Part 2, Accessory Uses or Structures. See Article 26 for regulations applicable to pools, spas, and hot tubs.
  - (2) Whichever is less.
  - (3) Provided the new use is similar in scale, extent, and intensity of operation to that of the current use.
  - (4) Should the change of use be from a nonconforming use to another nonconforming use, Planning Board review shall be required.
  - (5) Principal or accessory structure used for agricultural purposes, provided that such agricultural use is legally in existence as of the date of adoption of this chapter or is situated on property located within a county agricultural district.
  - (6) Exempt in the RMU zoning district. See Article 22, §128-22.5.
  - (7) Includes Keeping of Animals, Residential Use.
  - (8) Includes Bed & Breakfasts and Short-Term Rental

## § 128-42.4 ADMINISTRATIVE REVIEW

- A. Authorized Review Body.** Actions requiring administrative review, per the site plan review table shall be reviewed and decided upon by the Town’s Economic Development and Planning Department.
- B. Application Processing.** Administrative review applications shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. Application Requirements.** Administrative review applications shall include all materials as required by §128-42.7.
- D. Administrative Review Procedure.**
  1. The Town Economic Development and Planning Department Staff shall review and decide upon applications in accordance with Article 40.
  2. Town Staff may refer any administrative review application to the Planning Board if, in their opinion, it is found that such application requires a discretionary or more significant review to determine the appropriateness of such proposal.
  3. Upon referral by Town Staff, the Planning Board shall assume site plan review decision authority in accordance with §128-42.6.
- E. Public Hearings.** No public hearing shall be required for administrative review applications. Where such application has been referred to the Planning Board, however, the requirements of site plan review shall apply.
- F. Referrals.** All internal, professional, and required referrals shall be made in accordance with §128-40.7 and this Article.
- G. Coordinated Reviews.** Administrative review may be coordinated with other development applications in accordance with §128-40.6.
- H. Endorsement of Approved Plans.**
  1. The Director of Planning shall approve, approve with modifications, or disapprove the site plan application.
  2. A copy of the decision shall be filed in the office of the Town Clerk within five days of the date of such decision, and a copy shall be provided to the applicant. In acting to approve, with or without modifications, a site plan application, the Director of Planning may attach such conditions and safeguards as it deems necessary to assure that the purpose and intent of these regulations are complied with.
  3. Following site plan approval, or approval with modifications, and prior to expiration of the site plan as provided at §128-40.8 of this chapter, the applicant shall submit to the Economic Development and Planning Department a corrected final site plan in reproducible form, including any modifications required by the Director of Planning as a condition of approval.

4. Upon verification that the plan complies with the requirements of the approval, the plan shall be endorsed by the Director of Planning and filed with the Building Inspector.
5. Appeals of administrative site plan review decisions shall be made to the Zoning Board of Appeals in accordance with Article 47.

## § 128-42.5 PLANNING BOARD REVIEW

### A. Authorized Review Body.

1. Actions requiring Planning Board review, per the site plan review table, shall be reviewed and decided upon by the Planning Board.
2. All such applications shall be subject to site plan review in accordance with this Section.

### B. Application Processing.

Site plan review applications shall be submitted and processed in accordance with Article 40 of this Chapter.

### C. Application Requirements.

Site plan review applications shall include all materials as required by §128-42.8.

### D. Site Plan Review Procedure.

1. Town Staff shall conduct a review of site plans prior to action by the Planning Board.
2. Town Staff's written findings and any recommended modifications shall be referred to the Planning Board for their consideration.
3. Upon receipt of Town Staff findings and recommendations, the Planning Board shall review and issue a decision on the site plan in accordance with Article 40.

### E. Public Hearings.

A public hearing is not required. However, the Planning Board may hold a public hearing on site plan applications, if deemed necessary.

### F. Referrals.

All internal, professional, and required referrals shall be made in accordance with §128-40.7 and this Article.

### G. Coordinated Reviews.

Site plan review may be coordinated with other development applications in accordance with §128-40.6.

### H. Endorsement of Approved Plans.

1. The Planning Board shall approve, approve with modifications, or disapprove the site plan application.
2. A copy of the Planning Board's decision shall be filed in the office of the Town Clerk within five days of the date of such decision, and a copy shall be provided to the applicant. In acting to approve, with or without modifications, a site plan application, the Planning Board may attach such conditions and safeguards as it deems necessary to assure that the purpose and intent of these regulations are complied with.
3. Following site plan approval, or approval with modifications, and prior to expiration of the site plan as provided at § 128-40.8 of this chapter, the applicant shall submit to the Planning Board a corrected final site plan in reproducible form, including any modifications required by the Planning Board as a condition of approval.
4. Upon verification by the Planning Board that the plan complies with the requirements of the approval, the plan shall be endorsed by the Planning Board Chair and filed with the Planning Board and Building Inspector.

## § 128-42.6 REVIEW CRITERIA

The Town Economic Development and Planning Department Staff and Planning Board shall consider the following during administrative and site plan review, as applicable.

- A. Adopted Plans and Studies.** Conformance with the Town of Bethlehem Comprehensive Plan, Local Waterfront Revitalization Program (LWRP), and other relevant plans and studies.
- B. Zoning Regulations.** Conformance with all:
  - 1. Use, bulk, and dimensional requirements of Part 2 of this Chapter.
  - 2. Design and development standards of Part 3 of this Chapter, including, but not limited to, off-street parking, loading, and access management, landscaping, and screening, building and site design, exterior lighting, and sign regulations.
- C. Building and Site Design.**
  - 1. Compatibility of proposed uses and structures to that of adjacent properties, considering location, arrangement, size, materials, design, and transitional treatments. This may include an assessment of the appropriateness of proposed building and site design elements with the desired character of the district and/or neighborhood.
  - 2. Appropriateness of. This may include the assessment of the compatibility and relationship of proposed structures with the desired character of the district and/or neighborhood.
  - 3. Adequacy, type, and arrangement of trees, shrubs, and other landscaping and screening measures constituting a visual and/or noise deterring buffer between on-site uses and those adjacent thereto.
  - 4. Sufficient protection of adjacent properties from noise, glare, unsightliness, or other objectional features.
- D. Transportation Network.**
  - 1. Adequacy and arrangement of vehicular traffic and circulation, including intersections, road widths, traffic controls, traffic-calming measures, and accessibility by fire and emergency vehicles.
  - 2. Adequacy and arrangement of pedestrian and bicyclist access and circulation, including separation from vehicular traffic and connections provided internally and externally to the site.
  - 3. The location, arrangement, appearance, and sufficiency of off-street parking and loading areas.
- E. Environmental and Recreational Resources.**
  - 1. Preservation of and compatibility with natural site features and critical environmental resources, such as woodlots, watercourses, wetlands, floodplains, and animal habitat areas.
  - 2. Provision and dedication of public open space, parks, and recreational facilities and the adequacy of those facilities for their intended purpose.
  - 3. Adequacy of stormwater, drainage, and erosion management plans.
  - 4. Provision of green infrastructure or other such methods to reduce run-off.
- F. Services and Utilities.**
  - 1. Adequacy of sanitary waste disposal and water supply facilities.
  - 2. Adequacy and appropriate location of utility systems.
  - 3. Adequacy of proposed waste and trash management plan.
  - 4. Adequacy of snow storage and/or proposed snow removal plan.
- G. Other Considerations.**
  - 1. Encouragement of the most appropriate use of land and utilization of the site.
  - 2. Adequacy and appropriateness of construction plans and phasing.

3. Potential for adverse effects to the health, safety, or general welfare of nearby property owners and the community.

## § 128-42.7 ADMINISTRATIVE REVIEW APPLICATION MATERIALS

An administrative review application shall include the following materials, as deemed necessary and appropriate by the Town Economic Development and Planning Department Staff. Town Staff may require some or all application material be prepared by duly licensed professionals.

- A. Required application form, including but not limited to the name, address, and signature of the applicant, property owner, and developer.
- B. Description or narrative of all proposed uses and structures.
- C. Site plans drawn at a scale 50-ft to the inch or as deemed appropriate by the Town Economic Development and Planning Department Staff, prepared on a base map with an accurate boundary and topographic survey of the property, prepared by a New York State licensed land surveyor, and depicting all existing improvements and grades referenced to the NAD 1983 StatePlane New York East FIPS 3101 US feet coordinate system and the North American Vertical Datum of 1988 (NAVD88).
- D. The plans shall indicate the following:
  1. The location of all properties, their ownership, uses thereon, subdivisions, streets, easements, and adjacent buildings within 100 feet of the property in question.
  2. The location and use of all existing and proposed structures on the property in question, including all building and lot dimensions.
  3. The location of all existing and proposed topography as revealed by contours or key elevations, including final site grading.
  4. The location and proposed impacts to environmental features, including, but not limited to, open spaces, trees, watercourses, steep slopes, wetlands, floodplains, and watersheds.
  5. The location and dimensions of existing and proposed landscaping, screening, walls, and fences, including information regarding the size and type of plants and building materials proposed.
  6. The location and dimensions of existing and proposed public and private streets, off-street parking areas, access drives, driveways, sidewalks, ramps, curbs, and paths.
  7. A waste and trash management plan including the type, size, location, appearance, and operation of dumpsters or other trash receptacles.
  8. The type, size, location, appearance, and operation of all outdoor mechanical equipment.
  9. The location, height, intensity, bulb type, and light color of all exterior lighting fixtures.
  10. The location, height, size, material, and design of all existing and proposed signs.
  11. The location all new or modified downspouts or stormwater systems, including the configuration of a system for stormwater drainage or green infrastructure.
  12. The location of existing and proposed utility systems including sewage or septic, water supply, telephone, cable, electric, internet, and fiber.
- E. Building elevations, drawn at a scale deemed appropriate by the Town Economic Development and Planning Department Staff and descriptions of all exterior building materials.
- F. Plans for disposal of construction and demolition waste.
- G. Identification of any state or county permits required for the project and record of application for and approval status of such permits.
- H. All NYS SEQR documentation as required by law.

**§ 128-42.8 SITE PLAN APPLICATION MATERIALS**

- A.** An application for site plan review shall include all materials noted in this section, unless otherwise waived or modified in accordance with §128-40.4 C.
- B.** The site plan shall use as a base map an accurate boundary and topographic survey of the property, prepared by a New York State licensed land surveyor, and depicting all existing improvements and grades referenced to the NAD 1983 StatePlane New York East FIPS 3101 US feet coordinate system and the North American Vertical Datum of 1988 (NAVD88).
- C.** The site plan shall be prepared at a scale of not more than 50 feet to the inch, shall depict all proposed improvements, all elevations shall be based on NAVD88, and shall be prepared by a licensed land surveyor, a professional engineer, a landscape architect, or an architect licensed by the State of New York and shall include the following information:
  - 1. A location map, at a convenient scale, showing the applicant's entire property and all boundaries and streets within 500 feet thereof.
  - 2. The location, size and use of all existing and proposed buildings and structures.
  - 3. The location of all property lines and structures within 200 feet of the property boundary, with topography extended 50 feet outward from the site property boundary and 200 feet outward along existing roads.
  - 4. Any proposed division of buildings into units of separate occupancy.
  - 5. Existing and proposed easements.
  - 6. The names of the owners of land abutting the project site.
  - 7. The boundaries of applicable zoning district(s) and water and/or sewer district boundaries.
  - 8. The architectural design of all proposed buildings and structures, including the color and material proposed for use on exterior surfaces.
  - 9. Existing topography and proposed grade elevations at a contour interval not more than two feet, unless waived by the Planning Board, wetlands and watercourses, one- hundred-year floodplain area, bedrock outcrops, slopes in excess of 10%, and the location of trees with a diameter of 10 inches dbh and greater. Topography shall be based on NAVD88 datum, with ground truth established by actual field survey and certified to by a licensed land surveyor.
  - 10. If the site contains wetlands that meet the criteria for classification as federal jurisdictional wetlands, the site plan shall include a recent (not more than 2 years old) delineation of the on-site wetlands together with a tabulation of the amount of disturbance, if any, to the on-site wetlands. A jurisdictional determination from the United States Army Corps of Engineers shall also be provided.
  - 11. A jurisdictional determination from NYSDEC regarding state protected freshwater wetlands. The site plan shall include the location of the delineated on-site wetlands and the wetland buffer together with a tabulation of the amount of disturbance, if any, to the on-site wetlands.
  - 12. The location of all existing and proposed roads, driveways, parking and loading areas, including access and egress drives.
  - 13. A table stating the number of parking and loading spaces required under this chapter and the number proposed.
  - 14. The location of outdoor storage areas.
  - 15. The location of fire access roads and fire protection features.
  - 16. The location, description and design of all existing and proposed site improvements, including pavement, walkways, curbing, drains, culverts, retaining walls, fences, parks, open spaces, and recreation areas.
  - 17. The location, design and description of water supply and sewage disposal facilities.

18. The location, design and description of stormwater management facilities, including proposed grading plan.
19. The location, height, size and design of all signs.
20. The location, height, caliper and species of all proposed landscape plantings on a landscape plan provided in a Planting Schedule.
21. The location and design of building-mounted and freestanding lighting and communication facilities.
22. The location, type and design of all waste and refuse storage and handling facilities.
23. The character and type of all power distribution and transmission lines.
24. The location and description of all subsurface site improvements and facilities.
25. The extent and amount of cut and fill for all disturbed areas, including before and after profiles of typical development areas, parking lots, driveways and roads.
26. Adequate provisions for the handling of stormwater runoff, including retention/ detention, piping or channeling to existing or proposed drainage systems, during and after construction in accordance with Chapter 98 of the Code of the Town of Bethlehem.

27. All soil testing results and information, including test pit locations and tabulated design data. When soil testing is required by the Town Engineering Division, the following shall apply:
    - a) A representative from the Town of Bethlehem Engineering Division shall be present and witness all tests, including but not limited to: deep test pits, shallow test pits, borings, and infiltration tests.
    - b) All testing shall be in conformance to Appendix D of the 2015 New York State Stormwater Management Design Manual or as amended or equivalent documents from NYSDEC.
    - c) All testing must be performed between April 1st and November 31st. Testing outside of this window may be allowed at the discretion of the Town Engineer.
    - d) All perched water within the soil strata shall be accounted for in stormwater designs per NYSDEC requirements.
  28. Phasing of development, if any.
  29. A signature block for Planning Board endorsement of approval.
  30. Date, North arrow and tax identification numbers of all parcels included in the application.
  31. The name and address of the owner of the property proposed for development.
  32. The name and address of the applicant, if different than owner.
  33. Any other information as may be deemed by the Planning Board as necessary to determine and provide for the proper enforcement of this chapter.
- D. Waterfront Projects.** A completed Waterfront Assessment Form shall also be required for projects within the Waterfront Revitalization Area (WRA) boundary.
- E. Agricultural Data Statement.** A site plan application must also contain an agricultural data statement if any portion of the project is located on property within an agricultural district containing a farm operation or other property with boundaries within 500 feet of a farm operation located in an agricultural district. The agricultural data statement shall contain the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm property; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

# ARTICLE 43

## SPECIAL USE PERMITS

### § 128-43.1 PURPOSE & INTENT

- A. The purpose of this Article is to regulate special uses, which by nature of their operation, may have a higher potential for incompatibility with adjacent uses or otherwise unique characteristics which require a case-by-case review of their location, design, configuration, and impacts on the surrounding area. Special uses are those uses identified as appropriate for the zoning district for which they are located subject to satisfying performance standards. It is the intent of this Article is to ensure that specific projects meet those standards.
- B. The standards of this Article are intended to provide for the individual review and approval of such uses to ensure compatibility of the use in its proposed location and mitigate any potential adverse impacts the use may have on the district or neighborhood.

### § 128-43.2 APPLICABILITY

- A. **Permit Required.** A special use permit shall be obtained for all uses and actions as noted below.
  1. For all uses as noted in the district tables of Part 2 of this Chapter prior to their establishment or operation.
  2. Expansion, enlargement or extension of a structure containing a nonconforming use pursuant to Article 14 (Terminology).
  3. 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 Article 42 without the necessity of following the procedures in Article 43 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.
  4. Mining and mineral extraction, where noted in the district tables of Part 2 of this Chapter.
- B. **Additional Use Regulations.** In addition to the general district and development requirements of this Chapter, specially permitted uses shall also conform to the requirements of Article 24, where applicable.

### § 128-43.3 REVIEW PROCEDURE

- A. **Authorized Review Body.** Special use permit applications shall be reviewed and decided upon by the Planning Board.
- B. **Application Processing.** Special use permit applications shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. **Application Requirements.** Special use permit applications shall include all materials as required by §128-43.4.
- D. **Planning Board Action.** The Planning Board shall review and decide upon applications in accordance with §128-40.5.
- E. **Public Hearings.** A public hearing shall be held for all special use permit applications prior to issuance of decision.
- F. **Referrals.** All internal, professional, and required referrals shall be made in accordance with §128-40.7.
- G. **Coordinated Reviews.** The review of special use permit applications may be coordinated with other development applications in accordance with §128-40.6.

### § 128-43.4 APPLICATION REQUIREMENTS

A special use permit application shall include the following, as applicable:

- A.** A site plan denoting the location of the subject property and all structures thereon, as well as all property, uses, and structures within 300 feet of the proposed use.
- B.** A description of the proposed use and nature of its operation, including:
  1. A business plan, vision, or model, and/or summary of products, goods, and services to be sold or provided;
  2. The proposed hours of operation;
  3. The number of employees at maximum shift;
  4. The maximum seat capacity;
  5. The timing and manner of any and all anticipated deliveries;
  6. A recycling and waste management plan; and
  7. The nature and type of all mechanical equipment provided and/or required.
- C.** An interior floor plan, including, but not limited to, the arrangement of seats, kitchen and/or bar size and location, storage areas, bathroom facilities, and location of machines or other mechanical equipment.
- D.** A narrative describing how the proposed use will satisfy the review criteria of §128-43.5.
- E.** All SEQR Documentation as required by NYS Law.
- F.** Where administrative or site plan review is also required, the application materials of Article 42 shall also apply.
- G.** Mining Operation. A complete copy of the application to the New York State Department of Environmental Conservation for a mining permit is required, including all maps, reports and documentation incidental thereto, and the mining permit which has been issued by the Department in relation to the subject operation. An application for a special use permit shall not be acted upon by the Planning Board unless the location of the proposed activities lies entirely within the boundaries of a zone where soil mining is a permitted use or a variance has been obtained from the Zoning Board of Appeals for any land not within said zones.

## § 128-43.5 REVIEW CRITERIA

- A. Performance Standards.** In granting any special use permit, the Planning Board shall take into consideration the public health, safety and general welfare of the Town and the comfort and convenience of the public in general and the immediate neighborhood in particular. The Board may require modifications to an application, including submission of alternative design and layout proposals, and may attach reasonable conditions and safeguards on its approval to eliminate or minimize potential impacts on surrounding properties and the community in general. Before making a decision on whether to approve, approve with modifications, or disapprove a special use permit, the Planning Board shall give specific consideration to the following standards, and the Planning Board is hereby authorized to use its discretion to determine whether one or more of these standards apply to a particular application:
  1. Fire and explosion hazards. All activities involving the storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion. Methods of prevention and suppression of these hazards shall be approved by the local officials responsible for fire prevention and public safety.
  2. Radioactivity or electrical disturbance. No activities shall be permitted which emit dangerous radioactivity or electrical disturbance that will jeopardize the health of any employee or adjacent resident or property or otherwise adversely affect the operation of any equipment other than that on the premises.
  3. Noise. The maximum noise level at the property line applicable to the use involved shall not exceed 70 dBa as measured in accord with the procedure specified by the American National Standards Institute.

4. Vibration. No vibration shall be permitted which is detectable, other than by instrument, at the property line.
5. Glare. No direct or reflective glare from any lighting or process shall be permitted where such will interfere with traffic safety or the useful enjoyment of adjoining properties.
6. Smoke. No emission shall be permitted of a shade equal to or darker than Ringelmann Smoke Chart No.
7. Odors. No emission of odorous gases or other matter shall be permitted in a quantity or a type that permits it to be detectable, other than by instrument, at the property line.
8. Other forms of air pollution. No emission of fly ash, dust, smoke, vapors, gases or other forms of air pollution shall be permitted which can jeopardize human health or animal or vegetable life or which otherwise contributes to the deterioration of or detracts from adjacent properties.
9. Discharge of water. No polluting or objectionable waste shall be discharged into any stream or other natural drainage channel or upon the land that will in any way interfere with the quality, operation or continuation of these natural systems or contribute to their despoliation.
10. Traffic access. All proposed traffic accessways shall be adequate but not excessive in number; shall be adequate in width, grade and alignment and visibility; shall be sufficiently separated from street intersections; and shall meet other similar safety considerations.
11. Parking. Adequate off-street parking and loading spaces shall be provided in accordance with Article 32 to prevent parking in public streets of the vehicles of any persons connected with or visiting the use.
12. Circulation. The interior circulation system shall be adequate to provide safe accessibility to all required off-street parking and to provide for the convenience and safety of vehicular, pedestrian, and bicycle movement within the site and in relation to adjacent areas or roads.
13. Landscaping and screening. All parking and service areas shall be reasonably screened from the view of adjacent residential lots and streets, and the general landscaping of the site should be in character with that generally prevailing in the neighborhood. Existing trees, 12 inches or more in diameter at breast height (dbh), should be preserved to the maximum extent practical.
14. Character and appearance. The character and appearance of the proposed use, buildings, structures, outdoor signs, and lighting shall be in general harmony with the character and appearance of the surrounding neighborhood and shall not adversely affect the general welfare of the inhabitants of the Town.
15. Historic and natural resources. The proposed use shall be designed and carried out in a manner that minimizes impacts to historic and natural environmental features on the site and in adjacent areas.
16. Sewage treatment and water supply. Sewage disposal and water supply services supporting the proposed activity or use shall be sufficient to meet the needs of the proposed activity or use. Consideration shall be given to both the suitability of water supply and sanitary sewage facilities to accommodate the intended use and the adequacy of measures to protect surface water and groundwater from pollution.
17. Emergency services. All proposed buildings, structures, equipment, and/or material shall be readily accessible for fire, police, and other emergency service protection.
18. Nuisances. The proposed use shall not be more objectionable to nearby property owners or occupants by reason of noise, fumes, vibration or lighting than would the operations of a permitted use.
19. Size and scale. The location and size of the proposed use, the nature and intensity of operations involved in or conducted in connection therewith, and the site layout and its relation to existing and future access streets shall be such that both pedestrian and vehicular traffic to and from the use will not be hazardous or inconvenient to, or incongruous with, or conflict with the normal traffic of the neighborhood.

20. The location and height of buildings, the location, nature and height of walls and fences, and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.
- B. Stormwater Management.** The proposed use shall be designed to be in compliance with Chapter 98 of the Code of the Town of Bethlehem.
- C. Additional Safeguards and Conditions; Measurement of Standards.** The Planning Board shall impose additional conditions and safeguards upon the special use permit as may be reasonably necessary to assure continual conformance to all applicable standards and requirements, including reasonable assurances that these standards and requirements can be responsibly monitored and enforced.
- D. Measurement of Standards.** The determination of the existence of any dangerous or objectionable condition shall be made at:
1. The point or points at which any potential fire, explosion, radioactivity, electrical disturbance, smoke or other air pollution is most apparent or likely to create a hazard or nuisance; or
  2. The property lines of the use creating the condition, such as noise, vibration, glare or odor
- E. Standard for Review.** Failure to meet one or more of the above criteria may result in denial of an application.
- F. Mining Operation Conditions.** The special use permit for a mining operation shall be subject to the following conditions which shall be established by the Planning Board and shall be set forth in the special use permit:
1. Any conditions of special use permit approval pursuant to Article 43 of this chapter.
  2. Any limitations or prohibitions on the use of Town roads for the purpose of ingress and egress to and from the mining site to and from public thoroughfares.
  3. Any limitations or prohibitions on the routing of mineral transport vehicles on Town roads.
  4. All of the limitations, requirements and conditions as specified in the applicant's mining permit issued by the New York State Department of Environmental Conservation concerning setback from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, if required, dust control and hours of operation.
  5. The ability of the Town to enforce all of the reclamation requirements contained in the applicant's mined land reclamation permits issued by the New York State Department of Environmental Conservation

## § 128-43.6 TRANSFER OF PERMITS

Special use permit approval shall be considered to run with the land rather than applicant. Therefore, where a change of owner, operator, or occupant occurs, the approved special use permit for the property may be transferred in accordance with the following:

- A. Notice of Change.** The subsequent owner or occupant shall, prior to taking possession of such premises, give written notice to the Town's Department of Economic Development and Planning indicating the change of ownership or occupancy of such premises and shall execute such forms as shall be reasonably required by said Department.
- B. Compliance with Existing Approvals and Conditions.** The subsequent owner or occupant shall continue to comply with all the conditions and provisions of the existing special use permit and any associated site plans. Written acknowledgement of and agreement to the conditions and provisions of these existing approvals shall be provided to the Town by the owner or operator with the notice of change.
- C. Compliance with Existing Conditions.** Where modifications or alterations to the operation of the authorized special use are proposed by the applicant, a new special use permit shall be required in accordance with this Article.

## § 128-43.7 REAPPLICATION FOR DENIED SPECIAL USE PERMITS

A reapplication for a special use permit request which has been previously denied shall not be considered unless substantial revisions have been completed from the original application previously denied, as determined by the Building Inspector.

# ARTICLE 44

## SUBDIVISION

### § 128-44.1 LEGISLATIVE AUTHORITY

By authority of the Town of Bethlehem Town Board, pursuant to NYS Town Law §276, the Planning Board of the Town of Bethlehem is hereby authorized and empowered to review and approve subdivision plats.

### § 128-44.2 ADMINISTRATION

The purpose of subdivision review is not only to provide for future growth and development, but also maintain and enhance the physical character of the Town, its multi-modal transportation network, neighborhoods, agricultural lands, natural environment, and protect the general health, safety, and welfare of the public. The administration of this law shall be in accordance with Chapter 103 of the Town of Bethlehem Code.

# ARTICLE 45

## PLANNED DEVELOPMENT DISTRICT (PDD)

### § 128-45.1 APPLICATION SUBMITTAL

- A. Eligible Applicants.** An application for establishment of a planned development district by amendment of this chapter shall be made in writing to the Town Board in accordance with Article 40. Applications shall be made by the owner(s) of the land(s) to be included in the district or by a person or persons holding an option to purchase the lands contingent only upon approval of the application for the change of zone. In the event an application is made by a person or persons holding an option to purchase the lands, the application shall be accompanied by a statement signed by all owners of such land indicating concurrence with the application.
- B. Application Fees** An application shall be accompanied by an application fee as set by Town of Bethlehem Fee Schedule. All application fees are in addition to any required escrow fees and do not cover the cost of environmental review. The applicant shall be responsible for the total cost of environmental reviews that are determined to be necessary to meet the requirements of the State Environmental Quality Review Act (SEQRA). In addition, if the Board requires professional review of the application by designated private planning, engineering, legal or other consultants, or if it incurs other extraordinary expense to review documents or conduct special studies in connection with the proposed application, the reasonable cost of said reviews shall be funded by the applicant with deposits made to an escrow account established for this purpose.

### § 128-45.2 REQUIRED APPLICATION MATERIALS & DISTRICT PLAN

In order for the Town Board to reach an understanding of the appropriateness of rezoning at the earliest opportunity, the applicant shall submit a district plan of the proposed PDD in sufficient quantity as determined by the Town. The district plan to be complete shall consist at minimum of the following:

- A.** A metes and bounds description of the proposed district.
- B.** A survey of the parcel prepared and certified by a licensed land surveyor.
- C.** A map drawn to scale showing existing conditions of the parcel, including:
1. Name and address of owner of record (and applicant if different).
  2. Name of person or firm preparing the map.
  3. Date, North arrow and map scale.
  4. Names of owners of abutting parcels.
  5. Acreage of parcel and county tax map number.
  6. Boundaries of the parcel plotted to scale.
  7. Location and width of existing and proposed state, county, or Town highways or streets and rights-of-way abutting or within 200 feet of the parcel.
  8. Location and outline of existing structures both on the parcel and within 100 feet of the property line.

9. Location of any existing storm or sanitary sewers, culverts, waterlines, hydrants, catch basins, manholes, etc., as well as other underground or aboveground utilities within or adjacent to the parcel.
  10. Existing zoning and location of zoning boundaries.
  11. Location and outline of existing water bodies, streams, marshes or wetland areas and their respective classification as determined by the appropriate governmental regulatory body.
  12. Approximate boundaries of any areas subject to flooding or stormwater overflow.
  13. Location and outline of existing clusters of vegetation extending for a distance of no less than 50 feet onto adjoining property.
  14. Freestanding trees with a caliper of 18 inches or greater located within the parcel.
  15. Existing contours at an interval of five feet (or less) and extending for a distance of no less than 50 feet onto adjoining property. (Note: Two-foot contour intervals will be required at the time of detailed site plan or subdivision review of the project. To the extent that a two-foot contour interval is available, or has been obtained, the applicant is encouraged to submit this information at the redistricting phase of the review.)
  16. Identification of any other significant natural features.
  17. Identification of constrained lands as defined by this chapter.
  18. A map depicting the total developable acreage of the project site.
- D.** A preliminary plan for development of the district, drawn approximately to scale, though it need not be to the precision of a finished engineering drawing, clearly showing the following:
1. The approximate location and dimensions of proposed principal and accessory buildings on the site, their relationship to one another and to other structures in the vicinity, as well as the number of dwelling units by housing type, size, and number of bedrooms, plus a calculation of the density, in dwelling units per acre.
  2. The location, scale, approximate dimensions, floor area, and type of any secondary commercial, service or other nonresidential use proposed for the site and its relationship to residential uses and adjoining properties.
  3. The approximate location, layout and dimensions of vehicular traffic circulation features of the site, including proposed roadways, internal driveways, parking and loading areas and proposed access to the site.
  4. The approximate location, type, layout and nature of proposed pedestrian circulation systems on the site.
  5. The proposed location, type and layout and approximate size of playgrounds, recreational areas, and open space proposed for the site and the general location of such facilities in respect to the proposed buildings to be erected on the site.
  6. The approximate height, bulk and intended use of buildings on the site and an architectural concept plan prepared in sufficient detail to show the mass, form and general architectural style of proposed buildings on the site and their compatibility with nearby land uses. Single-family detached homes shall be exempt from this requirement unless the Planning Board or Town Board specifically requires an architectural concept plan for such housing.
  7. The proposed safeguards to be provided to minimize possible detrimental effects of the proposed development on adjacent properties and the neighborhood in general, including any proposed concept plan for landscaping, tree preservation and/or for buffering to adjacent properties.
  8. The proposed source of water supply and how it will be brought to the site, including a preliminary plan for distribution within the development.
  9. A preliminary plan for the collection and disposal of sanitary wastes from the site.

10. A preliminary stormwater management plan for the property, showing the proposed stormwater collection and management system, including discharge points and provisions intended for MS4 Phase II Stormwater compliance pursuant to General Permit GP-02-01, any renewals and extensions thereto and Chapter 98 of the Code of the Town of Bethlehem.
  11. A preliminary site grading plan at intervals of five feet or less.
  12. Approximate location of land to be dedicated to the Town.
  13. Preliminary identification of areas that will be disturbed by project implementation and areas that will remain undisturbed.
  14. Other information as may be required by the Town Board or Planning Board.
- E.** A vicinity map showing the proposed use in relation to existing zoning and land use within 1/4 mile of the site.
  - F.** A narrative describing the proposed project, including the desirability and/or public benefit of the proposed land use in the proposed location; the existing character, land use and zoning of the surrounding neighborhood; and the need for the project in the context of the Comprehensive Plan.
  - G.** A completed application form and full environmental assessment form.
  - H.** A fiscal impact analysis of the proposed project as compared to development of the site under its current zoning classification.

### § 128-45.3 SEQRA REVIEW FOR REZONING TO PDD

As the agency "principally responsible for undertaking, funding or approving" [6 NYCRR 617.2(u)] the PDD zoning amendment, the Town Board is hereby designated the lead agency pursuant to 6 NYCRR 617 for review of all applications to establish or amend a PDD or district plan. No application shall be deemed complete until a negative declaration has been issued or until a draft environmental impact statement has been accepted by the Town Board as satisfactory with respect to scope, content and adequacy. The SEQRA review shall be processed in accordance with 6 NYCRR Part 617 and in accordance with the following:

- A. Town Board as lead agency.** The Town Board shall assume and shall carry out all of the required duties of a lead agency as specified in 6 NYCRR 617, including but not limited to issuance of a determination of significance, adoption of a negative declaration, scoping, determining the completeness of a draft and a final environmental impact statement (EIS), convening of a public hearing on a draft EIS, and adoption of a findings statement. In performing these duties the Town Board shall, as early in the consideration of the project as possible, rely on the expertise of the Planning Board and the Department of Economic Development and Planning to identify the relevant environmental issues and the severity of potential impacts associated with the PDD application. The Town Board may, consistent with the requirements of SEQRA, adopt the recommendations of the Planning Board and/or the Department on any matter related to the environmental review, including the implementation of project changes or mitigation measures to avoid or to minimize the potential adverse environmental effects of the PDD project.
- B. Planning Board as involved agency.** As an involved agency the Planning Board has the responsibility to review the potential environmental effects of the proposed PDD; provide the Town Board with its recommendation and any supporting information it may have that may assist the Board in making its determination of significance; identify during the scoping process potentially significant adverse impacts that should be considered in the DEIS; review and comment in a timely manner on the EIS if it has concerns which need to be addressed; and participate as may be needed in any public hearing. The Planning Board shall, pursuant to §128-45.5, make a recommendation to the Town Board as to whether a draft EIS should be prepared and shall include a written statement of reasons to support its recommendation.
- C. Department of Economic Development and Planning.** As an interested agency the Department has a responsibility to the Town Board to make known its views on the action, particularly with respect to matters related to zoning compliance, engineering and public safety matters within its expertise and jurisdiction.

## § 128-45.4 INITIAL DETERMINATION & PLANNING BOARD REFERRAL

Upon receipt of a proposed district plan and application to establish a PDD, the Town Board shall determine whether or not it will further consider the PDD application. If the Town Board determines that the application will be further considered it shall refer the application, including the proposed district plan, SEQRA documentation and related materials, to the Planning Board for a recommendation on both the proposed zoning amendment and SEQRA determination of significance.

## § 128-45.5 PLANNING BOARD REVIEW

### A. SEQRA Recommendation and Review Period.

1. The Planning Board shall, within 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 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 subsection, the Planning Board and applicant may by mutual consent agree to an extension of the 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.
2. 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 time period of 120 days.

### B. Zoning Recommendation and Review Period. Subsequent to making its recommendation on a SEQRA determination of significance, the following procedures and time periods shall apply to the Planning Board's consideration of the zoning amendments:

1. Negative declaration. Where the Planning Board has recommended that a negative declaration be issued on the PDD application, the Planning Board shall, within 31 days of issuing said recommendation, also issue a report to the Town Board recommending that the zone change request be approved, approved with modifications, or denied. If the Planning Board determines that the preliminary district plan is not adequate upon which to render a recommendation, it shall so notify the Town Board within the thirty-one-day period and shall specify the additional information that it will require to make such recommendation. Notwithstanding the provisions of this subsection, the Planning Board and applicant may by mutual consent agree to an extension of the thirty-one-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 the preliminary district plan is inadequate, the time frames for action by the Planning Board and Town Board shall be extended accordingly. If no report has been rendered by the Planning Board after 31 days, and the Planning Board has not otherwise notified the Town Board that the preliminary district plan is inadequate, the applicant may proceed as if a favorable report were issued on the zoning amendment.
2. Positive declaration. Where the Planning Board has recommended that a positive declaration be issued on the PDD application, the Planning Board may withhold its recommendation on the proposed rezoning until such time it has sufficient information (which may in part include information contained in the EIS) to reasonably make its recommendation. In the event that the Planning Board withholds its recommendation on the zoning amendment, the Planning Board shall state its reasons and instead provide to the Town Board, within 31 days of issuing its recommendation on the positive declaration, a preliminary opinion on the proposed zoning amendment and whether or not the proposed PDD and district plan might constitute an appropriate land use at the proposed location. In rendering its

preliminary opinion, the Planning Board may attach to such opinion any reasons or qualifications it deems appropriate.

3. Nothing contained herein shall be construed to prevent the Planning Board from issuing its recommendation on the zoning amendment simultaneously with its recommendation for a negative declaration or positive declaration.

**C. Required Changes.**

1. In its review of the application, the Planning Board may require such changes in the district plan it finds necessary or desirable to meet the requirements of this chapter, to promote the objectives of the Comprehensive Plan, to protect the established or permitted uses in surrounding neighborhoods, and/or to promote the orderly growth and sound development of the Town. The Planning Board shall notify the applicant of such changes and discuss the changes with the applicant.
2. The applicant may submit to the Planning Board revised district plans incorporating the changes required. Such resubmission shall be made within a time period as may be allowed by the Planning Board after notification by the Board. If such resubmission is not made, the Planning Board shall note the required changes and the failure to make said changes in its report to the Town Board.
3. In order to incorporate in the district plan significant changes of the applicant's own making, the applicant shall withdraw from the Planning Board the district plans referred to said Board by the Town Board and submit a revised application and plans to the Town Board for review as provided herein. What constitutes a significant change shall be a determination of the Planning Board.

**D. Planning Board Action.** The Planning Board shall make a favorable or unfavorable recommendation on the application and shall report its findings to the Town Board. In making its recommendation to the Town Board, the Planning Board shall consider the criteria for rezoning found at §128-45.7 of this Article.

1. **Favorable Report.** A favorable recommendation to approve a PDD, or approve with modifications, shall not constitute nor imply approval of a site plan or subdivision for the area included in the application, nor shall it constitute an action under the State Environmental Quality Review Act. In issuing a favorable report, the Planning Board shall identify and provide its opinion as to what criteria at §128-45.7 are satisfied by the application, what criteria are not satisfied, and the reasons for each.
2. **Unfavorable Report.** An unfavorable report recommending that the rezoning be disapproved shall state clearly the reasons therefor, including any inconsistencies with the criteria found at §128-45.7, and, if appropriate, may point out to the applicant what might be necessary in order to receive a favorable report.

## § 128-45.6 TOWN BOARD REVIEW

**A. Report from Planning Board.**

1. **Favorable Report.** Upon receipt of a favorable report from the Planning Board, the Town Board shall set a date for and conduct a public hearing for the purpose of considering the proposed rezoning to planned development district. In accordance with the procedures established under §§ 264 and 265 of Town Law, said public hearing shall be conducted within 62 days of the receipt of the favorable report.
2. **Unfavorable Report.** In the event of an unfavorable report from the Planning Board recommending that the rezoning be disapproved, the Town Board shall, at its discretion, either deny the application at this time or proceed with the application and hold a public hearing, which it is entitled to do notwithstanding receipt of an unfavorable recommendation from the Planning Board.

**B. Town Board Action.**

1. Upon completion of the public hearing the Town Board shall act to approve or disapprove the rezoning application, including the district plan for development of the PDD. If the Town Board grants the rezoning to planned development district, the Zoning Map shall be so amended.

2. The Town Board may attach to its zoning amendment any additional conditions or requirements that it deems necessary to fully protect the public health, safety and welfare of the community. Such requirements may relate to, but are not confined to, visual and acoustical screening, land use mixes, order of construction and/or occupancy, circulation systems, both vehicular and pedestrian, availability of sites within the area for necessary public services, such as schools, firehouses and libraries, protection of natural and/or historic sites and other such physical or social demands or impacts generated by the project.
3. As part of its approval of the zoning amendment and district plan the Town Board shall establish the specific land use and lot and bulk requirements that will apply to the PDD. These requirements may include but are not limited to the mix of land uses that will be permitted, the permitted intensity of land use or dwelling unit density, the required setbacks, requirements regarding signs, parking, landscaping and buffers, or such other requirements for development of the district that the Town Board deems appropriate.
4. The district plan and all conditions and requirements approved by the Town Board as part of the rezoning shall be binding on all land and owners within the district and their successors and assigns, unless specifically amended by the Town Board.

### § 128-45.7 CRITERIA FOR REZONING TO PDD

In determining whether or not to approve a planned development district, the Town Board shall consider the extent to which, consistent with the intent and objectives of this chapter, the proposed PDD and district plan meet the following criteria:

- A. The proposal should conform to the Town Comprehensive Plan.
- B. The proposal should meet the purposes of this Article and Chapter.
- C. The proposal should meet a community need or otherwise provide a significant benefit to the community and conform to accepted design principles in the proposed functional roadway system, land use configuration, open space system, drainage system and scale of the elements.
- D. There should be adequate public services and utilities available or proposed to be made available in the construction of the development.
- E. The site should be served by both public water and public sanitary sewer facilities, and said facilities shall be adequate to accommodate the additional demand placed upon them by the proposed development.
- F. The site should be well-drained, and stormwater generated by development of the site should not place an undue burden on existing facilities or contribute to downstream flooding.
- G. The site should be located in an area suitable for residential purposes and should be reasonably free of objectionable conditions, such as odors, noise, dust, air pollution, high traffic volumes, incompatible land uses and other environmental constraints.
- H. The site should be located within reasonable proximity to public transportation service, or, in the alternative, shuttle bus or other transportation service should be available to the site.
- I. The site should be located such that access to it can be obtained from a public street that meets current engineering standards of the Town with respect to roadway width and alignment and acceptable sight distances can be developed at the site entry/exit and at intersections in the vicinity of the site.
- J. The architectural style of the proposed development, including exterior materials, finishes, color and the scale of the buildings, should be consistent with existing community and neighborhood character.
- K. The development of the site should not produce undue adverse effects on the surrounding neighborhood.
- L. To the extent affordable housing is made available, the scope and design of the project should establish a worthwhile asset for the area of the Town in which it is located and the community as a whole.

## § 128-45.8 APPROVAL OF BUILDING PROJECTS WITHIN A PDD

### A. Site plan Approval Required.

1. Site plan review and approval by the Town Planning Board as provided in Article 42 of this chapter shall be required prior to development of any lot, plot or parcel of land in a planned development district. Changes to a previously approved site plan shall also require site plan approval. The site plan application may address development of the district as a whole or it may address the development of a portion of the PDD.
2. Exemption. Notwithstanding the requirement for site plan review, no such review shall be required for development of single-family detached dwellings where such dwellings sit on their own lot and said lot(s) is (are) approved as part of a subdivision pursuant to Subsection B below.

**B. Subdivision Approval.** If the proposed development of the PDD involves a land division or the subdivision of land as defined in this chapter and Chapter 103, Subdivision Regulations, subdivision approval by the Planning Board pursuant to Chapter 103 shall also be required. Where practicable, the Planning Board shall conduct its review of an application for site plan approval coincident with its review of an application for subdivision approval.

**C. Conformity with District Plan Required.** The Planning Board shall not approve any site plan and/or subdivision within a planned development district unless said Board finds that the site plan and/or subdivision is in substantial conformance with the district plan that served as the basis for the zone change to PDD.

**D. SEQRA Compliance.** In approving a site plan and/or subdivision within a planned development district, the Planning Board shall ensure that the mitigation measures or project changes identified in the environmental review pursuant to this Article have been incorporated into the approved project plans and shall, consistent with 6 NYCRR 617.3(b), impose substantive conditions on the PDD project plans to ensure that the requirements of the findings statement or the conditioned negative declaration adopted by the Town Board are satisfied.

**E. Performance Surety.** Before granting site plan or subdivision approval for a building project within a PDD, the Planning Board may require the applicant to furnish a surety in connection with the construction involved in the preparation of the building project site and/or in connection with construction of buildings. The form and amount of such surety, and the amount of any liability insurance to be furnished, shall be determined by the Planning Board.

**F. Time Limits.** If construction work on the proposed building project is not begun within the time limits specified in the site plan and/or subdivision approval or if such work is not completed within the period of time specified by such site plan and/or subdivision approval, said approval shall become null and void and all rights therein shall cease unless the Planning Board, for good cause, authorizes an extension.

**G. Conditions.** All conditions imposed by the Town Board in granting the zoning change to PDD, including those the performance of which are conditions precedent to the issuance of any site plan or subdivision approval necessary for the development of any part of the entire site, shall run with the land and shall not lapse or be waived as a result of any subsequent change in the tenancy or ownership of any or all of the area.

**H. Building Permits.** Applications for building permits for each structure in a PDD shall be made to the Building Department and shall be subject to all rules and regulations of the Town pertaining to the issuance of such building permits.

## § 128-45.9 REQUEST FOR CHANGES IN DISTRICT PLAN.

**A. Planning Board Authority.** If in the site plan and/or subdivision review it becomes apparent that certain elements of the site plan or subdivision do not conform to the district plan, as it has been approved by the Town Board, or where it is shown that certain elements of the district plan are unfeasible and in need of modification, the applicant shall present the proposed changes to the Planning Board. The Planning Board shall then determine whether or not the proposed modifications to the district plan are significant, or

whether the modifications are still in keeping with the intent of the zoning amendment that established the PDD.

1. If the Planning Board finds that the proposed modifications are not in substantial conformance with the district plan, the site plan and/or subdivision shall be considered as disapproved. The developer may then, if he wishes, produce another site plan in conformance with the approved district plan.
2. If the Planning Board finds that the proposed modifications are in substantial conformance with the district plan, the Planning Board may approve said modifications as part of its site plan and/or subdivision approval, provided that the Board makes written findings identifying the approved modifications and the justification for each. If an affirmative decision is reached, the Planning Board shall so notify the Town Board, stating all of the particulars of the matter and its reasons as to why the project should be continued as modified.

**B. Town Board Application.** Nothing contained in the preceding subsections shall prevent an owner/applicant from making application directly to the Town Board for an amendment to the district plan. Said applications should be reserved for significant changes in concept and design of the PDD. Applications to the Town Board for amendment of an approved district plan shall be processed in the manner of the original application that established the district.

#### **§ 128-45.10 PROCEDURES IN PDDS ESTABLISHED PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE**

- A.** Application for approval of a new building project or for amendment to an existing building project in a PDD that was established prior to the effective date of this Article shall be processed in the manner prescribed at §128-45.8, except that the initial application shall be made in writing to the Town Board, which shall then refer the application to the Planning Board for site plan and/or subdivision review and a recommendation on whether to approve, approve with modifications or disapprove the application. The Planning Board's role in the review of the building project shall be advisory in nature, and final approval authority shall rest with the Town Board.
1. Exception. No approval shall be required for amendment to an existing building project where such amendment entails the construction of decks, screened porches, sunrooms or sheds, pools, or minor modifications of a similar nature that are incidental to the use or purpose of the building project, as determined by the Building Inspector, provided such construction complies with the use, area, yard and bulk requirements established in the Building Project Approval (BPA), any specific conditions of the BPA related to such improvements and any applicable requirements of the Town Code, including building permit requirements.
- B.** SEQR review. The Town Board shall serve as SEQR lead agency for building project reviews and amendments under this Article. In conducting its review, the Town Board shall follow the same procedures as specified at §128-45.3.
- C.** Notwithstanding the referral requirement in Subsection A above, the Town Board may forgo its referral to the Planning Board in the case of an amendment to a previously approved building project where it determines that such amendment is of a minor nature.

#### **§ 128-45.11 EFFECT ON PREVIOUSLY ESTABLISHED PDDS AND BUILDING PROJECTS**

For planned development districts and building projects that were approved prior to the effective date of this chapter, the use, area, yard and bulk requirements and all conditions of the approval that were established by the Town Board at the time of rezoning or granting of the building project approval shall remain in full force and effect unless specifically amended by the Town Board.

# ARTICLE 46

## INCENTIVE ZONING

### § 128-46.1 ESTABLISHMENT & AUTHORITY

- A. Establishment.** Pursuant to § 261-b of Town Law, the Town of Bethlehem hereby establishes a policy of encouraging the preservation of open space and the provision of facilities and amenities that would benefit the Town, providing incentive(s) to applicants seeking approval of certain development applications in accordance with this Article.
- B. Grant of Authority.** In considering an application for approval of a conservation subdivision plat or multi-family or mixed-use development project the Planning Board is hereby authorized to adjust certain requirements of this Chapter and Chapter 103 (Subdivision Regulations) in exchange for one or more of the specifically identified incentives of this Article and in accordance with the standards and conditions herein.
- C. SEQR Findings.**
1. Pursuant to a findings statement adopted after the review and acceptance of a final generic environmental impact statement that analyzed the potential environmental effects associated with implementation of incentive zoning, the Town Board hereby finds that the system of incentive zoning set forth in this section is consistent with the Town Comprehensive Plan and that such incentives are compatible with the development otherwise permitted in the residential districts as set forth in this chapter.
  2. The Town Board approved a negative declaration resolution for the adoption of the Town Comprehensive Plan Update, which included recommendations specific to incentive zoning modifications associated with benefits of open space preservation, senior housing, affordable housing, mixed use development, sustainability, accessibility and streetscape improvements and that these modifications continue to be compatible with the development otherwise permitted in the residential, hamlet, and multi-use districts.
  3. As set forth by this Article, the Town Board has established standards for the proper application of incentive zoning to a conservation subdivision layout and mixed-use and multi-family development projects and the specific findings the Planning Board shall make prior to approving an adjustment to the maximum unit density requirements of this chapter.
- D. Community Benefits.**
1. In the context of this Article, and as provided for by NYS Town Law, community benefits refer to the specific physical, social, or cultural amenities that are provided to the community in exchange for zoning incentives or bonuses. Potential benefits considered under the Town of Bethlehem Code are further described in §128-46.5 and 46.6.
  2. Community benefits must be offered to the Town in addition to, and not as a substitute for, any other improvements or items otherwise required for the proposed project itself and/or pursuant to other provisions of this zoning Law, site plan, special use permit, and subdivision regulations and/or any other laws, rules or regulations, including SEQRA or other applicable local, state or federal laws that now exist or as they may be amended from time to time.
- E. Incentives or Bonuses.** In the context of this Article, and as provided for by NYS Town Law, incentives or bonuses include deviations from the density-based restrictions of the Town of Bethlehem Zoning Code. Potential incentives or bonuses which may be considered under the Town of Bethlehem Code are further described in §128-46.5 and 46.6.

## § 128-46.2 PURPOSE & APPLICABILITY

- A. Purpose.** The purpose of the Town's system of incentive zoning is to advance the goals and principles expressed in the Town Comprehensive Plan, Comprehensive Plan Update, and this Chapter, including, but not limited to the following:
1. Ensure fairness and equity in providing for the housing, services, health, safety and livelihood needs of all citizens and groups.
  2. Ensure that all elements of the built environment, including land use, transportation, housing, energy and infrastructure work together to provide sustainable, green places for living, working and recreation, with a high quality of life.
  3. Ensure that the community is prepared to deal with both positive and negative changes in its economic health and to initiate sustainable urban development and redevelopment strategies that foster green business growth and build reliance on local assets.
  4. Ensure that public health needs are recognized and addressed through provisions for healthy foods, physical activity with access to recreation and social interaction, physical and emotional health care, environmental justice and safe neighborhoods.
- B. Applicability.** The incentives set forth herein shall be applicable only to:
1. Parcels zoned for residential uses for which a conservation subdivision application has been submitted, pursuant to Article 7 (Conservation Subdivision) of Chapter 103 of the Town Code; and
  2. Applications for multi-family and mixed density residential development in the RLL, LDR, MDR, TH, CH, RR, CMU, and RMU Districts pursuant to this Chapter.

## § 128-46.3 APPLICATION & REVIEW PROCEDURE

- A. Incentive Request.** Requests for an incentive, as provided for by this Article, shall be made as part of site plan or subdivision approval in accordance with Articles 42 and 44 of this Chapter, and Chapter 103 (Subdivision) of the Town of Bethlehem Code.
- B. Public Hearing Required.** A public hearing shall be held by the Planning Board prior to acting on any incentive zoning project. Such public hearing may be held jointly as part of the respective site plan or subdivision application to which the incentive is intended to be applied.
- C. Application Requirements.** Applications for incentives in exchange for community benefits will be submitted along with all required site plan and/or subdivision application materials. At a minimum, the application will include the following information:
1. The requested incentive.
  2. The proposed community benefit or amenity.
  3. A narrative which demonstrates the following:
    - a) The benefits to the community from the proposed amenity.
    - b) Consistency with the goals and objectives of the Town's Comprehensive Plan Update.
    - c) The relative importance and need for the amenity.
    - d) That there is adequate sewer, water, transportation, waste disposal and fire-protection facilities in the zoning district in which the proposal is located to handle the additional demands the incentive and amenity, if it is an on-site amenity, may place on these facilities beyond the demand that would be placed on them if the property were developed as of right.
  4. Acknowledge that all conditions and other applicable requirements of local, county, state, and federal laws, rules, and regulations will be met.

## § 128-46.4 REVIEW CRITERIA & FINDINGS

Before approving the exchange of a bonus for one or more of the identified benefits, the Planning Board shall make the following specific findings:

- A. The proposed adjustments allowable by the bonus would not have a significant adverse impact on the property, or to adjoining property, or to the neighborhood in which the property is situate.
- B. The proposed adjustments would not adversely affect the public health, safety or welfare or those of the residents of the project or neighboring lands.
- C. The project is in harmony with the purpose and intent of this article, is sufficiently advantageous to render it appropriate for grant of the incentive, and will add to the long-term assets of the Town of Bethlehem.
- D. The use of incentive zoning for the project is consistent with the Comprehensive Plan Update.
- E. The proposed project, including the incentive, can be adequately supported by the public facilities available or provided as a result of the project, including but not limited to sewer, water, transportation, waste disposal and fire protection, without reducing the availability of such facilities for projects permitted as of right under the Town of Bethlehem Code.
- F. The open space protected pursuant to this section would maximize conservation value, which may include, but is not limited to, recreational, historic, ecological, agricultural, water resource, scenic or other natural resource value.
- G. The units designated as affordable housing under this section shall remain affordable by an affordability agreement approved by the Planning Board Attorney, signed by the Town and the owner, and filed in the office of the Albany County Clerk. The agreement should include special termination provisions in case of foreclosure to protect tenants.
- H. The owner shall provide an annual certification to the Board identifying the occupancy of the units by qualified persons and families. The certification may use forms used by the New York State Division of Housing and Community Renewal. Failure to so certify may be deemed a violation of the site plan approval granted by the Planning Board. The Planning Board may grant one or more waivers from this provision, not to exceed one year each, upon written request and proof from the applicant that despite best efforts the applicant has been unable to locate persons or families qualified to occupy one or more of the units designated as affordable housing.
- I. Proper surety or performance guaranties between the applicant and the Town covering future title, dedication and provisions for the costs of land or improvements are or will be in existence as of the date the final plat map is signed by the Chair of the Planning Board.

## § 128-46.5 POTENTIAL INCENTIVES & COMMUNITY BENEFITS

- A. **Available Incentives.** An applicant may apply for an incentive adjustment to the maximum dwelling unit density requirements of this chapter (including building height) in exchange for the community benefits outlined in this section.
- B. **Density Calculations.** The calculation of dwelling unit density bonuses, as provided by this section, shall be based on:
  1. The maximum density for a conservation subdivision as determined by the Planning Board in accordance with Chapter 103, Article 7 (Conservation Subdivision) of the Town Code.
  2. For all other uses and developments considered for incentive zoning as provided for by this Article, shall be determined by the density, dimensional, and bulk requirements of the district in which it is located.
- C. **Combination of Incentives.** A combination of incentives may be granted by the Planning Board in accordance with this section provided the total of density bonuses does not exceed 50% of the maximum density as outlined in Subsection B above.

- D. Open Space for Conservation Subdivisions.** The following may be applied to any conservation subdivision considered under this Article.
1. For the permanent preservation of at least 60% of the buildable area of a proposed conservation subdivision, a 15% increase to the maximum unit density for the zoning district may be approved; or
  2. For the permanent preservation of at least 70% of the buildable area of a proposed conservation subdivision, a 20% increase to the maximum unit density for the zoning district may be approved.
- E. Public Trails, Parks, and Waterfront Access.** The following may be applied to any incentive zoning project considered under this Article.
1. For the dedication of not less than 10 contiguous acres of land for public use for trails, active or passive recreation, or waterfront access, a 15% increase to the maximum unit density may be approved.
  2. Such dedication may be by permanent easement or conveyance of land in fee to the Town.
  3. Such dedication shall be in addition to, and not in lieu of, any dedication of parkland or payment in lieu of parkland as provided in Article 6 (Parkland) of Chapter 103 (Subdivision) of the Town Code.
  4. It shall be the responsibility of the applicant to build and execute any improvements to be provided under this incentive, such as trails, passive or active recreation facilities, or other such amenities.
- F. Affordable Housing.** The following may be applied to any incentive zoning project considered under this Article.
1. Affordable Housing Conditions.
    - a) All affordable housing units shall be deed restricted to require the above standards apply upon resale in perpetuity.
    - b) For the purposes of this Article, "affordable housing" shall mean residential units that are rented or sold to households with incomes equal to or less than 80% of the Area Median Income (AMI). To qualify for the density bonus, the average income across all the project's affordable units shall be equal to or less than 60% AMI.
    - c) For the purposes of this Article, "Area Median Income" or "AMI" shall mean the area median income adjusted for household size as determined by the federal Department of Housing and Urban Development (HUD) for the Albany-Troy-Schenectady Metropolitan Statistical Area.
  2. Density Bonuses.
    - a) If equal to or more than 25% of dwelling units qualify as affordable, 10% increase in the total number of units.
    - b) If equal to or more than 33% of dwelling units qualify as affordable, 15% increase in the total number of units.
    - c) If equal to or more than 50% of dwelling units qualify as affordable, 20% increase in the total number of units.
  3. Reduction of Minimum Open Space.
    - a) If more than 25% of dwelling units qualify as affordable, 10% decrease in the minimum open space requirement.
    - b) If more than 33% of dwelling units qualify as affordable, 15% decrease in the minimum open space requirement.
    - c) If more than 50% of dwelling units qualify as affordable, 20% decrease in the minimum open space requirement.
  4. Reduction of Dwelling Unit Mix Restrictions. The following shall apply to conservation subdivisions only.
    - a) If more than 25% of dwelling units qualify as affordable, 10% decrease in the maximum number of single-family or two-family dwellings.

- b) If more than 33% of dwelling units qualify as affordable, 15% decrease in the maximum number of single-family or two-family dwellings.
- c) If more than 50% of dwelling units qualify as affordable, 20% decrease in the maximum number of single-family or two-family dwellings.

**G. Senior Housing.** The following may be applied to any incentive zoning project considered under this Article.

1. Senior Housing Conditions.
  - a) Senior housing shall mean a residential facility or neighborhood specifically designed, marketed, and operated to provide housing for persons who are 55 years of age or older, including their spouses or domestic partners regardless of age, and which complies with applicable federal and state fair housing laws regarding age-restricted housing.
  - b) Verification of age eligibility must be maintained through lease agreements and periodic certification
2. Density Bonus. Where a development includes at least 80% senior housing accommodations, a 20% increase in the maximum unit density may be approved.

**H. Public Gathering Space.** The following may be applied to any incentive zoning project in a TH, CH, RH, or CMU District.

1. Public Gathering Space Conditions.
  - a) Public gathering spaces shall be defined as outdoor areas where the public is directly or indirectly invited to visit or permitted to congregate. This shall only include genuinely accessible public areas, such as pedestrian plazas, courtyards, squares, and pocket parks.
  - b) Areas that will not be considered include landscaped setbacks, areas used for parking, loading, or vehicular access, and areas with significant grade changes, narrow passages, or obstructed access.
  - c) Public gathering spaces shall have a minimum dimension of 30 feet in width to be considered functional.
  - d) Public gathering spaces shall include flexible design features, such as moveable seating, tables, and shade structures, elements accommodating multiple scales of gathering, and weather protection, where appropriate.
  - e) Such spaces shall also be ADA compliant with accessible routes, seating options, and amenities, connect directly to public sidewalks without requiring passage through private property.
  - f) Construction and maintenance of such areas shall be the responsibility of the applicant.
2. Density Bonuses.
  - a) For the provision of at least 2,500 square feet of public gathering area, a 10% increase to the maximum unit density may be approved.
  - b) For the provision of at least 6,500 square feet of public gathering area, a 15% increase to the maximum unit density may be approved.

## § 128-46.6 CONSIDERATION OF ADDITIONAL COMMUNITY BENEFITS & INCENTIVES

### A. Valuation.

1. Density based incentives may also be considered under this Article for the provision of the additional community benefits listed in this section.
2. Due to the potential variation in cost and application of these amenities, the specific incentive which may be granted shall be determined by the Planning Board based on the estimated cash value of the proposed amenity, as demonstrated by the applicant.
3. In determining the adequacy of the amenity offered, the value/cost of the incentive (e.g., the increase in density for residential projects) shall be generally and approximately proportionate to the value/cost of the amenity, all as decided in the sole discretion of the Planning Board. In determining the relative

value/cost of the incentive and value/cost of the amenity, the Planning Board may utilize the services of experts, consultants and other third parties. The Planning Board shall use its discretion, acknowledging the potential difficulty in quantifying value/cost in dollars and cents for some types of amenities that are difficult to quantify monetarily such as, assigning value for protecting certain resources that contribute to community character like scenic and historic resources.

**B. Potential Community Benefits.** The following may be proposed for any incentive zoning project pursuant to this Article.

1. Public Roadway Improvements.
  - a) Such improvements shall only include those above and beyond what is traditionally required of developments under the Town of Bethlehem Code and other relevant local, state, and federal regulations. This may include, but is not limited to, street lighting, benches, transit stop accommodations, and increased pedestrian and bicyclist accommodations (e.g. bumpouts, enhanced crosswalks, bike lanes).
  - b) The construction and installation of such amenities shall be the responsibility of the applicant.
2. Universal Design. This may include developments where at least 50% of buildings and improvements follow Universal Design (UD) standards making the buildings and environments usable by all, regardless of age, ability, or disability. This may include, but is not limited to, zero-step entrances, accessible public gathering and recreation spaces, and accessible doorways, bathrooms, or other such building feature. Guidance on Accessibility and Universal Design Standards is provided by the U.S. National Parks Service and The Center for Universal Design operated by North Carolina State University through their publication, [The Principles of Universal Design](#).
3. Alternative Energy Sources. This may include a solar, geothermal, or other renewable energy power-generation system with an energy generation capacity of at least 30% of the expected annual energy usage for the building(s) in which it is intended to serve, above energy standards required by state law.
4. Passive House or Net Zero Design. This may include developments where at least 50% of buildings constructed comply with passive house, net zero, or net negative design practices achieving zero greenhouse gas emissions during their operational and construction phases. Guidance on Passive House or Net Zero Design is provided by the [Passive House Institute](#).
5. Rehabilitation or Reuse of Historic or Dilapidated Properties.
  - a) The preservation, stabilization, rehabilitation, and/or improvement of historic buildings, structures, and sites, including through adaptive reuse or other means, including archeologically sensitive locations, which may be a part of the proposed project itself.
  - b) Historic property improvements shall be in accordance with the US Secretary of the Interior Standards.

# ARTICLE 47

## VARIANCES & APPEALS

### § 128-47.1 VARIANCES & APPEALS

The rules, regulations, and procedures of NYS Town Law §267 shall apply to all applications for variances, appeals, and interpretations considered under this Zoning Law. The following requirements are provided for ease of reference. In the case of conflicts with or amendments to NYS Town Law, the state regulations shall supersede the regulations of this Article.

- A. Authorized Review Body.** The Zoning Board of Appeals (ZBA) shall have the power to review and decide upon all appeal, variance, and interpretation applications.
- B. Application Processing.** All matters for review by the ZBA shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. Application Requirements.** All applications before the ZBA shall include the materials identified on the Town's application forms or otherwise requested by the Building Inspector to allow for an adequate and informed review.
- D. ZBA Action.** The ZBA shall review and decide upon applications in accordance with §128-40.5.
- E. Review Criteria.** In conducting their review of variances, the ZBA shall consider the criteria only as provided by this Article and NYS Town Law.
- F. Public Hearings.** A public hearing shall be held by the ZBA for all appeal and variance applications.
- G. Referrals.** All internal, professional, and required referrals shall be made in accordance with §128-40.7.
- H. Coordinated Reviews.** The review of variance applications may be coordinated with other development applications in accordance with §128-40.6.

### § 128-47.2 USE VARIANCE REVIEW CRITERIA

The ZBA shall not grant a use variance without the applicant having shown that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located the following conditions exist:

- A.** The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- B.** The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- C.** The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- D.** That the alleged hardship has not been self-created.

### § 128-47.3 AREA VARIANCE REVIEW CRITERIA

In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the ZBA shall consider the following:

- A. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- B. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- C. Whether the requested area variance is substantial in relation to the requirement;
- D. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- E. Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the ZBA but shall not necessarily preclude the granting of the area variance.

#### § 128-47.4 MINIMUM VARIANCE ALLOWABLE

The ZBA, in the granting of variances, shall grant the minimum variance that it shall deem necessary and adequate to address the hardship proved by the applicant and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

#### § 128-47.5 APPEALS PROCEDURE

- A. **Appeal of Decision.** Appeals may be taken by any person aggrieved by the Building Inspector or other Town official's decision or action; or by an officer, department, or other review body of the Town pertaining to the zoning law.
- B. **Interpretations.** Upon the appeal from a decision by an administrative official, the Zoning Board of Appeals shall decide any question involving interpretation of any provision of this chapter, including any determination of the exact location of any district boundary if there is uncertainty with respect thereto. The Board may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official. In making such determination, the Board shall have all of the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.
- C. **Applications for special use permit, site plan, subdivision and land division.** Pursuant to §§ 274-a, Subdivision 3, 274-b, Subdivision 3, and 277, Subdivision 3, of the New York State Town Law, nothing herein shall be construed to prevent an applicant for special use permit, site plan, subdivision or land division approval from submitting an application for variance approval without first obtaining a decision or determination from the Town Building Inspector.
- D. **Public projects and improvements.**
  1. The Board shall decide any question as to the proper application of this chapter to public and quasi-public projects and improvements under the balancing of interests test set forth in Matter of County of Monroe, 72 N.Y.2d 338. Upon a finding of applicability under the balancing of interests analysis, the Board may require a project or improvement proposed by a governmental agency, a quasi-governmental entity, or any person or agency acting on behalf of a governmental or quasi-governmental entity to undergo site plan review and approval and/or subdivision review and approval before the Town Planning Board. Such projects and improvements include those:
    - a) Located on public land or public facilities, whether financed by public or private funds; and
    - b) Located on private land or private facilities but paid for, in part or in whole, by public funds.
  2. Notwithstanding the foregoing, the Town Board shall have exclusive jurisdiction over any Town sponsored public and quasi-public projects and improvements, including any special districts of the Town, or projects constructed with approval of the Town Board on Town owned or controlled property.

Such projects and improvements shall not be subject to the provisions of the Town Zoning Code. The Town Board may refer such matters to the Planning Board for its review and recommendations

**E. Filing an Appeal.** Said appeal shall be filed in accordance with the following:

1. An appeal that specifies the grounds of said petition and relief sought shall be taken within 60 days after the filing in the Town Planning and Development Department of any order, requirement, decision, interpretation, or determination of a review body authorized under this Chapter.
2. All appeals shall be heard by the ZBA.
3. The Building Inspector shall transmit to the ZBA all papers constituting the record upon which the action appealed from was taken. The Building Inspector shall, within five days, notify any petitioner of the denial of a petition presented to the Building Department for a building permit on account of violation of the Zoning Law.
4. An appeal under this Zoning Law stays all proceedings in furtherance of the action appealed from unless the Building Inspector, after the notice of appeal shall have been filed, certifies to the ZBA that, by reason of acts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In which case proceedings shall not be stayed otherwise than by a restraining order granted by the ZBA, Town Board, or by a court of record on application, on notice to the Building Inspector and on due cause shown.

# ARTICLE 48

## AMENDMENTS

### § 128-48.1 ZONING AMENDMENTS (REZONINGS)

- A. Authority to File.** Amendments to the zoning text or zoning map (rezonings) may be initiated by the Town Board, recommendation of the Planning Board, or petition presented to the Town Board in accordance with NYS Town Law.
- B. Application Processing.** All applications shall be submitted and processed in accordance with Article 40 of this Chapter.
- C. Application Requirements.** All rezoning applications shall include the materials identified on the Town’s application forms or otherwise requested by the Director of Planning and Development.
- D. Planning Board Review and Recommendation.** The Planning Board shall conduct a review of amendment applications and provide a written recommendation of decision to the Town Board in accordance with §128-40.5.
- E. Town Board Review and Decision.** Upon receipt of a recommendation from the Planning Board, the Town Board shall review and decide upon the application in accordance with §128-40.5. If the Town Board approves the rezoning the text and/or map shall be amended after publication as required by NYS Law.
- F. Review Criteria.** In conducting their review, the Planning Board and Town Board shall consider the criteria provided by §128-48.2.
- G. Public Hearings.** A public hearing shall be held by the Town Board prior to issuing a decision on the rezoning.
- H. Referrals.** All internal, professional, and required referrals shall be made in accordance with §128-40.7.
- I. Coordinated Reviews.** The review of amendments may be coordinated with other development applications in accordance with §128-40.6.

### § 128-48.2 REVIEW CRITERIA

In reviewing zoning amendments the Planning Board and Town Board must consider the following criteria:

- A.** Whether the proposed amendment corrects an error or inconsistency in the zoning law or meets the challenge of a changing condition;
- B.** Whether the proposed amendment is in substantial conformance with the adopted plans and policies of the Town;
- C.** Whether the proposed amendment is in the best interests of the Town as a whole;
- D.** Whether public facilities (infrastructure) and services will be adequate to serve development allowed by any requested rezoning;
- E.** Whether any rezoning will substantially harm the public health, safety or general welfare or the value of nearby properties;
- F.** Whether any rezoning is compatible with the zoning and use of adjacent property;
- G.** Whether the property in question is suitable for the uses and development to which it has been restricted under the existing zoning regulations; and

- H. Whether the gain, if any, to the public health, safety and general welfare due to denial of the application outweighs that of the hardship imposed upon the landowner, if any, as a result of denial of the application.

# ARTICLE 49

## REVIEW BODIES

### § 128-49.1 TOWN BOARD

- A. Authorization.** For the purpose of promoting the health, safety, morals, or the general welfare of the community, the Town Board of the Town of Bethlehem is hereby empowered by NYS Town Law to regulate and administer the provisions of this Zoning Law as provided herein.
- B. Final Decision Authority.** Pursuant to this Zoning Law and NYS Town Law, the Town Board is hereby authorized and empowered with final decision authority for the following:
1. Amendments to the text and/or map of this Chapter (re-zonings); and
  2. Planned Unit Development (PUD) Districts.
- C. Additional Powers.**
1. Delegation of review and decision authority for special use permit, site plan, and subdivision to the Planning Board pursuant to NYS Town Law.
  2. Delegation of review and decision authority to the Director of Planning for land division, accessory dwelling units, and those actions identified as administrative review under Article 42.
  3. The Town Board shall also hold all additional powers and duties provided by the laws, rules, and regulations of New York State and the rules, regulations, and local laws of the Town of Bethlehem.

### § 128-49.2 PLANNING BOARD

- A. Establishment.**
1. As provided by NYS Town Law §271, the Town of Bethlehem Planning Board previously established under local law and still in existence at the time of this Chapter's enactment shall hereby be continued.
  2. The Planning Board shall be governed by the provisions of all applicable state statutes, local laws, ordinances, including NYS Town Law, and these rules.
- B. Membership and Terms.**
1. There shall be a Planning Board of five members.
  2. Member appointments other than to fill out an unexpired term shall be for a period of five years.
- C. Training Requirement.** Training requirements are pursuant to NYS Town Law §271.
- D. Advisory Authority.** Pursuant to this Article and NYS Town Law, the Planning Board is hereby authorized and empowered with review and advisory authority for the following actions:
1. Amendments to the text and/or map of this Chapter (re-zonings); and
  2. Planned Development Districts (PDD).
- E. Final Decision Authority.** Pursuant to this Article and NYS Town Law, the Planning Board is hereby authorized and empowered with final decision authority to approve, approve with modifications or conditions, or deny applications for the following:
1. Site Plan Review;
  2. Special Use Permits;

3. Incentive Zoning; and
4. Subdivision.

**F. Additional Powers and Duties.** The Planning Board may exercise additional powers and duties as directed by the Town Board, as may be described elsewhere in this Chapter, and as permitted by NYS Town Law.

### § 128-49.3 ZONING BOARD OF APPEALS (ZBA)

#### A. Establishment.

1. Per NYS Town Law §267, the Zoning Board of Appeals (ZBA) previously established under local law and still in existence at the time of this Chapter's enactment shall hereby be continued.
2. The ZBA shall be governed by the provisions of all applicable state statutes, local laws, ordinances, including NYS Town Law, and these rules.

**B. Appointment of Members.** The Town Board of the Town of Bethlehem shall appoint members to the Zoning Board of Appeals and shall designate a Chairperson. The Town Board may provide for compensation to be paid to experts, clerks and a secretary and provide for such other expenses as may be necessary and proper, not exceeding the appropriation made by the Town Board for such purpose.

1. Town Board members ineligible. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals.
2. Terms of members first appointed. In the creation of a new Zoning Board of Appeals, or the reestablishment of terms of an existing Board, the appointment of members to the Board shall be for terms so fixed that one member's term shall expire at the end of the calendar year in which such members were initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term that shall be equal in years to the number of members of the Board.
3. Terms of Zoning Board of Appeals members now in office. The term of Zoning Board of Appeals members now holding office, which do not expire at the end of the calendar year, shall expire on the expiration date of their term. Successors to the vacant office shall then be appointed for terms of office for the remainder of the calendar year, plus one year less than the number of years equal to the number of members of the Board. Terms of successors of members of the Board whose terms expire at the end of the calendar year shall be for the number of years equal to the number of members of the Board. This subsection supersedes New York State Town Law § 267, Subdivision 5.
4. Oath of Office. Upon appointment the member shall file with the Town Clerk an oath of office as may be prescribed by the Town Board.

**C. Vacancy in Office.** If the vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the unexpired term.

**D. Removal of Members.** The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after public hearing.

**E. Alternate Members.** The Town Board may appoint one or more alternate voting members of the Zoning Board of Appeals. Each such alternate voting member shall serve for a term of five years.

1. All provisions of New York State law relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office, and service on other boards, and any provisions of any local laws relating to training, continuing education, compensation and attendance, shall also apply to alternate voting members. Before appointing an alternate voting member, the Town Board shall review the background of any appointee and may, in its discretion, require that such appointee complete specified training prior to any designation to serve as an alternate voting member, or within a specified time thereafter.

2. Upon appointment the alternate voting member shall file with the Town Clerk an oath of office as may be prescribed by the Town Board.
3. At the time of their appointment alternate voting members shall be designated as "Alternate No. 1," "Alternate No. 2," and so on, in the order in which they are first appointed.
4. The Chairperson of the Zoning Board of Appeals, or the Acting Chair, shall designate an alternate voting member to serve in the place of a regular Zoning Board of Appeals member in the following circumstances and for the following periods:
  - a) When a regular Zoning Board of Appeals member has recused themselves with respect to a matter constituting one or more particular applications before the Board, the Chairperson, or the Acting Chair, shall first designate Alternate No. 1 to serve in such regular member's place throughout the entire remaining period of the Zoning Board of Appeals review, consideration, and voting, until the matter is concluded. In the event that Alternate No. 1 is unable to serve, the Chairperson shall designate the next most senior alternate voting member to serve. In the event that the next most senior alternate voting member is unable to serve, the Chairperson shall designate the next most senior alternate voting member to serve, and so on. At the time of designation of an alternate voting member, the Chairperson, or the Acting Chair, shall specify the name of any application or matter for which the designated alternate voting member will serve. The Clerk of the Board shall enter the designation of any alternate voting member or members into the minutes of the meeting at which the designation is made.
  - b) Rotating appointment of alternate voting members. When a designated alternate voting member has fulfilled his or her duty as to the application or matter to which he or she was appointed, he or she shall not be appointed to another application or matter until each of the other alternate voting members has been appointed to serve.
5. Upon appointment by the Town Board, any alternate voting member shall attend the regular and special Zoning Board of Appeals meetings on the same basis as regular members and shall participate in discussion, deliberation and voting on the Zoning Board of Appeals only upon being designated by the Zoning Board of Appeals Chairperson, or Acting Chair, to serve, as set forth in Subsection I(4) above. Upon designation the alternate voting member shall possess all of the powers and responsibilities of a regular Zoning Board of Appeals member for the period of time for which such alternate voting member serves, with respect to any application or matter for which such alternate voting member has been designated.
6. Prior to deliberating or voting on a matter wherein the alternate voting member has not been present for all of the Zoning Board of Appeals meetings or hearings relating to such matter, the alternate voting member shall become familiar with the Zoning Board of Appeals records relating to the same, including the application, the environmental documents, and any other materials in the Zoning Board of Appeals files, such as minutes of meetings and hearings. Prior to voting on any such matter or application the alternate voting member shall set forth on the record the manner in which such member has become familiar with the record before the Board.
7. This section shall not be deemed to require the appointment of alternate voting members by the Town Board, nor shall it be deemed to impair or restrict the authority of the Town Board to remove members of the Zoning Board of Appeals for cause.
8. It is the intention of this chapter that the Zoning Board of Appeals members will recuse themselves at the earliest possible time when a conflict of interest or appearance of impropriety has arisen and that the Zoning Board of Appeals Chairperson, or Acting Chair, will thereupon immediately notify the Town Board and designate an alternate voting member at the earliest possible time after a recusal has taken place. However, in the case of any pending applications or matters, where any Zoning Board of Appeals members have already made recusals and it has not previously been possible to designate alternate voting members because this chapter is not yet enacted, the Zoning Board of Appeals Chairperson, or Acting Chair, shall designate the alternate Zoning Board of Appeals member or members at the earliest possible time, so that the Zoning Board of Appeals will be able to conduct its business with a full complement of members on all pending matters.

- F. Chairperson Duties.** All meetings of the Board of Appeals shall be held at the call of the Chairperson and at such other times as such Board may determine. Such Chairperson or, in their absence, the Acting Chair may administer oaths and compel the attendance of witnesses.
- G. Rules.** The Board of Appeals is hereby authorized to promulgate rules regarding the following matters:
1. The day and time by which applications for new matters, and supplemental materials for pending matters, must be submitted to the Secretary of the Zoning Board of Appeals in order to be considered at the next meeting of the Board.
  2. The number of copies of materials that must be submitted for new and pending matters.
  3. The maximum number of applications that may be heard at a regular meeting of the Board.
  4. The form of the applications for variance and interpretation requests, including the use of a long form or a short form environmental assessment form. See 6 NYCRR 617.2(20) of the State Environmental Quality Review Act regulations.
  5. The maximum length of time of a regular meeting of the Board.
  6. The conduct of applicants and the public at meetings and public hearings of the Board.
- H. Final Decision Authority.** Pursuant to this Article and NYS Town Law, the ZBA is hereby authorized and empowered with final decision authority to approve, approve with modifications or conditions, or deny applications for the following:
1. Variances;
  2. Appeals to determinations of the Building Inspector or the Director of Planning to matters set forth in the zoning law; and
  3. Zoning Code Interpretations.
- I. Additional Powers and Duties.** The ZBA may exercise additional powers and duties as directed by the Town Board, as may be described elsewhere in this Chapter, and as permitted by NYS Town Law.

## § 128-49.4 DEVELOPMENT PLANNING COMMITTEE

### A. Purpose and Intent.

1. The purpose of this Committee is to provide for coordinated inter-departmental development review, bringing together highly experienced and qualified staff from all Town departments involved in project review.
2. This coordinated review is intended to:
  - a) Better facilitate the processing and review of applications.
  - b) Ensure consistency and compliance with all applicable local, state, and federal plans, codes, and standards.
  - c) Avoid costly delays in the approval process by providing feedback from multiple departments early in the review process.
  - d) Streamline the review of smaller, low-impact development proposals by providing for administrative review.

**B. Membership.** The Development Planning Committee shall consist of all Town department directors, or their designee(s), with an interest or stated role in the review of development applications. This may include, but is not limited to Building, Planning, Public Works, and Engineering staff.

### C. Meetings.

1. Meetings of the Committee may be held on an as needed basis, when called by the Director of Planning.
2. Said meetings are open to the public. Attendees will be provided an opportunity for public comment.

**D. Powers and Duties.**

1. The Committee is authorized to act as an advisory review body, where requested or required by this Chapter.
2. In its advisory role the Committee may provide written comments and recommendations on applications
3. All feedback shall be provided in a timely and efficient manner.
4. The Committee may exercise additional powers as may be described elsewhere in this Chapter and as permitted by other applicable NYS laws, rules, and regulations.